
EVIDENCE

CHAPTER 109.

[S. B. No. 23—Stevens]

EVIDENCE OF DECEDENTS.

AN ACT to Amend Chapter 119 of the Session Laws of 1907, of the State of North Dakota, In Regard to Evidence as to Statements and Transactions With Decedents.

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

§ 1. AMENDMENT.] Chapter 119 of the session laws of North Dakota for the year 1907 is hereby amended to read as follows:

§ 7253. WHO NOT EXCLUDED. HUSBAND AND WIFE. DECEDENTS' TESTIMONY.] No person offered as a witness in any action or proceeding in any court, or before any officer or person having authority to examine witnesses or hear evidence, shall be excluded or excused by reason of such person's interest in the event of the action or proceeding; or because such person is a party thereto, or because such person is the husband or wife of a party thereto, or of any person in whose behalf such action or proceeding is commenced, prosecuted, opposed or defended, except as hereinafter provided.

1. A husband can not be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this subdivision does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding, for a crime committed by one against the other.

2. In civil action or proceeding by or against executors, administrators, heirs-at-law or next of kin in which judgment may be rendered or order entered for or against them, neither party shall be allowed to testify against the other as to any transaction whatever with or statement by the testator or intestate unless called to testify thereto by the opposite party; and where a corporation is a party in proceedings mentioned in this section, no agent, stockholder, officer, or manager of such corporation shall be permitted to testify to any transaction had with the testator or intestate. But if the testimony of a party to the action or proceeding has been taken and he shall afterwards die and after his death the testi-

mony so taken shall be used upon any trial or hearing in behalf of his executors, administrators, heirs-at-law or next of kin, then the other party shall be a competent witness as to any and all matters to which the testimony so taken relates; provided, further, that in any action or proceeding by or against any surviving husband or wife touching any business or property of either, or in which the survivor or his or her family are in any way interested, such husband or wife shall be permitted, if they shall so desire, to testify under the general rules of evidence as to any or all transactions and conversations had with the deceased husband or wife during their life time touching such business or property.

§ 2. EMERGENCY.] Whereas, an emergency exists in that under the present statutes a surviving husband or wife may be embarrassed by the rules of evidence now in effect; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved February 18, 1909.

EXECUTIONS

CHAPTER 110.

[H. B. No. 194—Hendrickson]

JURY AT EXECUTIONS.

AN ACT Providing for a Jury to Be Official Witnesses of the Execution of Persons Executed at the State Penitentiary; Providing for Guards to Act as Death Watch Over Condemned Prisoners.

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

§ 1. WITNESSES OF EXECUTION.] It shall be the duty of the warden of the state penitentiary to summon a jury of three men, one of whom shall be a regularly licensed physician, whose duty it shall be to witness the execution and infliction of the death penalty on every person condemned to death and executed at the state penitentiary, and to examine the body of the condemned person after the execution has been performed, and to render their verdict in writing as soon as they are convinced that life is extinct. The warden shall attach this verdict to his return, and shall keep a verified copy on file at the penitentiary. Each juror shall receive a fee of six dollars, and no mileage, for his services.

§ 2. DEATH WATCH.] It shall be the duty of the warden of the state penitentiary to appoint two men to act as the death watch whenever a person is committed to the penitentiary to be executed.