

PROBATE COURT

CHAPTER 214.

[S. B. No. 40—Elken]

SALE OF LAND SOLD BY DECEDENTS CONFIRMED.

AN ACT To Confirm Title to Real Estate Sold by Decedents in Their Lifetime under Contract, Conveyed Pursuant to Article 8 of Chapter 6 of the Probate Code of North Dakota in Estates now Closed, and not Approved by the County Judge.

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

§ 1. That all sales of real estate made by any administrator or executor, where his testator or intestate had contracted in writing for the sale thereof in his life-time, and conveyance of which has been made pursuant to a decree of any county court of this state as provided by article 8 of chapter 6, of the Probate Code of North Dakota, in estates which are closed and such administrator or executor has been discharged, and which conveyances have been otherwise legally made but have not been approved by the judges of the county courts wherein such conveyances were had, pursuant to section 8157 of the Revised Codes of North Dakota, of the revision of 1905, are hereby declared valid and of the same effect as if an order or judgment of approval had been made by the county judge of the court in which such proceedings were had.

§ 2. All acts or parts of acts in conflict herewith are hereby repealed.

Approved January 31, 1911.

CHAPTER 215.

[S. B. No. 155—Williams]

ENDORSEMENT OF ALLOWANCE OR REJECTIONS OF CLAIMS.

AN ACT to Amend Section 8103 of Revised Codes of 1905 of the State of North Dakota, Relating to Endorsement of Allowance or Rejections of Claims by Executors or Administrators and Providing for Notice Thereof.

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

§ 1. AMENDMENT.] That section 8103 of the Revised Codes of 1905 be amended so as to read as follows:

§ 8103. **INDORSEMENT OF ALLOWANCE OR REJECTION. HOW MADE.]** When a claim accompanied by the affidavit required in this chapter is presented to the executor or administrator, he must endorse thereon his allowance or rejection with the day and date thereof. If he allows the claim it must be presented to the county judge for his approval, who must, in the same manner, endorse upon it his allowance or rejection. If the executor or administrator, or the judge, refuses or neglects to endorse such allowance, or rejection for ten days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal is prima facie evidence of such presentation and rejection. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time. When a claim, stating the post-office address of the claimant has been rejected, either by executor or administrator or county judge, whether by endorsement or by non-action, the person to whom the claim was presented must serve notice of such rejection, said notice to be by personal service or registered mail upon the claimant.

Approved February 21, 1911.

CHAPTER 216.

[S. B. No. 156—Williams]

REJECTING CLAIMS. HOW SUIT IS INSTITUTED.

AN ACT to Amend Section 8105 of the Revised Codes of 1905, Relating to Rejecting Claims and Providing How Suit is Instituted.

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

§ 1. **AMENDMENT.]** That section 8105 of the Revised Codes of 1905, be amended so as to read as follows:

§ 8105. **CLAIMS REJECTED. SUIT INSTITUTED. HOW.]** When a claim is rejected either by the executor or administrator, or the county judge, the holder must bring suit in the proper court, to-wit: before a justice of the peace, or in district court, according to its amount, against the executor or administrator, within four months after notice of rejection of claim having been made by registered mail, if it be then due, or within three months after it becomes due, otherwise the claim is barred forever.

Approved February 21, 1911.

CHAPTER 217.

[S. B. No. 216—Overson]

TIME TO APPLY FOR ADMINISTRATION.

AN ACT to Amend and Re-Enact Section 8023 of the Revised Codes of North Dakota for 1905 Relating to Time to Apply for Letters of Administration and Providing When the Statute of Limitations Shall Run Against Claims Against Decedents.

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

§ 1. AMENDMENT.] That section 8023 of the Revised Codes of North Dakota for 1905 be amended and re-enacted to read as follows:

§ 8023. TIME TO APPLY FOR ADMINISTRATION, WHEN STATUTE OF LIMITATIONS RUNS AGAINST CLAIMS AGAINST DECEDENTS.] After each of the above classes in succession, a period of ten days, commencing with the death of the decedent, is allowed within which to apply for administration before a petition can be presented by any person of a subsequent class, provided, however, that a failure of a creditor to apply for letters of administration within sixty days after creditors become entitled so to do, will not prevent the statute of limitations from running against the claims against decedents.

