

macist, by reason of the requirements as to college work, shall upon application duly made to the Board prior to July 1st, 1936, be given an examination for registration as a registered pharmacist, such examination for registration to be given with due regard for such circumstances; and upon passing of an examination so to be given, in manner satisfactory to a majority of such Board, shall be given a certificate as a registered pharmacist.

Registration as a pharmacist by said Board, entitles the person so registered to membership in the North Dakota Pharmaceutical Association.

§ 2. AMENDMENT.] Section 487 of the Compiled Laws of North Dakota of 1913 as amended and re-enacted by Section 3 of Chapter 211, Session Laws of 1927 is hereby amended and re-enacted to read as follows:

§ 487. EXAMINATION FOR AN ASSISTANT.] An applicant for examination and registration as an assistant pharmacist must as a condition precedent to the right to be examined, present and file with the Board satisfactory evidence that he or she is a person of good moral character, over the age of eighteen years, and has had at least two years experience in a reputable pharmacy under the instruction and supervision of a reputable pharmacist, or has been registered as an apprentice in pharmacy in this state for a period of two years. The Board may, however, allow and consider as a part of the two years experience required of such applicant such time not exceeding one year, as shall be spent by the applicant in a regular course of study in a college of pharmacy approved by the Board.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and this bill shall be in full force after its passage and approval.

Approved March 12, 1935.

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## PROCEDURE

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### CHAPTER 233

H. B. No. 78—(Godwin)

#### TIME OF COMMENCING ACTIONS

An Act to amend and re-enact Section 7375, Compiled Laws of North Dakota for the year 1913, enumerating the kinds of actions which must be commenced within six years after the cause of action accrues.

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

That Section 7375, Compiled Laws of North Dakota for the year 1913 be amended and re-enacted to read as follows:

§ 7375. SIX YEARS.] Within six years. An action upon a contract, obligation or liability, express or implied excepting those mentioned in Section 6762.

An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.

An action for trespass upon real property.

An action for taking, detaining or injuring any goods, or chattels, including actions for specific recovery of personal property.

An action for criminal conversation, or other injury to the person or rights of another not arising on contract and not hereinafter enumerated.

An action for relief on the ground of fraud in all cases both at law and in equity, the cause of action not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

An action for the foreclosure of a mechanics' lien.

Approved February 14, 1935.

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## CHAPTER 234

S. B. No. 31—(Coffey)

### APPEALS JUSTICE TO DISTRICT COURTS

An Act to amend and re-enact Section 9163 of the Compiled Laws of North Dakota for the year 1913, relating to Appeals from Justice Courts.

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

§ 1. AMENDMENT.] That Section numbered 9163 of the Compiled Laws of North Dakota, for the year 1913, be amended and re-enacted to read as follows:

§ 9163. APPEALS TO THE DISTRICT COURT.] Any party dissatisfied with a judgment rendered in a civil action in justice court, whether the same was rendered on default or after a trial, may appeal therefrom to the district court of the county at any time within thirty days after the rendition of the judgment. The appeal is taken by serving the notice of appeal and a copy of the undertaking; and in case of default judgment a copy of the proposed pleading shall be served with the notice and undertaking, on the adverse party or his attorney and by filing the notice of appeal together with the undertaking required by law with the clerk of the district court of the county in which the appeal was taken; provided, however, that if at the time of the service of the notice of appeal, undertaking and copy of pleadings as provided for in this chapter, the party is not within the state, or cannot conveniently be found and such fact appears by the return of the sheriff filed with the justice, and has not appeared by attorney, the service of such notice of appeal and under-

taking—with copy of pleading in case of default—may be made upon the justice rendering the judgment.

Approved February 6, 1935.

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## CHAPTER 235

S. B. No. 244—(Committee on Judiciary)

### AUTHORIZING FIDELITY AND SURETY COMPANIES AS SURETIES ON BAIL

An Act to permit fidelity and surety companies to act as sureties upon civil or criminal undertakings for bail.

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

§ 1. In all civil or criminal actions in this state bail may be given by a fidelity or surety company authorized to act as surety within this state. Any such company may execute the undertaking as surety by the hand of an officer or attorney authorized thereto by a resolution of its board of directors, a certified copy of which, under its corporate seal, shall be filed with the undertaking.

Approved March 6, 1935.

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## CHAPTER 236

S. B. No. 242—(Committee on Judiciary)

### DEPOSIT OF MONEY OR BONDS AS BAIL IN CRIMINAL CASES

An Act to amend and re-enact Section 11119, Compiled Laws of 1913, and to permit the deposit of money or bonds as bail in criminal cases.

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

§ 1. AMENDMENT.] Section 11119, Compiled Laws of 1913, is hereby amended and re-enacted to read as follows:

§ 11119. DEPOSIT FOR BAIL.] A deposit of the sum of money, or non-registered bonds of the United States, or of the State of North Dakota or of any county, city, village or school district within the state, equal in market value to the amount mentioned in the order admitting to bail, together with the personal undertaking of the defendant shall be equivalent to bail, and upon such deposit the defendant must be discharged from custody. If the defendant has given bail, he may at any time before the forfeiture of the undertaking, in like manner deposit the sum of money or bonds mentioned therein, and upon the deposit being made the bail is exonerated. Every deposit under the provisions of this act shall be with the clerk of the court in which the defendant is held to answer.

Approved March 7, 1935.

## CHAPTER 237

S. B. No. 230—(Bonzer, Fowler and Coffey)

### NOTICE EXECUTION SALE

An Act to amend and re-enact Section 7745 of the Compiled Laws of North Dakota, for the year 1913, relating to the notice to be given upon sale of real property under execution; repealing all acts or parts of acts in conflict herewith.

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

§ 1. AMENDMENT.] That Section 7745 of the Compiled Laws of North Dakota for the year 1913, relating to the sale of real property under execution be and the same is amended and re-enacted to read as follows:

§ 7745. REAL PROPERTY. SAME.] Before any real property or interest therein taken on execution shall be sold the officer making such sale must cause public notice of the time and place thereof in manner following:

(1) If there is a newspaper printed in the county or subdivision where the real property to be sold is situated, such notice must be given by advertisement in some newspaper printed in such county or subdivision, once a week for three successive weeks the last publication to be at least ten days prior to the making of such sale.

(2) In case there is no newspaper printed in such county or subdivision, then the officer making the sale must cause such advertisement to be made by posting a copy of such advertisement on the outer door of the court house or building wherein the district court of the county or subdivision was last held, and in five other public places in the county. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

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

Approved March 6, 1935

## CHAPTER 238

H. B. No. 126—(Place, Noben and Fitzgerald)

### ABSOLUTE EXEMPTIONS

An Act to amend and re-enact Section 7730 of the Compiled Laws of North Dakota for 1913, defining absolute exemptions.

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

§ 1. AMENDMENT.] That Section 7730 of the Compiled Laws of North Dakota for 1913, be and the same is hereby amended and re-enacted to read as follows:

§ 7730. ABSOLUTE EXEMPTION.] The property mentioned in this section is absolutely exempt from all such process, levy or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. The family Bible and all school books used by the family and all other books used as a part of the family library not exceeding in value one hundred dollars.
5. All wearing apparel and clothing of the debtor and his family.
6. The provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year.
7. The homestead as created, defined and limited by law.
8. All crops and grain both threshed and unthreshed raised by the debtor on not to exceed 160 acres in one tract occupied by the debtor, either as owner or tenant, as his homestead as defined by law; provided, however, that the provisions of this law will in no way affect seed, farm labor, thresher, or landlord liens. Provided, however, that if the debtor takes advantage of subdivision 8 of this act, he shall not avail himself of any additional or alternate exemptions.

