

conveyance, lease, deed of trust or mortgage shall not operate as a conveyance of, or as creating any lien upon, any such real estate other than railroad or telegraph or telephone right-of-way, until such instrument has been duly recorded in the office of the register of deeds of the county in which the same is situated.

§ 2. Whereas there is now no provision for the recording of certain of the documents herein described in the office of the Secretary of State, it is hereby declared that this Act is an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved March 10, 1921.

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## TRIAL

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### CHAPTER 129.

(H. B. No. 63—Martin and Bjorgo.)

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#### AFFIDAVIT OF PREJUDICE.

AN ACT to Amend and Re-enact Section 7644 of the Compiled Laws of North Dakota for the year 1913 as Amended by Chapter 1 of the Session Laws for the year 1919, (regular session), Relating to change of Judges in Civil and Criminal Actions in the District Court, for Prejudice or Bias of Judge thereof; providing for the calling in of another Judge of another Judicial District, and the payment of his expenses, and the discharge of Jurors therein, and repealing all acts or parts of acts in conflict herewith.

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

§1. FOR PREJUDICE OR BIAS.] When either part to a Civil action pending in any of the District Courts of the state, or any defendant in any criminal action pending in any of the District Courts of the state, shall after issue joined and before the opening of any regular, special or adjourned term at which the cause is to be tried file an affidavit stating that he has reason to believe and does believe that he cannot have a fair and impartial trial or hearing before the Judge of the District Court by reason of the prejudice or bias of such Judge, the Court shall proceed no further in the action and shall thereupon be disqualified to do any further act in said cause; provided that where the information in a criminal action is filed in term time such affidavit may be filed at any time before trial.

§ 2. AFFIDAVIT OF PREJUDICE. BY WHOM MADE.] Such affidavit shall be made by the defendant or his attorney in a criminal action and in civil actions by the party to the action desiring such change of Trial Judge or by his attorney.

§ 3. AFFIDAVIT TO BE FILED.] Such affidavit with two copies thereof shall be filed with the Clerk of the Court in which the action is pending. Upon the filing of such affidavit the Clerk shall immediately give notice to the Judge so disqualified by delivering to him a copy of such affidavit. Said Clerk shall promptly forward to the Clerk of the State Supreme Court a copy of such affidavit.

§ 4. THE SUPREME COURT TO DESIGNATE TRIAL JUDGE.] The Supreme Court shall upon receipt of such affidavit of prejudice from the Clerk of the District Court designate a District Judge to act in the place and stead of the Judge disqualified.

§ 5. EXPENSES OF JUDGE.] Any Judge of the District Court designated by the Supreme Court to act in said cause shall as soon as possible after receiving such notice from the Supreme Court and during said term, unless otherwise agreed by the parties to said action, proceed with the trial of said cause, first giving reasonable notice of the date of trial to the parties to said action, or their attorneys, and the actual expenses of such incoming Judge shall upon the furnishing of a voucher therefor by said Judge to the State Auditor be approved for payment and paid to the State Treasurer out of the General Fund.

§ 6. JURORS NOT TO BE EXCUSED BY DISQUALIFIED JUDGE.] After the filing of such affidavit of prejudice with the Clerk of the District Court no juror shall be excused except for good cause shown to the incoming judge and by such incoming judge.

§ 7. NUMBER OF CHANGES ALLOWED.] No more than one change shall be granted on the application of a defendant in a criminal action or to either party in a civil action.

§ 8. All Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 10, 1921.

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## CHAPTER 130.

(H. B. No. 6—Bauer.)

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### CONTINUANCES.

AN ACT to Amend and Re-enact Section 7949 of the Compiled Laws of North Dakota, 1913, Relating to continuances of cases.

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

§ 1. AMENDMENT.] Section 7949 of the Compiled Laws of North Dakota is hereby amended and re-enacted so as to read as follows:

§ 7949. CASES CONTINUED.] In all actions, Civil or Criminal, pending in any Court in this State at any time when the Legislature is in Session, it shall be sufficient cause for a continuance of said action to

a succeeding term of said Court, if it shall be made to appear by affidavit of any Attorney of Record, that either party to said action applying for such continuance or the Attorney has been the Attorney of Record of either party since commencement of such action or suit or for more than fifteen days prior to filing such affidavit, and is a member of either House of the Legislature, and is then or will be at the beginning of the term of said Court in which said action is pending, actually engaged in the performance of his duties at the said session of the Legislature, and that the attendance of such party or the Attorney of Record is necessary to the fair and proper trial of said action. Notice of motion, together with a copy of the affidavit, shall be served upon the other party to the action, at least ten days prior to the opening of said term of Court at which said action is pending, if said action is pending in such Court at the opening of the term.

§ 2. Upon the proof of service of such notice and affidavit the case shall be continued over to the next succeeding term, and shall not be tried over the objection of the party within ten days after the adjournment of the legislature.

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

§4. EMERGENCY.] Whereas an emergency exists, now therefore this action shall be in full force and effect immediately after its passage and approval.

Approved March 3, 1921.

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## CHAPTER 131.

(H. B. No. 74.—Lackey.)

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### NEW TRIAL.

AN ACT to Amend and Re enact Section 7660, Compiled Laws of 1913, Relating to Causes for a New Trial.