Approved February 21, 1911.

CHAPTER 218.

[S. B. No. 313—Gronvold]

SALARY OF COUNTY JUDGE.

AN ACT to Amend Section 2586, of the Revised Codes of North Dakota for 1905, Relating to Salaries of Judges of the County Court.

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

§ 1. That section 2586 of the Revised Codes of 1905 be amended to read as follows:

§ 2586. SALARY OF COUNTY JUDGE.] As compensation for his services the county judge shall be paid in all counties an annual salary based on the assessed valuation as follows:

In counties having a valuation under five hundred thousand dollars, five hundred dollars; over five hundred thousand dollars and under one million dollars, seven hundred dollars; over one million dollars and under two million dollars, nine hundred dollars; over two million dollars and under three million dollars,

eleven hundred dollars; over three million dollars and under four million dollars, thirteen hundred dollars, over four million dollars and under five million dollars, fifteen hundred dollars; over five million dollars and under six million dollars, sixteen hundred dollars; over six million dollars and under seven million dollars, seventeen hundred dollars; over seven million dollars and under eight million dollars, eighteen hundred dollars; and in all counties having a valuation of over eight million dollars, two thousand dollars, and no more for his personal services. Provided, that the salary of county judge in counties having increased jurisdiction shall not be affected by the provisions of this act.

Approved March 6, 1911.

CHAPTER 219.

[S. B. No. 261—Wallin]

REGULATING THE PRACTICE IN COUNTY COURTS HAVING INCREASED JURISDICTION.

AN ACT to Amend and Re-Enact Sections 16 and 22 of Chapter 80 of the Session Laws of the State of North Dakota for the Year of 1909, Regulating the Practice in County Courts Having Increased Jurisdiction.

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

§ 1. AMENDMENT.] Section 16 of chapter 80 of the Session Laws of the state of North Dakota for the year of 1909, is hereby amended and re-enacted to read as follows:

§ 16. FILING AND SERVICE OF PLEADINGS.] A copy of the complaint need not be served with the summons. In such case the summons must state that the complaint is or will be filed with the clerk of the county court in the county in which action is commenced, and if the defendant within ten days thereafter causes notice of appearance to be given and in person or by attorney demands in writing, a copy of the complaint, specifying a place within the state where it may be served, a copy thereof must within ten days thereafter be served accordingly, and after such service the defendant has ten days to answer, but only one copy need be served on the same attorney where the summons states that the complaint is or will be filed with the clerk of court and the same is not so filed within ten days after the date of such summons the action will be deemed discontinued.

§ 2. AMENDMENT.] Section 22 of chapter 80 of the Session Laws of the state of North Dakota for the year of 1909, is hereby amended and re-enacted to read as follows:

§ 22. TIME OF TRIAL NOTICE.] At any time after issue joined, and at least ten days prior to the first day of a term, either

party may give notice of trial. The party giving notice shall furnish the clerk, at least eight days before the court, with a note of the issue containing the title of the action, the names of the attorneys, and the time when the last pleading was served, and the clerk shall thereupon enter the cause upon the calendar according to the date of the issue. The party upon whom notice of trial is served may also file the note of issue and cause the action to be placed on calendar without further notice on his part. There need be but one notice of trial and one note of issue and the action must then remain on the calendar until disposed of. Either party after the notice of trial—whether given by the adverse party—may bring the issue to trial.

§ 3. REPEAL.] That all acts or parts of acts inconsistent with this act are hereby repealed.

§ 4. EMERGENCY.] Whereas, an emergency exists, therefore, this act shall take effect from and after its passage and approval.
Approved March 6, 1911.

CHAPTER 220.

[S. B. No. 90—Gronvold]

ASCERTAINING TITLES TO LANDS.