Approved March 5, 1935.

## CHAPTER 239

S. B. No. 143—(Lemke and Greene of Cavalier)

### ADDITIONAL EXEMPTIONS PERSONAL PROPERTY

An Act to amend and re-enact Section 7731 Supplement to the Compiled Laws of 1913, relating to exemptions of personal property from attachment, levy and sale on execution, and defining "head of family" as defined by Section 5626 of the Compiled Laws of 1913, and exemptions of a single person, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 7731 Supplement to the Compiled Laws of 1913, is hereby amended and re-enacted so as to read as follows:

§ 7731. ADDITIONAL EXEMPTION.] In addition to the property mentioned in the preceding section, the head of a family may himself, or by his agent, select from all other of his personal property not absolutely exempt, goods, chattels, merchandise, money or other personal property not to exceed in the aggregate \$1,500.00 in value, which is also exempt, and must be chosen and appraised as hereinafter provided. The "head of a family" as herein used means the "head of a family" as defined by Section 5626 of Compiled Laws of North Dakota for the year 1913.

§ 2. EXEMPTIONS OF A SINGLE PERSON.] A single person may himself, or by his agent, in addition to his wearing apparel, select from all other of his personal property, goods, chattels, merchandise, money or other personal property not to exceed in the aggregate \$150.00 in value, which is also exempt and must be chosen and appraised in the same manner as the exemptions of the "head of a family."

§ 3. EMERGENCY.] An emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval.

Approved March 7, 1935.

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## CHAPTER 240

H. B. No. 299—(Page)

### SALES PERSONAL PROPERTY ON FORECLOSURE, JUDGMENT, ETC.

An Act to amend and re-enact Section 2 of Chapter 206 of the 1933 Session Laws of the State of North Dakota, providing for the sale of personal property or chattels ordered sold by judicial action; providing for the publication of notice of sale, repealing acts in conflict herewith and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 2 of Chapter 206 of the 1933 Session Laws of the State of North Dakota be and the same is hereby amended and re-enacted to read as follows:

§ 2. CONDUCT OF SALE.] All sales of personal property or chattels as a result of foreclosure or decree of judgment, or of sheriff's levy, shall be conducted on the premises where said property is seized, and shall be conducted by the sheriff or other auctioneer duly designated by the court holding jurisdiction, and due notice of such sale shall be given by insertion of the notice of sale in a legal newspaper of the county for at least two issues prior to the date of sale.

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

§ 3. EMERGENCY.] An emergency is hereby declared to exist and this act shall go into full force and effect upon its passage and approval.

Approved March 13, 1935.

## CHAPTER 241

S. B. No. 229—(Bonzer, Fowler and Coffey)

SERVICE OF SUMMONS, ETC., FORECLOSURE REAL ESTATE  
MORTGAGE OR LIEN

An Act relating to foreclosure of mortgage or other lien upon real estate; providing for service of summons in actions to foreclose mortgage or other lien upon real estate; providing for personal service or service by publication; specifying manner in which unknown defendants and representatives of deceased defendants may be joined; providing that said method shall be in addition to present remedies.

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

§ 1. SUMMONS HOW SERVED.] That in addition to any method now or hereafter provided by law for the service of summons, in all actions hereafter commenced for the foreclosure or satisfaction of a mortgage, or other lien, upon real estate, in any court of the State of North Dakota, the summons may be served in the following manner, and when so served the service shall be deemed complete, viz: by personally serving upon all defendants, if any, in actual possession of the real estate involved in the action (if said real estate is occupied), and as to all other defendants by publication in the manner herein provided.

§ 2. SERVICE BY PUBLICATION. HOW MADE.] When the plaintiff shall file a verified complaint in the office of the clerk of the district court of the county where said action is commenced, setting forth a cause of action in favor of the plaintiff and against the defendants, for the foreclosure of a mortgage or other lien upon real estate, and when the plaintiff shall file in said office an affidavit signed by the plaintiff or his attorney in substance as follows:

State of North Dakota }  
County of ..... } ss.

.....being first duly sworn upon oath deposes and says that he is the.....plaintiff in the above  
(attorney for)

entitled action:

Affiant further says that the defendants.....  
(naming them)

appear to have an interest in or lien or incumbrance upon the real estate described in the complaint in this action, which interest or lien is subject and inferior to the lien of the plaintiff being foreclosed; that plaintiff seeks no personal judgment against the defendants (if any).....and seeks only to bar and exclude said defendants from any interest in or lien or incumbrance upon the real estate described in the complaint, save and except the right of redemption as provided by law; that the addresses of the defendants

(if any).....are not shown upon the records of the  
(naming them)  
office of the register of deeds, county auditor or clerk of the district  
court of.....county, that being the county in which  
the real estate involved in this action is situated; that the addresses  
of the defendants (if any).....is as follows:  
(naming them)  
.....; that affiant does not know the addresses of  
the defendants (if any).....; that the defendants  
(naming them)  
(if any).....are deceased, and it does not appear  
(naming them)  
by the records in the office of the judge of the county court in and  
for.....county, that being the county in which  
the real estate described in the complaint in the action is situated,  
that any administration upon the estate of said defendant is now  
pending: or, that the defendants (if any).....  
(naming them)  
are deceased, and that.....of.....  
is the duly appointed, qualified and acting administrator or executor  
(as the case may be) of the estate of said deceased.

§ 3. SUMMONS TO BE PUBLISHED.] Plaintiff shall cause said summons to be published once each week for four successive weeks in some newspaper published in the county where the land described in the complaint is situated, and if no newspaper is published in said county, then in some newspaper published at the seat of government of the State of North Dakota.

§ 4. COPY OF SUMMONS AND COMPLAINT TO BE MAILED.] A copy of the summons and complaint must, within thirty days after the first publication of the summons, be deposited in some post office in this state, postage prepaid, and directed to the defendants whose addresses are shown by the affidavit aforesaid to be known to the person making such affidavit, and to the executor or administrator, if any, of deceased defendants, the receipt of the postoffice where such mailing is done is to be received in evidence by any court in this state as proof of such mailing.

§ 5. PERSONAL SERVICE EQUIVALENT TO PUBLICATION.] After the affidavit for publication has been filed, personal service of the summons and complaint upon any defendant, within or without the State of North Dakota, shall be equivalent to and have the same force and effect as the publication and mailing in the act provided for.

§ 6. PERSONAL SERVICE OF SUMMONS AND COMPLAINT MAY BE MADE IN ANY EVENT.] Nothing herein contained shall prevent the plaintiff from making personal service of the summons and complaint upon any or all of the defendants, in the manner now or hereafter provided by law.



§ 7. SERVICE BY PUBLICATION WHEN COMPLETED.] Service by publication is completed upon the expiration of thirty-six days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defendant outside of the state, upon the expiration of fifteen days from such service.

§ 8. PERSONAL SERVICE OF SUMMONS. HOW MADE.] Personal service of the summons may be made in the manner provided by Section 7426 of the 1913 Compiled Laws of the State of North Dakota.

§ 9. UNKNOWN DEFENDANTS. HOW JOINED.] 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 representatives 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 described in the complaint is situated, to have such claim, title or interest therein, may be proceeded against as persons unknown, and any order, judgment or decree entered in said action shall be valid and binding on such unknown persons, whether of age or minors, and on those claiming under them. Provided, however, that if any unknown persons are joined as defendants, the summons shall contain the following statement: "And all persons unknown, claiming any estate or interest in, or lien or incumbrance upon the real estate described in the complaint;" provided, further, that as to such unknown defendants the plaintiff or his attorney shall, at the time of filing the summons and complaint, file in the office of the clerk of the court wherein said action is brought, an affidavit in substance as follows:

State of North Dakota }  
County of ..... } ss.

