

side of such counties as depositories, but such bank or banks must furnish bonds according to the provisions of this act.

§ 12. TREASURER EXEMPT FROM LIABILITY.] Whenever any portion of the funds of any county shall be deposited by any county treasurer in the manner as provided in this act, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such deposited funds from the failure, bankruptcy or any other acts of any such bank or banks to the extent and amount only of such funds in the hands of such bank or banks at the time of such failure or bankruptcy.

§ 13. MALFEASANCE.] Any officer violating any of the provisions of this act shall be deemed guilty of malfeasance in office.

§ 14. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed, and especially Chapter 20 of the Special Laws of Dakota Territory for the year 1885.

Approved, March 6, 1893.

## DESCENT OF ESTATES.

### CHAPTER 50.

[S. B. No. 39.]

RELATING TO SUCCESSION OF REAL AND PERSONAL PROPERTY.

AN ACT to Amend Section 778 of the Civil Code, Being Section 3401 of the Compiled Laws, Relating to the Succession of Real and Personal Property.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

[§ 1. AMENDMENT. That Section 3401 be amended so as to read as follows:]

§ 3401. SUCCESSION, INTESTATE ESTATES.] When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this Code and the Probate Code, subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife,

and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the children living and the issue of the deceased child or children by right of representation.

2. If the decedent leave no issue, and the estate does not exceed in value the sum of five thousand dollars (\$5,000) all the estate goes to the surviving husband or wife, and all the property in excess of five thousand dollars (\$5,000) in value, one-half thereof goes to the surviving husband or wife, and the other one-half goes to the decedent's father, and if he be dead, then to the decedent's mother. If the decedent leave no issue nor husband nor wife, the estate must go to the father, and if he be dead, then to the mother. If the decedent leave a surviving husband or wife and no issue and no father nor mother nor brother nor sister, the whole estate goes to the surviving husband or wife.

3. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation.

4. If the decedent leave no issue, nor husband, nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother to the exclusion of the issue, if any, of deceased brothers or sisters.

5. If the decedent leave no issue, nor husband, nor wife, and no father nor mother, nor brother, nor sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming to an ancestor more remote. However, if the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

6. If, at the death of such child, who dies under age, not having been married, all the other children of the parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all

other children of the same parent; and if all issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

7. If the decedent leave no husband, wife, or kindred, the estate escheats to the State for the support of common schools.

Approved, March 13, 1893.

## CHAPTER 51.

[H. B. No. 203.]

### TITLES TO LANDS OF HEIRS-AT-LAW.

AN ACT to Provide for the Ascertaining and Giving Notice of the Title of the Lands of the Heirs of Deceased Persons.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. HEIRS TO APPLY TO COURT FOR ADJUDICATION.] That when any person shall have deceased, having title to any lands in this State, it shall be lawful for any person claiming an interest in said lands, whether as heir-at-law or through or under such heir or heirs to apply to the county court of the county in which said lands or any part of them are located, which said court shall adjudicate and determine who are or were the legal heirs of said deceased person, and entitled to the lands of which the deceased died seized.

§ 2. APPLICATION, HOW MADE—CONTENTS.] The application shall be made by filing a petition in said court, subscribed by the petitioner, his, her or their attorney, duly verified, setting forth the name of the deceased; that he died seized of lands in this State, a portion of which (and describing such portion) the said petition shall show to be located in the county where said petition is to be filed; the names and residences of the heirs of said deceased person, so far as they are known to the petitioner, and shall conclude with a prayer for the adjudication and determination aforesaid; and thereupon said court shall make an order setting forth the time and place of hearing such petition, and shall cause notice of such petition and the time and place assigned for the hearing thereof to be published for three successive weeks in such newspaper, printed and published in the county, as the said court shall direct.

§ 3. HEARING AND ADJUDICATION.] At the time assigned for the hearing of said petition the court may hear proof taken by commission or by witnesses produced in open court, of the facts set forth in said petition, and shall thereupon, if the evidence be sufficient, find and adjudge who are or were the heirs of the deceased and entitled by the laws of this State to inherit the real estate of the deceased, which finding and adjudication shall be



entered on the journal of said court, and which entry, or a duly certified copy thereof, shall be *prima facie* evidence of the facts therein found.