AN ACT to Provide for the Ascertaining and Giving Notice of the Title of the Lands to the Heirs of the Deceased Persons and Establishing the Right of Heirship to Real Property and to Provide a Method of Procedure Therefor, and to Repeal Sections 8040, 8041, 8042, 8043, 8044, and 8045 of the Revised Codes of North Dakota.

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

§ 1. When a person dies leaving real property within the state, which he has not disposed of by will, and there are no debts of the decedent which are payable to residents of this state, after the expiration of six months from the date of his death, if no county court of this state has acquired jurisdiction of his estate for the purpose of administration, any heir or other person deriving title from or through any heir or heirs of such decedent may present to the county court of the county in which he last resided, or if he was not a resident of this state at the time of his death, to the county court of the county in which the real property, or some part thereof was situated, a petition alleging the facts which authorize the special proceeding according to the foregoing provisions with a particular description of the real property and stating the interest of the petitioner and the interest or share of each heir according to his relationship to the deceased and praying for a decree determining the right of succession to the property. Such petition shall also allege and set forth the

value of the entire estate, both real and personal, of which said decedents died seized, so that the court may be able to pass upon the right of succession to the property involved in such proceeding; and said petition must also allege the value of the property described in the petition; and the allegation in such petition shall be deemed true unless the same are denied by answer filed by any person interested. Upon the presentation of such petition, citation shall be issued to all of the heirs of the decedent and all other persons interested, and such citation shall state the name of the decedent and contain a description of the land to which said proceeding relates.

§ 2. At the hearing any person interested may appear and answer the petition; and this section applies to all creditors of said decedent, and any and all heirs, devisees or legatees claiming by or under said decedent whether such parties appear and answer, or permit decree by default to be taken against them. The answer of the respondents may allege any valid defense to the petition, any part of the same or any right or interest which the respondents claim in the property, the allegations of the petition must be established to the satisfaction of the court by competent testimony before the decree may be entered although no issue is joined by answer.

§ 3. In all such proceedings all persons appearing of record to have any estate or interest in or lien or encumbrance upon the property, and all persons in possession may be joined as respondents and all others may be joined by inserting in the title of the proceedings the following: "And all other persons unknown claiming any estate or interest in or lien or encumbrance upon the property described in the petition or against the estate of said deceased."

§ 4. All persons having or claiming any estate or interest in or lien or encumbrance upon the property described in the petition, whether as heirs, devisees or legatees or personal representatives or creditors of the 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, clerk of the district court or the county auditor of the county in which the land is situated, to have such claim, title or interest therein may be proceeded against as persons unknown, and the decree entered in such proceedings shall be valid against all persons affected thereby. Service of the citation in such proceeding may be had upon all such unknown persons respondents, by publication in the manner provided by law for service by publication of citation in the county courts in other probate proceedings; provided that as to such unknown persons, respondents, the affidavit for publication shall be required to state in substance the following facts: that the interests of such unknown persons respondent, in the land described in the petition are not shown of record in the office of the register of deeds, clerk of the district court, or the

county auditor of the county in which the land lies, and the affiant does not know and is unable to ascertain the names, residences and postoffice addresses of any of the persons who are proceeded against as unknown persons respondents; unknown corporations claiming interests are included within the word "persons" as used in this act.

§ 5. When the facts are established to the satisfaction of the court a decree shall be given specifying the service of citation on the respondents, and that the decedent died leaving the real property involved in the proceeding within this state which he had not disposed of by will, and that there are no debts of the decedent which are payable to residents of this state; and further specifying who are the heirs of the decedent entitled to succeed and inherit the land under the laws of succession in such cases made and provided, and what are the interest or shares of the parties to the property and declare the right of succession accordingly. Such decree shall also determine the value of the property. Such decree is conclusive upon all creditors of the decedent and upon all parties and their successors having any interest in said property, and such decree shall be final and conclusive upon all parties and their successors having any interest in said property, and such decree shall be final and conclusive upon all parties to the proceedings, including all unknown persons affected thereby and that no proceedings shall be entertained by the county court or by any court in this state for a reversal or modification or vacation of such decree or for the probate of a will or grant of administration affecting the property described in such decree unless such proceedings are commenced within six months after the date of the rendition of said decree; provided, however, that an appeal may be taken from such decree in the same manner now provided by law for appeal from a decree of the county court in other probate proceedings.