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

§ 1. AMENDMENT.] Section 7660, Compiled Laws of North Dakota for the year 1913, is hereby amended and re-enacted to read as follows:

§ 1. CAUSES FOR NEW TRIAL.] The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the Court, Jury, or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial.

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

3. Accident or surprise, which ordinary prudence could not have guarded against.

4. Newly discovered evidence material to the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

5. Excessive damages appearing to have been given under the influence of passion or prejudice.

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

7. Error in law occurring at the trial and excepted to by the party making the application.

8. Loss or destruction, without fault on the part of the party aggrieved, of the official shorthand minutes, taken at the trial containing the testimony offered and the instructions of the court when given orally to the jury, or either, before a transcript thereof has been made.

§ 2. EMERGENCY.] Whereas the Supreme Court of this State has but recently handed down a decision holding that the grounds for a new trial, enumerated in the above section are exclusive, and under such law as the same stands a person may be deprived of an appeal to the supreme court, without fault on his part, by reason of a loss of such shorthand minutes, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.

Approved February 18, 1921.

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## CHAPTER 132.

(H. B. No. 170—Starke.)

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### SPECIAL VERDICTS AND FINDINGS.

AN ACT to Amend and Re-enact Section 7633 of the Compiled Laws of the State of North Dakota for the year 1913, Relating to When Special Verdicts Directed to Special Findings, how prepared and Judgment entered thereon.

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

§ 1. AMENDMENT.] That Section 7633 of the Compiled Laws of the State of North Dakota for the year 1913, is hereby amended and re-enacted to read as follows:

§ 7633. WHEN SPECIAL VERDICTS DIRECTED. SPECIAL FINDINGS. HOW PREPARED.] The Court in its discretion may upon the

request of either party direct the Jury to find a special verdict. Such verdict shall be prepared by the Court in the form of questions in writing, which shall be confined to matters involving the merits of the case and shall admit of direct answer. Such questions shall be submitted by the Court to the parties at or before the close of the testimony, and the Court must incorporate therein such additional questions, of like character, as shall be demanded by either party, and the Jury shall make their answers thereto in writing. The Court may also direct the Jury, if they render a general verdict, to find in writing upon any particular question of fact, to be stated as aforesaid.

In every action for the recovery of money only or of specific real property, the Jury may in their discretion, when not otherwise directed by the Court render a general or special verdict. The special verdict or finding must be filed with the Clerk and entered upon the minutes. When the special findings of fact are inconsistent with the general verdict, the former controls the latter and the Court must give judgment accordingly.

Approved March 10, 1921.

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## CHAPTER 133.

(H. B. No. 56.—Starke.)

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### DIRECTED VERDICTS.

AN ACT to Amend and Re-enact Section 7643 of the Compiled Laws of the State of North Dakota for the year 1913, Relating to Judgments, District and Supreme Courts to Direct.

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

§ 1. AMENDMENT.] That Section 7643 of the Compiled Laws of the State of North Dakota for the year 1913, is hereby amended and re-enacted to read as follows:

§ 7643. JUDGMENT NOTWITHSTANDING VERDICT.] When at the close of the testimony any party to the action moves the court to direct a verdict in his favor, and the adverse party objects thereto, such motion shall be denied and the court shall submit to the jury such issue or issues, within the pleadings on which any evidence has been taken, as either or any party to the action shall request, but upon a subsequent motion, by such moving party after verdict rendered in such action, that judgment be entered notwithstanding the verdict, or if the jury have failed to agree upon a verdict, for a directed verdict, the court shall grant the same if, upon the evidence as it stood at the time such motion to direct a verdict was made, the moving party was entitled to such directed verdict. An order for judgment notwithstanding the verdict may also

be made on a motion in the alternative form asking therefor, or if the same be denied, for a new trial. If the motion for judgment notwithstanding the verdict be denied, the supreme court, on appeal from the judgment, may order judgment to be entered, when it appears from the testimony that a verdict should have been so directed; and it may also so order on appeal from the whole order denying such motion when made in the alternative form whether a new trial was granted or denied by such order.

Approved February 18, 1921.

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## VALIDATING ACTS

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### CHAPTER 134.

(H. B. No. 109—Olson of Billings.)

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#### MUNICIPAL INDEBTEDNESS.

AN ACT Legalizing Certain Acts of City, Village and School District Officials.

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

§ 1. ACTS LEGALIZED.] Where the officers of any incorporated city, village, or school district of this state shall have incurred indebtedness and issued warrants or orders for the erection, purchase, repair or maintenance, within and for said city, village, or school district for school or other buildings or water works, gas or electric light plant, public wells cisterns, fire apparatus, or legitimate corporate purposes for said city, village or school district, or to pay for or to raise money for any such purpose, and said warrants or orders are outstanding, or held in the general revenue or other funds of said city, village or school district, in any or all such cases where said warrants or orders are within the debt limit, the same are hereby legalized and are declared to be the valid indebtedness of such city, village or school district, and in every case where the city council or city commissioners, village board of trustees, school board or board of education thereof shall have heretofore or shall hereafter determine by resolution or ordinance, that it was or is for the best interests of the city, village or school district to issue its negotiable bonds in the name of the city, village or school district for the sole purpose of funding such indebtedness and shall have been or shall be authorized to issue such bonds, by a majority vote of the qualified electors of such city, village or school district, voting thereon at any regular or special election legally called and held after public notice thereof as required by law, and