

# ACTIONS.

## CHAPTER 3.

[S. B. No. 110—Movius.]

### ACTION AGAINST HOMESTEAD.

AN ACT to Limit the Time Within Which An Action May Be Commenced, or a Defense or Counterclaim Interposed, Founded Upon a Claim of Right to a Homestead Heretofore or Hereafter Conveyed or Incumbered, Otherwise Than as Provided by the Law in Force at the Time of the Execution of the Conveyance or Incumbrance Thereof.

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

§ 1. LIMITING TIME WHEN ACTIONS MAY BE COMMENCED AGAINST HOMESTEADS.] No action, defense or counterclaim founded upon a right of homestead in property conveyed or incumbered prior to the taking effect of this act and since the taking effect of section 3609 of the revised codes of 1895, otherwise than as provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the taking effect of this act, shall be effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed on or before the first day of January, 1906; and no action, defense or counterclaim founded upon a right of homestead in property hereafter conveyed or incumbered, otherwise than as provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the execution of such conveyance or incumbrance, shall be effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed within two years after the execution of such conveyance or incumbrance; provided, nevertheless, that such limitation shall not apply, if the homestead claimant was, at the time of the execution of such conveyance or incumbrance, in the actual possession of the property claimed and had not quit such possession previous to the commencement of such action, or the interposing of such defense or counterclaim; and provided, further, that this act shall not in any way affect claims to homestead which may have become barred under the provisions of section 3609 of the revised codes of 1895.

§ 2. • REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 13, 1905.

## CHAPTER 4.

[S. B. No. 149—Pierce.]

## ACTIONS AGAINST UNKNOWN DEFENDANTS.

AN ACT to Amend Sections 5908 and 5909 of the Revised Codes of 1899, as Amended by Section 1 of Chapter 5 of the Laws of 1901, Relating to Unknown Persons Defendant in Certain Actions and Service of Summons Upon the Same.

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

§ 1. AMENDMENT.] That section 5908, as amended by section 1 of chapter 5 of the laws of 1901, be and the same is hereby amended so as to read as follows:

§ 5908. JOINDER OF DEFENDANTS.] In an action to determine adverse claims all persons appearing of record to have estates or interests in, or liens or incumbrances upon the property, and all persons in possession, may be joined as defendants, and all others may be joined by inserting in the title of the action the following: "All other persons unknown claiming any estate or interest in, or lien or incumbrance upon the property described in the complaint."

§ 2. AMENDMENT.] That section 5909, as amended by section 1 of chapter 5 of the laws of 1901, be and the same is hereby amended so as to read as follows:

§ 5909. UNKNOWN PERSONS MADE PARTIES.] All persons having or claiming an estate or interest in, or lien or incumbrance upon the property described in the complaint, whether as heirs, devisees, legatees, or personal representative of a deceased person, or under any other title or interest, and not in possession or not appearing of record in the office of the register of deeds, the clerk of the district court or the county auditor of the county in which the land is situate to have such claim, title or interest therein, may be proceeded against as persons unknown, and any order, judgment or decree entered in the action shall be valid and binding on such unknown persons, whether of age or minors, and on those claiming under them. Service of the summons in such action may be had upon all such unknown persons defendant by publication in the manner provided by law for service by publication upon defendants whose residence is unknown; provided, that as to such unknown persons defendant the affidavit for publication shall be required to state in substance the following facts: That the interests of such unknown persons defendant in the land described in the complaint are not shown of record in the office of the register of deeds, the clerk of the district court or the county auditor of the county in which such land lies, and the affiant does not know and is unable to ascertain the names, residences or postoffice addresses of any of the persons who are

proceeded against as unknown persons defendant; and the affidavit or complaint shall further show that the relief sought in the action consists wholly or partly in excluding the defendants from any interest in or lien upon specific real property in this state; and where jurisdiction is sought to be obtained against unknown persons under the provisions of this section, the summons shall state where the complaint is or will be filed, and there shall be subjoined to the summons as published, a notice signed by the plaintiff's attorney containing a description of the land to which such action relates. Unknown corporations claiming interests are included within the word "persons" as used in this act.

§ 3. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 13, 1905.

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## CHAPTER 5.

[H. B. No. 138—Stevens of Burleigh.]

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### COMMENCEMENT OF ACTIONS.

AN ACT to Amend Section 5210 of the Revised Codes of 1899, Relating to the Time of Commencement of Actions.

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

§ 1. AMENDMENT.] That section 5210 of the revised codes of 1899 be amended to read as follows:

§ 5210. EXCEPTION. ABSENTEE.] If, when the cause of action shall accrue against any person, he shall be out of the state, such action may be commenced within the terms herein respectively limited after the return of such person into the state; and if after such cause of action shall have accrued such person shall depart from and reside out of this state and remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action; provided, however, that the provisions of this section shall not apply to the foreclosure of real estate mortgages by action or otherwise; provided, further, that action against trustees acting under the townsite laws of the United States and this state, must be commenced within two years of the date when the cause of action accrued.

Approved March 10, 1905.

## CHAPTER 6.

[H. B. No. 260—Arnold.]

## DISMISSING CIVIL ACTIONS.

AN ACT Relating to the Dismissal of Civil Actions and Providing When and How Such Actions May Be Dismissed, and When the Judgment of Dismissal Shall Be on Its Merits.

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

§ 1. CIVIL ACTIONS, HOW DISMISSED.] A civil action may be dismissed, without a final determination of its merits, in the following cases:

1. By the plaintiff, at any time before trial, if a provisional remedy has not been allowed, or counterclaim made, or affirmative relief demanded in the answer; provided, that an action on the same cause of action against any defendant shall not be dismissed more than once without the written consent of the defendant or an order of the court on notice and cause shown.

2. By either party, with the written consent of the other; or by the court, upon the application of either party, after notice to the other, and sufficient cause shown, at any time before the trial.

3. By the court, when upon the trial and before the final submission of the case, the plaintiff abandons it, or fails to substantiate or establish his claim, or cause of action, or right to recover.

4. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

5. By the court, on the application of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

§ 2. DISMISSALS UNDER SUBDIVISIONS 1 AND 2 MAY BE MADE HOW.] The dismissal mentioned in the first and second subdivisions of the first section of this act may be made by an entry in the clerk's register, by the plaintiff or his attorney, and a written notice of such dismissal and entry served on the adverse party, and judgment may thereupon be entered accordingly; provided, that in the cases mentioned in the said first subdivision of the first section of this act, and in cases in which the parties to the action consent in writing to the dismissal of such action, the judgment of dismissal may be entered by the clerk on motion of either party without any notice to the opposite party, and without an order from the court or judge.

§ 3. DISMISSALS UNDER OTHER SUBDIVISIONS, HOW MADE.] In every case, other than those mentioned in the first section of this act, the judgment in the action shall be rendered on the merits.

§ 4. ALL OTHER MODES OF DISMISSAL ABOLISHED.] All other modes of dismissing an action, except as provided in this act, by non-suit or otherwise, are hereby abolished.

Approved March 11, 1905.