§ 6. A certified copy of such decree may be recorded in the office of the register of deeds of each county, in which the property is situated in the manner prescribed by law for recording a deed.

§ 7. The costs of such proceedings shall be paid by such petitioner or petitioners, and the county court fees shall be determined by the court on the oath of the petitioner or petitioners, and shall be dependent on the value of the property which value shall be stated in the decree. The county court fees shall be as follows: \$5.00 where the value of the estate does not exceed \$1000.00; \$10.00 where the value of the estate exceeds \$1000.00 and does not exceed \$3000.00; \$15.00 where the value of the property exceeds \$3000.00.

§ 8. Sections 8040, 8041, 8042, 8043, 8044 and 8045 of the Revised Code of North Dakota of 1905 are hereby expressly repealed.

§ 9. Whereas an emergency exists in this that the present

law relating to the probate of heirship is wholly inadequate, and for this reason this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1911.

CHAPTER 221.

[H. B. No. 168—Homnes]

REVISION OF THE PROBATE CODE.

AN ACT Providing for the Appointment of a Commission to Draft a Revision of the Probate Code of the State of North Dakota, and Appropriating Money Therefor.

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

§ 1. COMMISSION. HOW APPOINTED. DUTIES.] The governor of this state shall appoint, with the advice and consent of the senate, a commission of three persons, properly qualified, whose duty it shall be to consider the contradictions, inconsistencies, and omissions existing in the present laws relating to probate and testamentary matters, and to draft a revision of the probate code of this state, which shall be reported to the next session of the legislature for its consideration and action. The members of said commission shall receive ten dollars per day each, as compensation for their services, and in addition thereto, their actual and necessary expenses while serving on such commission, provided no member of the commission shall receive more than three hundred dollars for his services.

§ 2. APPROPRIATION.] There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of fifteen hundred dollars, or such part thereof as may be necessary to pay the expenses of the members of said commission and the compensation provided for by this act. All bills shall be paid only upon the presentation of duly verified vouchers, approved by the state board of auditors.

§ 3. EMERGENCY.] Whereas, an emergency exists, this bill shall be in effect from and after its passage and approval.

Approved February 18, 1911.

CHAPTER 222.

[H. B. No. 254—Fraine]

WHO SHALL ACT IN ABSENCE OF COUNTY JUDGE.

AN ACT to Amend Section 7894 of the Revised Codes of 1905 Relating to Who Shall Act When a County Judge is Disqualified or Absent.

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

§ 1: That section 7894 of the Revised Codes of 1905 be amended so as to read as follows:

§ 7894. JUDGE DISQUALIFIED OR ABSENT. WHO TO ACT.] When the judge of the county court having jurisdiction as defined in sections 7890 and 7891 is disqualified, is necessarily absent from the state, or is ill and unable to act, he shall request in writing, the county judge of an adjoining county to act in his lieu and stead, and when acting pursuant to such request the county judge of such adjoining county shall possess all the powers and have the jurisdiction of the county judge for whom he acts, and the judge so requested shall attend for that purpose at such times as may be necessary.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is no law authorizing another county judge to act in the lieu and stead of one absent from the state, or ill and unable to act, and the transaction of probate business is now being impeded thereby, this act shall be in force and effect from and after its passage and approval.

Approved February 23, 1911.

CHAPTER 223.

[H. B. No. 183—Boyd]

ORDER OF SUCCESSION.

AN ACT to Amend Section 5187 of the Revised Codes of 1905, Relating to Order of Succession.