.....being first duly sworn upon oath deposes and says that he is the.....plaintiff in the above  
(attorney for)

entitled action:

Affiant further says that as to all defendants proceeded against as "And all persons unknown, claiming any estate or interest in, or lien or incumbrance upon the real estate described in the complaint," the interests of such unknown persons defendants in the land described in the complaint 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 of....., being the county in which said land is situated, and affiant does not know and is unable to ascertain the names, residences or post office addresses of any of the persons who are so proceeded against as unknown defendants; that the relief sought in this action consists wholly or partially in excluding said unknown defendants of any interest in or lien upon the real estate

described in the complaint save and except the right of redemption as provided by law.

§ 10. CORPORATIONS INCLUDED IN THE WORD "PERSON" OR "PERSONS."] Wherever the word "person" or "persons" is used in this act it shall include corporations, firms and co-partnerships.

§ 11. WHAT THE SUMMONS TO CONTAIN.] The summons issued and served under this act shall contain, or have appended thereto a statement substantially as follows:

"This action relates to the foreclosure of a mortgage or lien (as the case may be) upon (here describe the real estate involved in the action.)

§ 12. JUDGMENT AND DECREES TO BE BINDING AGAINST WHOM.] All orders, judgments or decrees entered in any action brought under this act shall be binding upon all persons proceeded against as defendants, whether of age or minors, and all those claiming by, through or under them after the commencement of the action, and all persons whose interests did not appear of record in the office of the register of deeds, county auditor or clerk of the district court of the county wherein said action is brought at the time of the commencement of the action.

Approved March 22, 1935.

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## CHAPTER 242

S. B. No. 23—(Representatives Godwin and Scholl and Senators Cain, Peterson, Thatcher and Young)

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### RELIEF FROM FORECLOSURE OF REAL ESTATE MORTGAGES, ETC.

An Act providing for relief in certain cases during the emergency declared to exist, from foreclosure of mortgages or other liens on real estate, and execution sales of real estate, and cancellation of contracts for the sale of real property, eviction of tenants from real estate, and for postponing certain sales and extending the period of redemption from certain sales, and relating to the jurisdiction and procedure for such relief, and for the right to possession during the extended period, and limiting the right to emergency actions for deficiency judgment, and for extending the expiration of certain periods of redemption to thirty days after the passage of this act.

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

Whereas, The members of the Twenty-fourth Legislative Assembly of the State of North Dakota, being cognizant of the distress of the farmers, the laborers, the businessmen, the tenants and the property owners of the state, due to the extremely low prices of the products of the farm and the factory, and the large number of unemployed, and the severe financial and economic distress prevailing

throughout this and other states of the nation during the past several years, and the drought of the past two years, and

Whereas, Many owners of property by reason of said conditions are unable, and it is believed will for some time be unable, to meet all payments as they become due of taxes, interest and principal of mortgages or other liens on their properties, or to make the payments due on contracts for the purchase of real estate, and are therefore threatened with loss of such properties through mortgage or other foreclosure, judicial sale, or cancellation thereof, and

Whereas, It is believed that the owners of such property will suffer irreparable loss and damage if mortgage or lien foreclosure, or cancellation of contracts, or execution sale of property is had, because of lack of purchasers financially able to bid an adequate price therefore, and

Whereas, It has been reported that at many mortgage foreclosure or execution sales the property was bid in for prices much below what was believed to be its real value, and often for much less than the mortgage or judgment indebtedness against the same, thereby resulting in large deficiency judgments being entered against debtors, and

Whereas, Chapter 158 of the Session Laws of North Dakota for the year 1933, prohibiting the foreclosure of mortgages on real estate by advertisement in certain cases, is of doubtful validity insofar as it is made to apply to mortgage contracts in existence at the time the act was passed and approved, and

Whereas, Chapter 155 of the Session Laws of North Dakota for the year 1933, prohibiting the obtaining of a deficiency judgment on mortgage foreclosure, is of doubtful validity insofar as it applies to mortgage contracts in existence at the time it was passed and approved, and

Whereas, It is the opinion of, and believed by the Legislature of the State of North Dakota that the conditions existing as hereinbefore set forth, has created an emergency of such nature that justifies and validates legislation for the extension of the time of redemption from mortgage foreclosure or other lien or judicial sales on execution or evictions and other relief of a like character, and

Whereas, The State of North Dakota has the right, in the opinion of its Legislative Assembly, to safeguard the vital interests of its people, and

Whereas, The State of North Dakota possesses the right under its police power to declare a state of emergency to exist, and

Whereas, The inherent and fundamental purpose of our government is to safeguard the public and promote the general welfare of the people, and

Whereas, Under existing conditions, foreclosure of real estate mortgages or other liens by advertisement would prevent fair, open

and competitive bidding at the time of sale in the manner now contemplated by law, and

Whereas, It is believed, and the Legislature of North Dakota hereby declares its belief that the conditions existing, as hereinbefore set forth, have created an emergency of such a nature that justifies and validates changes in legislation providing for the temporary method, terms and conditions upon which mortgages or other lien foreclosures may be had or postponed, and jurisdiction to administer equitable relief in connection therewith may be conferred upon the district court,

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

§ 1. In view of the situation hereinbefore set forth, the Legislature of the State of North Dakota hereby declares that a public economic emergency does exist in the State of North Dakota.

§ 2. In any proceeding for the foreclosure of any mortgage or other lien upon real property, or the cancellation of any contract for the sale of real estate by advertisement or publication of notice, the mortgagor, lienee or assignee of either, or the owner in possession of such property, or any one claiming under said mortgage or lienor, or any one liable for the mortgage debt, or the vendee or his assignee of such contract for the sale of said premises, may, at any time after the publication of notice for the foreclosure of such mortgage or other lien, or the cancellation of a contract, apply to the district court of the county wherein such proceedings are being had, or are pending, by filing with the court his affidavit, setting forth such reasons, consistent with the provisions of this act, as the party applying for such order may have for a postponement thereof, with a prayer that the foreclosure or cancellation, if any, shall be had by action in the district court. If it appears to the court that granting of the relief, as prayed for in such affidavit, would be equitable and just, then and in that event the foreclosure or cancellation proceedings by advertisement or publication of notice may be postponed by the court by ex parte order, which may be served upon the attorney or agent of the mortgagee or assignee, or vendor or assignee, or upon the party foreclosing or cancelling said contract, and the party seeking to foreclose such mortgage or other lien, or cancel such contract, shall proceed, if at all, to foreclose such mortgage or other lien, or cancel said contract, by action in the district court of the county having jurisdiction thereof and shall tax as a part of the costs in said action the expense incurred in publishing such notice.

§ 3. When any mortgage or other lien has been foreclosed by action, the court shall, on the coming in of the report of sale, on the request of any party who has been personally served with a summons or who has appeared, cause notice of hearing thereon to be served on the parties to the action, who have appeared, and fix the

time and place for hearing on said report. Before granting an order confirming said sale, the court shall, if it appears upon due examination that the sale price is unreasonable and unfairly inadequate, or that justice has otherwise not been done, order a re-sale. If the sale is confirmed, the sheriff or his deputy shall forthwith execute and deliver the proper certificate of sale, which shall be recorded within twenty days after such confirmation. Upon the hearing of the motion for an order confirming the sale of the premises involved in the foreclosure of mortgages or other liens by action, in case the evidence is insufficient to establish a fair and reasonable market or rental value of such property, the court shall receive any competent evidence, including evidence tending to establish the actual value of the property involved in such mortgage foreclosure proceedings for the purpose or purposes for which said property is or can be used. The court shall also receive any evidence tending to show to what extent, if any, the property has decreased in actual or market value by reason of the economic conditions existing at the time, or prior to such sale.

§ 4. When any judgment has been entered for the cancellation of a contract for the sale of real estate, or eviction or ejectment of any tenant from the possession of real estate, the court having jurisdiction thereof shall, at the request of any party to the action, cause notice of hearing to be served upon the parties thereto, who have appeared therein, to show cause, if any they have, why a stay of execution should not be granted. Before granting such request on the part of any party to said action, the court having jurisdiction thereof shall receive any competent evidence of the reasonable rental value of said property, taxes levied and assessed against the same, the interest on the indebtedness, if any, due thereon, and the purpose or purposes for which said property is or can be used.

§ 5. (a) In case the parties to any such foreclosure action, or other action heretofore set forth in this act, shall agree in writing upon terms of compromise settlement thereof, or of composition of the mortgage or other indebtedness, or both, the court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be.

§ 5. (b) The court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale, or to order re-sale, or give other relief where such judgment is rendered in an action to collect a debt or obligation secured by real estate mortgage or other lien, the foreclosure of which might be effected under the terms of this act, as is conferred by this act, with regard to the mortgage or other lien, or the cancellation of a contract, or the enforcement of an obligation for rent.

§ 6. Where any mortgage or other lien upon real estate has been foreclosed and the period of redemption has not yet expired,

or where sale is hereafter had in the case of real estate mortgage or other lien foreclosure proceedings, now pending, or which may hereafter be instituted, prior to the expiration of two years from and after the passage and approval of this act, or upon the sale of any real property under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter within two years from and after the passage and approval of this act, the period of redemption may be extended for such additional time as the court may deem just and equitable, but in no event beyond July 1, 1937; or where stay of execution has been granted against the cancellation of a contract or the ejectment of a tenant from premises, for such additional time as the court may deem just and equitable, but in no event beyond July 1, 1937. Provided that the mortgagor or the owner in possession of said property in the case of mortgage foreclosure proceedings, or the lienor or person in possession of said property in the case of foreclosure of such a lien, or the judgment debtor in the case of sale under judgment or execution, or the tenant in case of judgment of eviction, or the vendee in case of a contract of sale of real property, shall, prior to the expiration of the period of redemption, or in case of judgment or eviction or cancellation of land contract within the period of time described in Section 4 hereof, apply to the district court having jurisdiction of the matter, on not less than ten days written notice to the mortgagee, the lienee, judgment creditor or plaintiff, or the attorney of either as the case may be, for an order determining the reasonable value of the income of said property, or if the property has no income then the reasonable rental value of the property involved in such sale, cancellation or eviction, and directing and requiring such mortgagor, lienor, vendee, tenant or other judgment debtor to pay all or a reasonable part of such income or rental value in or toward the payment of taxes, insurance, interest, mortgage, or judgment indebtedness, at such time and in such manner as shall be fixed and determined and ordered by the court; provided, however, that in fixing the rental value of farm lands, the rental value of any buildings thereon shall not be included or considered; and the court shall thereupon hear said application and after such hearing shall make and file its order directing the payment by such mortgagor, lienor, vendee, tenant or judgment debtor of such an amount, at such times and in such manner as to the court shall, under all circumstances, appear just and equitable, and provided that upon the service of notice or demand aforesaid, that the running of the period of redemption shall be tolled until the court shall make its order upon such application. Provided, further, however, that if such mortgagor, lienor, vendee, tenant, or judgment debtor or personal representative shall default in the payments, or any of them, in such order required on his part to be done, or commits waste, his right of redemption from said sale shall terminate thirty days after such default, and holders of subsequent liens may redeem in the order and manner now provided by law,

beginning thirty days after the filing of notice of such default with the clerk of district court, and his right to possession shall cease, and the party acquiring title to such real estate shall then be entitled to immediate possession of said premises. If default is claimed by allowance of waste, such thirty day period shall not begin to run until the filing of an order of the court finding such waste. Provided, further, that the time of redemption from any real estate mortgage or other lien foreclosure, or judgment, or execution sale heretofore made, which otherwise cannot expire less than thirty days after the passage and approval of this act, shall be, and the same hereby is extended to a date thirty days after the passage and approval of this act, and in such case the mortgagor, lienor, vendee, tenant or judgment debtor, or the assignee or personal representatives of either, as the case may be, or the owner in possession of the real property may, prior to said date, apply to said court for, and the court may thereupon grant, the relief as hereinbefore and in this section provided. Provided, further, that prior to July 1, 1937, no action shall be maintained in this state for a deficiency judgment until the period of redemption, as allowed by existing laws or as extended under the provisions of this act, has expired; provided, however, that the provisions of the act shall (not)\* be construed as a repeal of Chapter 155 of the Session Laws of 1933 or any other similar enactment.

§ 7. Upon application of either party, prior to the expiration of the extended period of redemption as provided for in this act, and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter said terms in such manner as the changed circumstances and conditions may require.

§ 8. The trial of any action, hearing or proceedings mentioned in this act shall be held within twenty days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the court, and the order of the court shall be filed within five days after trial or hearing. No more than five days' stay shall be granted, and review by the Supreme Court may be had by certiorari, if application for the writ shall be made within 15 days after notice of such order, and such writ shall be returnable within 20 days after the filing of such order.

§ 9. Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of this act, are hereby suspended until July 1, 1937. No extension of the period for redemption, nor any postponement of sale judgment on execution shall be ordered or allowed under this act which would have the effect of extending the period of redemption or enforcement of judgment beyond July 1, 1937.

§ 10. This act as to mortgage or other lien foreclosures shall

apply only to mortgages or contracts or liens made prior to the passage and approval of this act, but shall not apply to mortgages, liens, contracts or leases made prior to the passage of this act which shall hereafter be renewed or extended for a period ending more than one year after the passage of this act. Neither shall this act apply in any way which would allow a re-sale, stay, postponement, or extension to such time that any right might be adversely affected by the statute of limitations.

§ 11. The provisions of this act shall not apply to any mortgage, lien, contract or lease while such mortgage or other instrument is held by the United States or any agency, department, bureau, board, instrumentality or commission thereof, as security or pledge of the maker, its executors or assigns, nor shall the provisions of this act apply to any mortgage holder as security or pledge to secure payment of a public debt, or to secure payment of the deposit of public funds, nor shall the provisions of this act apply to notes and obligations incurred under Title I and to insured mortgages issued under Title II of the National Housing Act, including the Land Bank Commissioner, a Federal Land Bank, a Federal Intermediate Credit Bank, a Production Credit Association, a Bank for Co-operatives, and a Regional Agricultural Credit Corporation.

§ 12. It is hereby declared that if any of the provisions of this act in any manner contravenes the provisions of the Constitution, the remaining provisions would have been enacted by this Legislative Assembly even though such provisions had been eliminated from the act. Hence, if any of the provisions are found to be violative of the Constitution, the remaining provisions shall not be affected by such invalidity, but shall remain in full force and effect.

§ 13. This act is declared to be an emergency measure and shall take effect from and after its passage and approval.

Approved March 9, 1935.

\*Word (not) inserted to indicate probable intention.

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## CHAPTER 243

H. B. No. 79—(Godwin)

### FRAUDULENT CONCEALMENT POSTPONES RUNNING OF STATUTE OF LIMITATIONS

An act to provide for fraud or fraudulent concealment of facts constituting a cause of action, to postpone or toll the running of the statute of limitations.

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

§ 1. FRAUD TOLLS STATUTE.] When a party against whom a cause of action exists in favor of another, by fraud or fraudulent concealment prevents such other from obtaining knowledge thereof,



the statute of limitations will commence to run only from the time the cause of action is discovered or might have been discovered by the exercise of diligence, and the action may be commenced within one year thereafter.

§ 2. BURDEN OF PROOF.] Such fraud or fraudulent concealment shall be established to the satisfaction of the trial court by a fair preponderance of the evidence.

Approved March 13, 1935.

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## CHAPTER 244

S. B. No. 33—(Coffey)

### AFFIDAVIT JUDGMENT DEBTOR IDENTIFICATION

An Act requiring judgment creditors to file an affidavit identifying the judgment debtor, forbidding clerks of court and other officers to enter judgments without affidavits of identification, and providing a penalty for failure to comply with this law.

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

§ 1. No judgment, except for taxes, shall hereafter be docketed or entered until the judgment creditor, his agent or attorney, shall have filed with the clerk of the district court, an affidavit stating the full name, occupation, place of residence, and post office address of the judgment debtor, to the best of affiant's information and belief; and if debtor has a known street address or residence number, or both, it shall be given. Failure to file such affidavit, or the filing of a defective or insufficient affidavit, shall not invalidate the judgment docketed or entered, but the clerk of the district court entering or docketing a judgment without such affidavit of identification shall be liable to any person damaged thereby in the sum of five dollars.

Approved February 6, 1935.

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## CHAPTER 245

S. B. No. 95—(Cain)

### JUDGMENT NOTWITHSTANDING VERDICT

An Act to amend and re-enact Section 7643, Supplement to the Compiled Laws of 1913, relating to directed verdicts, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 7643, Supplement to the Compiled Laws of 1913 be and the same hereby is 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 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. Such motion, singly or in the alternative, may be made either before or after entry of judgment. The ruling on the motion for a directed verdict may be reviewed by the Supreme Court without a motion for judgment notwithstanding the verdict or a motion in the alternative for such judgment or for a new trial having been first made in the trial court. 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.

§ 2. The terms and provisions of this act shall apply to any and all actions pending in any of the courts of the state.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and therefore this act shall be in full force and effect from and after its passage and approval.

Approved February 21, 1935.

## CHAPTER 246

S. B. No. 246—(Committee on Judiciary)

### ALTERNATE JURORS CRIMINAL CASES

An Act to provide for the use of alternate jurors in criminal cases, and to regulate the practice of the courts in regard thereto.

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

§ 1. ALTERNATE JURORS.] Immediately after the jury is impanelled and sworn to try any criminal action in district court or county court with increased jurisdiction the court may, if in its judgment it is necessary or proper, direct the calling of one or two additional jurors, to be known as "alternate jurors." Such jurors shall be drawn from the same source, and in the same manner, and have the same qualifications as regular jurors, and be subject to examina-

tion and challenge as such jurors, except that each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury. If, before the final submission of the cause, a regular juror dies or is discharged on account of disability or other good reason, the court shall order the alternate juror, if there is but one, to take his place in the jury box. If there are two alternate jurors the court shall select one by lot, who shall then take his place in the jury box. After an alternate juror is in the jury box he shall be subject to the same rules as a regular juror.

Approved March 6, 1935.

## CHAPTER 247

H. B. No. 188—(Godwin and Cunningham)

### GRANTING PREVENTATIVE RELIEF IN LABOR DISPUTES

An Act relating to the granting of preventative relief, prescribing conditions thereof and provisions therefor; and repealing Sections 7214a1, 7214a2 and 7214a3 of the Supplement to the 1913 Compiled Laws of North Dakota.

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

§ 1. That no court of the State of North Dakota as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this act.

§ 2. In the interpretation of this act and in determining the jurisdiction and authority of the courts of the State of North Dakota, as such jurisdiction and authority are herein defined and limited, the public policy of the State of North Dakota is hereby declared as follows:

WHEREAS, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment,

wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of the (his) own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the court of the State of North Dakota are hereby enacted.

§ 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in Section 2 of this act, is hereby declared to be contrary to the public policy of the State of North Dakota, shall not be enforceable in any court of the State of North Dakota and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

§ 4. No court of the State of North Dakota shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 3 of this act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 3 of this act.

§ 5. No court of the State of North Dakota shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 4 of this act.

§ 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the State of North Dakota for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

§ 7. No court of the State of North Dakota shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof.

(b) That substantial irreparable injury to complainant's property will follow:

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect

complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property; provided, however, that if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

§ 8. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

§ 9. Whenever any court of the State of North Dakota shall issue or deny any temporary injunction in a case involving or grow-

ing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the Supreme Court of the state for its review. Upon the filing of such record in the Supreme Court, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

§ 10. In all cases arising under this act in which a person shall be charged with contempt in a court of the State of North Dakota (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State of North Dakota wherein the contempt shall have been committed; provided, that this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

§ 11. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

§ 12. When used in this act, and for the purposes of this act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect

interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

§ 13. If any provision of this act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

§ 14. REPEAL.] That Sections 7214a1, 7214a2 and 7214a3 of the Supplement to the 1913 Compiled Laws of North Dakota are hereby repealed.

Approved March 13, 1935.

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## CHAPTER 248

S. B. No. 289—(McDonald)

### MAJORITY VOTE PARDON BOARD

An Act to amend and re-enact Section 11100 of the Compiled Laws of the State of North Dakota relating to quorum and majority vote of Board required to grant pardon, providing for the time of meetings.

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

§ 1. AMENDMENT.] That Section 11100 of the Compiled Laws of the State of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 11100. MAJORITY VOTE REQUIRED. QUORUM.] Every pardon or commutation of sentence shall be in writing and shall have no force and effect unless the same be granted by a vote of four members of said Board, four of such Board shall constitute a quorum. Provided that at any special meeting called in case of an emergency; the Governor, the Chief Justice of the Supreme Court and the Attorney General shall constitute a quorum. A reprieve in a case where capital punishment has been imposed may be granted by the Governor, but for such time only as may be necessary to secure a meeting of said Board of Pardons for the consideration of an application for a reprieve, pardon or commutation of sentence so reprieved. Said Board may grant an absolute or conditional pardon, and any conditional pardon shall state the terms and conditions upon which it is granted. Such Board of Pardons may issue its warrant under the seal of said Board to any proper officers to carry into



effect such pardon which warrant shall be obeyed and executed instead of the sentence which was first originally pronounced.

EMERGENCY.] 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 March 13, 1935.

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## CHAPTER 249

S. B. No. 174—(Johnson)

### UNIFORM TITLE PROBATE COURT PROCEEDINGS, ETC.

An Act providing for uniform title to papers and proceedings in Probate Court practice, and for form of citation.

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

§ 1. In the title to all citations and final decrees in the probate courts of North Dakota, each and all of the respondents in such proceeding shall be named as respondents, but in all other orders or pleadings or other papers it shall not be necessary to name all of the respondents as respondents therein. It shall be sufficient to name one respondent with the language "et al."

Approved March 7, 1935.

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## CHAPTER 250

H. B. No. 258—(Treffry, by request)

### UNIFORM ACT FOR ADMINISTRATION OF TRUSTS

An Act providing a uniform law for the administration and supervision of trust estates in the District Court, and providing the procedure and rules governing and relating to same; and repealing all of Chapter 122 of the Session Laws of North Dakota for the year 1931, and all other acts or parts of acts in conflict herewith.

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

§ 1. ADMINISTRATION AND SUPERVISION OF TRUSTS.] The District Court of the county where trust property or some portion thereof is situated, except and other than property held by an executor, administrator, guardian, or assignee or trustee for the benefit of creditors, shall have jurisdiction to supervise the administration, by the trustee or trustees, of such trust estate; and reference in this act to trusts, trustee, and trust property or trust estate shall be construed as in this section defined. In case such property is situated in more than one county the District Court of the county to which application is first made shall supervise the administration of such property. The procedure shall be by special proceedings which may

include proceedings ancillary to like proceedings of a foreign court when such court has acquired prior and original jurisdiction over the person of the trustee and a part only of the trust property is within the state.

2. PROCEEDINGS. HOW COMMENCED.] Any trustee, beneficiary or person interested in such trust may file with the clerk of the District Court a petition that the administration of the trust shall be therein supervised. That the form of said petition in substance shall be as herein provided. Notice of hearing thereon shall be as provided by this act, and such further or additional notice as may be prescribed by court rules; and the court, upon hearing, may enter its order that all further proceedings in the supervision of the administration of such trust shall be had in the said court: provided, that the District Court of the county where any portion of the trust property is located, may, upon petition of any interested person, and upon like notice and hearing, adopt and confirm as the act of such District Court any order or decree of a foreign court with respect to the sale, mortgaging, leasing, or other disposition of the real property of a trust within this state. In all cases of public or charitable trusts the Attorney General and also the States Attorney of the county where the trust is established shall be deemed persons interested in the trust estate.

§ 3. FORM OF PETITION.] The caption or title of the petition and of all orders, notices or other proceedings in the matter shall be substantially as follows: In the matter of the administration by John Doe, Trustee of the Trust created by Richard Roe. Said petition shall state the residence and post office address of the trustee and shall set forth the time and manner of the creation of the trust, as by will, deed, declaration or contract. It shall include or have annexed thereto a copy of the instrument creating the trust, or show that the same is not available to the petitioner, and show where the original of such instrument is on file, or in whose possession it may be, if known to the petitioner. In case the trustee has come into possession of the trust property through distribution under the probate of a will or by other judicial proceeding, such fact shall be alleged. The petition when made by a trustee shall include or have annexed thereto an itemized inventory giving the description, location and the estimated value of all property included in the trust and, whether filed by the trustee or person interested, it shall set forth the names and post office addresses of all beneficiaries or persons interested in the trust property so far as known to the petitioner. If the residence or post office address of any such beneficiary or interested person named in the petition is unknown to the petitioner, the fact shall be stated in the petition and the petition shall allege whether there are or may be beneficiaries or interested persons other than those specifically named who are unascertained or whose names are unknown to the petitioner. The petition may contain such other and

further showing as the petitioner may consider relevant, and a prayer for the supervision of the administration of the trust by the court and for the direction or order of the court in respect to such other and specific matters as the petition may disclose. The verification of all petitions shall be made by the petitioner, or his or its agent or attorney. The form of verification shall be as prescribed for the verification of pleadings in the District Court.

§ 4. ORDER FOR HEARING AND NOTICE.] Upon the filing of the petition the Judge of the District Court shall enter an order fixing the date of hearing of the petition and shall issue a notice to show cause of hearing in form as hereinafter prescribed. The notice to show cause shall be served upon all beneficiaries and interested parties resident in this state by personal service in the manner prescribed by law for the service of summons in a civil action, at least thirty days before the date of hearing; and, if it appears from the petition that there are beneficiaries or interested persons whose residence or post office addresses are without the state, or whose post office addresses are unknown, or that there are or may be interested persons or beneficiaries unascertained or whose names are unknown to petitioner, copies of the notice to show cause why said petition should not be granted shall be mailed by registered mail to all such persons whose post office addresses are set forth in the petition, at least thirty days before the date of hearing, and the notice shall be published in a legal newspaper in the city and the county where the proceeding is pending, once in each week for three successive weeks; and at least thirty days shall elapse after the last publication before the day of hearing.

Personal service of the notice at least thirty days before the hearing may be made upon any party in lieu of the service by mail registered and publication; and personal service upon the general guardian of any minor or incompetent person, or upon a special guardian of such person appointed as hereinafter provided, shall be equivalent to and dispense with the need of such service upon a ward, except in a case of a minor over fourteen years of age who shall also be served with said notice as herein provided.

§ 5. REQUISITES AND FORM OF NOTICE OF HEARING.] Notice of hearing on order to show cause why said petition shall not be granted shall be signed by the judge and shall be issued in the name of the State of North Dakota and be directed to the trustee or trustees, beneficiaries and all persons interested in the trust by their several names. If the petition shall have set forth that there are or may be persons interested in the trust or beneficiaries unascertained or whose names are unknown to the petitioner, the notice shall be also directed to all persons unknown who have or claim to have any interest in the administration of the trust.

The notice of hearing to show cause must be substantially in the following form:

State of North Dakota  
County of.....  
In the Matter of the Administration of }  
the trust created by John Doe }

In District Court  
Judicial District

NOTICE OF  
HEARING

.....  
(Describe instrument creating the trust)

THE STATE OF NORTH DAKOTA SENDS GREETING:

To Jane Roe, Mary Roe, Will Roe (and all other persons unknown or unascertained who have or claim to have any interest in the administration of the above named trust) :

Take notice that..... (Trustee or person interested as the case may be) has filed in this court a petition for the supervision, in this court of the administration of the trust (and for order of the court directing the trustee in respect of any other specific matter mentioned in the petition) which trust was created by (here insert description of instrument, as the will of Richard Roe of....., deceased, or by deed or other instrument, etc.); and that....., the.....day of....., 19...., at the hour of.....o'clock, ...M., or as soon thereafter as counsel can be heard, at the court room of this court, in the City of....., North Dakota, has been set as the time when and the place where any person interested may appear and show cause why said petition should not be granted,

Dated....., 19....

BY THE COURT:

.....  
Judge.

§ 6. APPEARANCE. WAIVER OF NOTICE. ADMISSION OF SERVICE.] The general appearance of any interested person at any hearing, in person or by attorney, or by the guardian of a minor or person incompetent, shall render prior notice to him unnecessary. Any such person, or attorney or guardian of a minor or person incompetent may waive notice of any hearing in the proceeding by written waiver filed with the clerk of the District Court. Any such person or guardian, or attorney in the proceedings, may admit in writing the due service of any notice in the proceeding; provided, that where jurisdiction is made to depend upon the appearance, waiver or admission of an attorney his authority must appear in written power filed with the clerk.

§ 7. PROOF OF SERVICE OF NOTICE. HEARING AND ORDER.] At or before the time appointed for any hearing, returns or affidavits or written admission of the service of all notices by all persons who have made or admitted service, and if the notice has been published an affidavit of publication of the notice of hearing shall be made and filed with the clerk. Upon the hearing of the petition the court shall

first require proof that service of the notice has been given or waived, as a condition precedent, as herein required, then the court must hear the allegations and proofs of the parties, and, if the court finds the evidence and proofs sufficient, the court shall enter its order that all further proceedings in the supervision of the administration of the trust shall be had in said court. All subsequent notices shall be given to all interested persons, and hearings had therein and orders entered therein as provided by Section 8 of this act.

§ 8. SUBSEQUENT NOTICES AND HEARINGS. EFFECT OF ORDERS OF DISTRICT COURT.] Every order entered in such proceedings, upon due notice as herein prescribed, shall have the force and effect of a judgment, and shall be subject to appeal as provided by the terms of this act, and shall be binding upon all parties in interest resident within or without the state, known or unknown, ascertained and in being or otherwise. It is further provided, that no order approving a trustee's account, or directing or approving the disposition or investment of trust property or funds, shall be entered except on hearing, and after service of notice by mailing copy of the same at least fifteen days before the hearing to all beneficiaries of the trust, at their post office addresses, respectively, as last known to the trustee, and, where there are or may be beneficiaries or interested persons, unknown or unascertained or resident without the state or whose post office address is unknown to the trustee, the notice as to such persons shall be served by publication of the same in a legal newspaper in the city and county where the trust is being adjudicated once in each week for two successive weeks and fifteen days prior to the date of hearing; and provided, that the appearance of any interested person at the hearing, in person or by attorney, or by the guardian of a minor or incompetent person, shall render prior notice to him unnecessary; and any such person or guardian may waive the notice herein provided by a written waiver filed with the clerk of the District Court.

§ 9. TRIAL. CORRECTION OF MISTAKES. RELIEF FROM DEFAULT. COPY OF RECORD FURNISHED.] Any person interested in the trust estate may file written objections to any account, report or petition of such trustee before or at the time of the hearing thereof, and present proof and evidence in support thereof; any order so made by the court in such proceeding may be modified or vacated to correct clerical errors or mistakes of calculation apparent on the face of the records, either by the court on its own motion, or with or without notice given. That within six months after the entry of any order, the District Court may relieve any interested person from the same where such order has been taken against him through his mistake, inadvertence, surprise or excusable neglect, or default therein upon fifteen days notice given to the opposite party as prescribed by the terms of this act.

Whenever any interested person in the trust estate has been

served with any notice of any proceeding based upon any petition, report or accounting, or other record required to be filed under the terms of this act, may demand a copy thereof and the same shall be forthwith furnished and mailed or served on the interested party demanding same free of charge by the trustee, or any other party commencing same by petition or otherwise.

§ 10. REPRESENTATION OF MINORS AND INCOMPETENTS.] In such proceedings the District Court may, in its discretion, appoint a special guardian or guardian ad litem for any minor or person of unsound mind. The appointment of a special guardian or guardian ad litem shall be made by order of the court filed in the proceedings upon petition of any interested person or upon the court's own motion, and which order may be made with or without notice, and shall specify whether the representation of any ward by special guardian shall be limited to a specific hearing or throughout the proceedings and until further order of the court. The special guardian shall qualify by filing an acceptance of appointment and oath to faithfully perform the duties of said special guardianship. It shall be the duty of the special guardian to represent his ward at the hearing or throughout the whole or any portion of the proceedings, as the court by its order may direct; and, provided, that the special guardian shall not receive for the ward any money, funds or property, unless a good and sufficient bond of at least the amount or the value thereof is furnished and filed in court, in an amount as ordered and fixed by the court in the order of appointment; and any money, funds or property so received shall be subject to and under the further orders of the court as to the disposition and turning over of the same to any general guardian of any ward appointed according to law.

§ 11. RESIDENT AGENT.] The trustee, if not a resident of the state, shall file in the office of the clerk of court his appointment in writing of a resident of this state as his agent upon whom any legal processes, notice or order may be served in the proceeding. Such appointment shall be filed within ten days after the hearing of the first or original petition for the supervision of the trust; and, if the trustee fails to make the appointment as such resident agent the court upon its own motion or upon petition of the interested person, by order, and upon fifteen days prior notice to the trustee given by mail, may appoint such resident agent. Service upon the said resident agent, in the manner provided by the terms of this act of any notice or order in the proceedings, shall be equivalent to service upon the trustee. Where the trustee is a foreign corporation, or other interested person, which has appointed the Secretary of State it or his agent for the service of process service of any notice in the proceeding may be made upon such foreign corporation or other interested person by service upon the Secretary of State in lieu of service by any other method herein provided.

§ 12. WHEN COURT ORDER REQUIRED. VALID ACTS OF TRUS-

TEE.] Except as required by the terms of this act, or specifically required by statute, such as in Section 6283 or 6307 of the Compiled Laws 1913, or other statutory provisions or as hereinafter may be enacted, no judgment or order of the court shall be necessary to render effective and valid any act of the trustee lawfully performed within the terms of the trust. The intendment of this act shall be taken to provide a speedy and convenient means to apprise interested persons of the progress of the trust administration; to bring the same before the court for its direction of the trustee; and, provide for prompt hearing upon the adjudication of the claims and objections of interested persons, and timely and conclusive approval or confirmation of the acts, accounts and reports of the trustee.

§ 13. ADOPTION OF ORDERS AND DECREES OF FOREIGN COURTS.] Where a foreign court, having jurisdiction in the matter of a trust which includes property in this state, has entered an order directing or allowing the performance of any act by the trustee with the respect to property within this state, which order is not inconsistent with any prior order, direction or judgment of the courts of this state, the said order may be adopted and confirmed as the order of District Court of this state having jurisdiction in the county where such property, or a part thereof, may be located; provided, that if the trustee of said trust is not found to be qualified to administer the same in this state a successor in trust shall be appointed as provided by the terms of this act to perform the duties of the trustee under such order, and who shall have charge and jurisdiction over all property located in this state. Exemplified copies of the order or decree of the foreign court may be filed with the clerk of the District Court of any county in this state wherein any of the trust property is situated with a petition of the trustee, or any beneficiary or person interested in the trust for the adoption thereof as the order of such District Court. Upon the filing of the petition, order of hearing thereon shall be entered and notice of hearing given to all interested persons as provided by the terms of this act; and the order of the foreign court, if adopted and confirmed, shall have the same force and effect and may be enforced in like manner as if the same were originally entered in the District Court of this state having jurisdiction of the trust estate or any part thereof.

§ 14. BOND OF TRUSTEES.] That unless otherwise provided by the provisions of the trust instrument or statute, the trustee or trustees shall be required to file with the clerk of court before entering upon his or its duties as such a bond with two or more sureties, or of a surety company in such sum as the court by order may direct; and, the bond shall be payable to the State of North Dakota for the use and benefit of all persons interested in the administration of the trust and be conditioned for the faithful performance of his or its duties by the trustee, as provided by the terms of the trust instrument, or by statute, and/ or the rules of the court; and that

any or all of the beneficiaries or persons interested in the trust may sue on said bond for any breach of trust by the trustee or trustees or any of them. That all foreign trustees of property located within this state shall be required to file a bond before entering upon their duties as such in this state and comply with the terms of this act.

§ 15. POWER AND DUTIES OF TRUSTEE.] Every act of the trustee or trustees in contravention of the terms of the trust, and as provided by statute, shall be absolutely void, and, unless the District Court, having justification of the supervision of the administration of such trust shall, by order on notice and hearing as provided by the terms of this act, authorize any such trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in such manner as may best accomplish the object and purpose of the trust, when it is made to appear to the satisfaction of the court that such order is necessary and for the best interest or benefit of the trust estate, or person or persons beneficially interested therein, or who may thereafter acquire an interest in the trust estate, and where it is further established to the satisfaction of the court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of such instrument will tend to destroy the trust estate or create losses of principal or income. A single hearing may be had upon, and notice thereof may include, any number of accounts, reports or petitions previously filed in the proceeding by the trustee or other interested person; and, provided that no account, report or petition shall be allowed or adopted unless or until an order is duly entered and filed allowing or approving of same.