§ 4. RECORD OF ADJUDICATION.] A duly certified copy of such determination and adjudication shall be entitled to record in the record of deeds of conveyance, and to be noted in the numerical index in the office of the register of deeds of any county where land affected by such adjudication may lie.

§ 5. COSTS, HOW PAID—AMOUNT.] The costs of such proceedings shall be paid by the petitioner or petitioners, including all expense of publishing or serving notice required by law or the order of the court and court fees, as follows: Five dollars (\$5) where the value of such estate does not exceed the value of five hundred dollars; ten dollars (\$10) where it exceeds the value of five hundred dollars and not more than fifteen hundred dollars; fifteen dollars (\$15) where the value of such estate exceeds fifteen hundred but does not exceed twenty-five hundred dollars; twenty dollars (\$20) where the value of such estate exceeds twenty-five hundred dollars but does not exceed five thousand dollars; twenty-five dollars (\$25) where the value of such estate exceeds five thousand but does not exceed ten thousand dollars; thirty dollars (\$30) where the value of such estate exceeds ten thousand but not fifteen thousand dollars; forty dollars (\$40) where the value of such estate exceeds fifteen thousand but not twenty thousand dollars; fifty dollars (\$50) where the value of such estate exceeds twenty thousand but not twenty-five thousand dollars; and seventy-five dollars (\$75) in all cases when the value of such estate shall exceed the value of twenty-five thousand dollars. The value of such estate for the purpose of taxation of said court fees, shall be determined by the court on the oath of the petitioner or petitioners or other testimony satisfactory to the court, and the said fees shall be paid to the judge, who shall keep a record of the same, and he shall pay them over to the county treasurer, who shall give receipts for the same, as in other cases, and place the sums so paid into the general fund.

Approved, March 6, 1893.

## CHAPTER 52.

[H. B. No. 200.]

### DOWER AND CURTESY.

AN ACT to Re-enact Section 779 of the Civil Code, Being Section 3402, Compiled Laws, and Subdivision 5 of Section 83 of the Civil Code, Being Subdivision 5 of Section 2594, Compiled Laws.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 779 of the Civil Code is hereby re-enacted to read as follows:

§ 779. Dower and courtesy are abolished.

§ 2. AMENDMENT.] Subdivision 5 of Section 2594 of the Civil Code is hereby re-enacted to read as follows:

§ 5. NO ESTATE BY DOWER OR CURTESY.] No estate is allowed the husband as tenant by curtesy upon the death of his wife nor is any estate in dower allotted to the wife upon the death of her husband.

§ 3. REPEAL.] All acts and parts of acts inconsistent with this act are hereby repealed.

Approved, March 6, 1893.

## DISTRICT COURTS.

### CHAPTER 53.

[H. B. No. 30.]

#### TERMS OF COURT IN THIRD DISTRICT.

AN ACT to Fix the Terms of the District Court in the Third Judicial District.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. TERMS.] The terms of the district court shall be held in each of the counties composing the Third Judicial District in each year, as follows:

In the county of Cass, at Fargo, in said county, commencing respectively on the first Tuesday in September, the first Tuesday in November, the first Tuesday in February, and the fourth Tuesday in April; *Provided*, That at said terms appointed to be held in the months of February and September no jury shall be called; *Provided, however*, That a jury may in the discretion of the court be called for the trial of criminal cases.

In the county of Steele, at Sherbrooke, in said county, commencing respectively on the third Tuesday in October and on the second Tuesday in June.

In the county of Traill, at Hillsboro, in said county, commencing respectively on the second Tuesday in January and on the fourth Tuesday in June.

§ 2. IN CASE OF HOLLIDAYS.] In case the day hereby appointed for the commencement of a term in any county should be a statutory holiday, such term shall be commenced on the next following day.

§ 3. SPECIAL TERMS.] Nothing contained in this act shall be construed to restrict the power and authority of the judge to call