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

§ 1. AMENDMENT.] Section 5187 of the revised codes of North Dakota for the year 1905 is hereby amended and re-enacted so as to read as follows:

§ 5187. ORDER OF SUCCESSION.] 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 leaves 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 leaves 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 is no child of the decedent living at the time of 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 leaves 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, but if the decedent's child or children be dead, leaving issue, all the estate goes to such issue by right of representation.

2. If the decedent leaves no issue and the estate does not exceed in value the sum of ten thousand dollars, all the estate goes to the surviving husband or wife, and all property in excess of ten thousand dollars in value, one-half thereof goes to the surviving husband or wife and the other half goes to decedent's father and mother in equal shares, and if either is dead to the survivor, and if both father and mother are dead, and decedent leaves brothers or sisters or children of a deceased brother or sister, then in equal shares to the brothers and sisters of decedent and to the children of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband, nor wife, the estate must go to the father, and mother in equal shares, and if either is dead, to the survivor. If the decedent leaves a surviving husband or wife and no issue and no father nor mother, nor brother, nor sister, nor children of a deceased brother or sister, then the whole estate goes to the surviving husband or wife.

3. If there is 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 leaves no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, then 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 through an ancestor more remote. However, if the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having 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.

5. 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 parents descends to the issue of all other children of the same parents; 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.

6. If the decedent leaves no husband, wife or kindred, the estate escheats to the state for the support of the common schools.

7. If the decedent be an infant, and leave no parents, nor brother nor sister, but leaving any person of kin, acting in the capacity of a foster parent, who may have assumed or have had imposed upon him, the duty or obligation of the personal care, custody, support or maintenance of such infant after the decease of its natural parents, and until its decease, but where such relationship was not created by a guardianship of the estate of such infant, then the estate of such infant shall descend to such foster parent or such person acting in such capacity.

Approved March 6, 1911.

CHAPTER 224.

[H. B. No. 56—Hedalen]

DISPOSITION OF UNCLAIMED SHARES OF ESTATE IN COUNTY COURT.

AN ACT to Amend Section 8231 of the Revised Codes of 1905, Relating to the Disposition of Unclaimed Shares of Estate in County Court.

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

§ 1. That section 8231 of the Revised Codes of 1905 be amended to read as follows:

§ 8231. SALE OF PROPERTY, WHEN UNCLAIMED FOR A YEAR.]
When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the

benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the state treasury. When the payment is made, the agent must take from the treasurer duplicate receipts, one of which he must file in the office of the state auditor and the other in the county court; provided, however, that if such unclaimed share or shares in any estate heretofore or hereafter pending in such county court, shall consist exclusively of money, in that event it shall be unnecessary to appoint any agent for the person or persons entitled to such share or shares or to order any sale thereof, but the administrator, executor, or other representative of such estate, may, if such money has remained in his hands unclaimed for one year, pay such money into the state treasury in the same manner as hereinbefore provided, and the receipt of the state treasurer shall entitle such administrator, executor, or other representative of such estate to his final discharge, so far as such share or shares are concerned.

§ 2. All acts or parts of acts in conflict with this act are hereby expressly repealed.

§ 3. Whereas, an emergency exists in this that there is no method provided in the laws of this state for the disposition of unclaimed shares in estate, consisting of money only, therefore this act shall take effect and be in force immediately after its passage and approval.

Approved February 24, 1911.

PROBATION

CHAPTER 225.

[S. B. No. 77—Jacobsen.]

PROVIDING FOR BOARD OF EXPERTS FOR PAROLE.

AN ACT to Amend and Re-Enact Section 3 of Chapter 175 of the Laws of North Dakota for 1909. Being an Act to Provide Indeterminate Sentences of Persons Convicted of Certain Crimes, Providing for a Board of Experts Empowered to Prescribe Suitable Rules of Conduct and Treatment and to Determine How and When a Person Sentenced Under This Act shall be Paroled or Released.

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

§ 1. AMENDMENT.] Section 3, chapter 175 of the laws of the state of North Dakota for 1909 is hereby amended and re-enacted to read as follows: