

for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts, or alpha or beta eucaïne or any of their salts, or any subthetic substitutes for them; provided, that such remedies and preparations are solid, distributed, given away, dispensed or possessed as medicines and not for the purpose of evading the intentions and provisions of this section.

§ 9. AMENDMENT.] Section 505 of the Compiled Laws of the State of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 505. PENALTY FOR VIOLATIONS.] Any person who shall wilfully violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof, shall, unless otherwise provided in this article, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), or be imprisoned in the county jail not exceeding thirty days, or both, with costs of prosecution in which shall be included an item of twenty-five dollars in addition to the traveling and other necessary expenses of members of the board, or of their appointee, in procuring evidence and securing conviction.

Approved March 7, 1927.

PROCEDURE

CIVIL PROCEDURE

CHAPTER 212

(S. B. No. 53—Forbes)

ACTION BY FOREIGN EXECUTOR, ADMINISTRATOR OR GUARDIAN

An Act Authorizing a Foreign Executor, Administrator or Guardian to Commence and Prosecute or Defend a Civil Action or Proceeding in the State of North Dakota.

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

§ 1. Any foreign executor, administrator or guardian may commence and prosecute or defend a civil action or proceeding in this state, in his representative capacity, in the same manner and under the same restrictions as in case of a resident; provided, that before commencing or defending such action he shall file an authenticated copy of his appointment as such executor, administrator or guardian in the office of the Clerk of the District Court of the county in which such action is to be or has been commenced.

Approved February 5, 1927.

CHAPTER 213
(S. B. No. 52—Forbes)

**ACTIONS BY AND AGAINST PARTNERSHIPS AND
ASSOCIATIONS**

An Act Authorizing Actions to be Commenced, and Prosecuted by and Against Partnerships and Associations, in Their Firm or Common Name, and Making the Judgments in All Such Actions Binding Upon the Joint Property of All the Members or Associates of Such Partnerships or Associations.

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

§ 1. When two or more persons have heretofore done or transacted, or are doing or transacting, or shall hereafter do or transact business as partners or associates, under a common name, whether such name comprises the names of such persons or not, they may sue, and be sued by such common name, and in case such partners or associates are defendants, the summons may be served on two or more of them, one of whom shall be an active officer or manager, if there be such. The judgment in any such action shall bind the joint property of all the members or associates of such firm or association, the same as though all of them had been named as defendants.

§ 2. No action, authorized by the preceding section, shall be commenced in the firm or common name of such partners or associates unless the consent, in writing, of at least a majority of such partners or associates be first obtained or unless all such partners or associates are named as plaintiffs in the title of said action and the fact that such consent has been obtained, when necessary, shall be alleged in the complaint and proved as a fact in said action.

Approved March 3, 1927.

CHAPTER 214
(S. B. No. 97—Baird)

**POWER OF COURT—REHEARING—WHAT CLERK TRANSMITS ON
APPEALS IN CIVIL ACTIONS**

An Act to Amend and Re-enact Section 7844 of the Compiled Laws of North Dakota for the Year 1913, Relating to the Power of and Proceedings Had in the Supreme Court on Appeals.

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

§ 1. AMENDMENT.] That Section 7844 of the Compiled Laws of North Dakota for the year 1913 shall be and the same is hereby amended and re-enacted to read as follows:

§ 7844. POWER OF COURT. REHEARING. WHAT CLERK TRANSMITS.] Upon an appeal from a judgment or order the Supreme

Court may reverse, affirm or modify the judgment or order and as to any and all of the parties; and may, if necessary or proper, order a new trial of the entire cause or of some specific issue or issues, and if the appeal is from a part of the judgment or order, may reverse, affirm or modify it as to the part appealed from. If, in the consideration of any appeal, it becomes apparent to the Supreme Court that some issue involved in the case has not been tried, or if tried has not been determined, by the trial court, and that it is necessary or desirable to a proper disposition of the case on appeal that such issue be determined, the Supreme Court may remand the case to the District Court for the determination of such issue, without relinquishing jurisdiction of the appeal, and the Supreme Court may hold the determination of the appeal in abeyance until such issue has been determined by the trial court and the determination certified to the Supreme Court. In such case the proceedings had and the determination made in the trial court, upon remand, shall be deemed part of the record on appeal in such cause. In all cases the Supreme Court shall remit its final judgment or decision to the court from which the appeal was taken to be enforced accordingly; and if from a judgment, final judgment shall thereupon be entered in the court below in accordance therewith, except when otherwise ordered. The clerk of the Supreme Court shall remit to such court the papers transmitted to the Supreme Court on the appeal together with the judgment or decision of the Supreme Court thereon within sixty days after the same shall have been made, unless the Supreme Court on application of either of the parties shall direct them to be retained for the purpose of enabling such parties to move for a rehearing. In case such motion for a rehearing is denied the papers shall be remitted within twenty days after such denial. The clerk of the Supreme Court shall in all cases, except when the order or judgment is affirmed, also transmit with the papers so returned by him a certified copy of the opinion of the Supreme Court and his fees for such copy shall be taxed and allowed with his other fees in the case.

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

§ 3. EMERGENCY.] This act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved February 19, 1927.