§ 16. REPORTS OF TRUSTEE.] The trustee or trustees of every trust estate under the supervision and administration of which the court has acquired jurisdiction under the terms of this act, shall within ten days after the entry of the order taking jurisdiction of the trust estate, file with the clerk of court a verified itemized account and report showing in detail the description, location and value of all assets of the trust estate, the disposition thereof, the income therefrom from the time of inception of the trust; and, annually thereafter, said trustee or trustees shall file a like account and report together with all vouchers and receipts as hereinafter provided for, duly verified. That the court at any time and upon its own motion, or upon good cause shown by a petition of any beneficiary, and with or without notice, may require and compel the trustee to file a special itemized account, or report of any acts done, or acts contemplated by the trustee or trustees in the disposition or investment of the trust. No account or report shall be approved without notice of hearing as provided by the terms of this act.

§ 17. REMOVAL OF TRUSTEE.] Based upon a verified petition of any interested person showing upon its face good cause for removal, the court shall require the trustee or trustees to show cause



why he, they or it should not be removed as trustee or trustees. Notice of hearing shall be given as provided by the terms of this act, and personal service of such notice shall also be made upon the trustee or each of them if a resident of the state, and if not a resident, then such personal service shall be made upon the resident agent of the trustee or trustees. Provided, further, that the court may on its own motion, temporarily remove any or all trustees of the trust and appoint a temporary trustee to take charge of the trust estate and to act as such trustee until the petition for the removal of the trustee has been heard and determined, and a new trustee or trustees, as the case may be, has been appointed to fill any vacancy in the trust, or up until the time the proceedings for the removal of the trustee have been disposed of.

§ 18. VACANCY IN TRUST.] In the event of a vacancy by death, resignation or removal of a trustee or trustees, or if a trustee named in the instrument creating the trust shall not be qualified to administer the trust in this state, or as otherwise provided by statute, the court must appoint a new trustee or trustees to fill such vacancy in the trust, upon like notice and petition as herein provided for. In appointing a trustee, so far as practicable, the directions if any in the instrument creating the trust shall be followed; and likewise as to the successor in trust to be appointed or the method to be followed in the selection of same. And, generally, in the selection and appointment of a trustee the court should give first consideration to the wishes and selection made by the interested parties or beneficiaries who own, represent or control, or who have more than a fifty per cent beneficial interest in the trust estate; and provided, further, that if there is appointed three or more trustees to handle the trust estate, then the minority interest in said estate shall be entitled to the appointment of at least one trustee as selected by them, provided their combined beneficial interest in the estate amounts to at least twenty per cent of the value thereof.

§ 19. VOUCHERS MUST ACCOMPANY ACCOUNT, AND EXCEPT WHEN.] In rendering an account the trustee must produce and file vouchers or receipts for all charges, debts, claims and expenses which he has paid, and must be filed and remain in the court; and he may be examined on oath touching such payments and also touching such property and effects of the trust estate and the disposition thereof. Whenever any voucher is required for other purposes it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason can not be produced on the hearing and settlement of account, the payment may be proved by the oath of any competent witness. The trustee may be allowed any item of expenditures not exceeding fifteen dollars for which no voucher is produced, if such item be supported by his own affidavit and uncontradicted oath filed, positive to the fact of payment, specifying when, where and to whom it was made; and no account or report shall be

approved or allowed until the terms of this act are complied with by the trustee.

§ 20. EXPENSES AND NECESSARY FEES ALLOWED. COMMISSIONS.] The trustee shall be allowed all necessary expenses in the care, management and settlement of the trust estate, and for his services such fees as are hereinafter provided for; but when the instrument by which the trust is created makes some other provision for compensation of the trustee that shall be the full compensation for his services. That no compensation shall be allowed for attorney fees rendered to such trustee unless the same has been so performed by or under the direction of an attorney at law, who is a resident and admitted to practice in this state.

When there is no provision in the instrument made for the compensation of a trustee for his services, he must be allowed commissions on the amount of the whole trust estate accounted for by him, except all property not ranked as assets, as follows: For the first one thousand dollars, at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of two per cent; for all above that sum at the rate of one per cent. In all cases such further allowances may be made as the court may deem just and reasonable for any extraordinary service shown to have been performed; but the total amount of such allowance must not exceed the amount of commissions allowed by this section. Reasonable attorney fees shall be allowed, the same as allowed in like cases in the probate court in this state and no more, unless the instrument creating the trust specifies what shall be paid and allowed for legal services, and in that case the attorney fees provided for therein shall be allowed and no more.

§ 21. APPEALS.] Any trustee, beneficiary or person interested in such trust, feeling aggrieved by any order of the District Court, made in such proceedings, may appeal from the same or any part thereof to the Supreme Court within six months after the filing of such order with the clerk of the District Court. Such appeal shall be taken in the same manner, and upon such record and notice, as provided by the terms of this act, and a single appeal may include any number of orders made appealable by this section.

§ 22. APPEAL. HOW TAKEN.] Within the time prescribed by this act, any interested person may take an appeal to the Supreme Court from any order or orders entered by the District Court by the service of notice of appeal and filing the same with return or affidavit of service or admission thereof, together with a bond for costs in the sum of two hundred and fifty dollars, (\$250), with the clerk of the District Court. The bond for costs shall be executed by the appellant with the sureties to be approved by the clerk of the District Court and conditioned to the effect that the appellant will pay to the parties entitled thereto all costs that may be awarded against the appellant upon such appeal. The procedure on appeal

shall follow as near as may be done as provided by the Code of Civil Procedure in appeals in court cases, except wherein the procedure is expressly provided by the terms of this act.

§ 23. STAY OF PROCEEDINGS.] Upon the perfecting of an appeal in the manner as herein prescribed no further proceedings under the order or orders appealed from may be taken, pending the appeal, unless the District Court or Supreme Court may otherwise direct upon hearing, and upon such notice thereof as the court by order may prescribe; and the court may prescribe the terms and conditions of a supersedeas bond, deposit or other act in lieu thereof, otherwise none shall be required, except the cost bond in the sum of two hundred and fifty dollars, (\$250), to stay all proceedings from the date of the filing of the notice of appeal together with the undertaking on appeal and the service thereof.

§ 24. NOTICE OF APPEAL.] The notice of appeal shall specify the order, or orders, or parts thereof from which the appeal is taken, and shall be subscribed by the party taking the appeal, as appellant, or by his attorney. Such notice shall be served on each of the other parties, or their attorneys, who shall have appeared at the hearing or hearings at which the order or orders from which appeal is taken shall have been entered, and which parties shall be named in the notice as respondents. Service of the notice of appeal may be made personally upon, or by registered mail by mailing copies thereof to the respondents or their attorneys.

§ 25. PROCEDURE OF APPEAL.] The procedure on appeal to the Supreme Court and for certification of the record and the form of assignment of errors shall be, in so far as applicable and except as herein otherwise provided, as now provided by the statute for appeals in cases properly triable by the court without a jury in which an issue of fact has been joined; provided, that where no testimony was taken by the court reporter at the hearing on which the order or orders appealed from was entered, the original records and files of the District Court used upon the hearing, with the original notice of appeal and undertaking, shall be attached together and certified by the clerk of court and constitute the record for the purposes of appeal. The time for procuring transcript of evidence for appeal shall commence to run from the date of the entry of the order or orders from which the appeal is taken.

§ 26. TRANSMISSION OF RECORD. BRIEFS.] Within thirty days after the taking of appeal where no transcript of testimony is to be included in the record, and within thirty days after certification of the record where transcript is included, the clerk shall transmit the record and briefs filed to the Supreme Court. The parties shall serve and file their briefs on appeal as now provided by law and by the rules of the Supreme Court. However, the court may enlarge the time upon proper showing within which any act is to be performed

to perfect the record; but the court shall have no power to extend the time within which the appeal must be taken.

§ 27. AFFIDAVIT OF PREJUDICE FILED DISQUALIFIES JUDGE. WHEN.] Any judge of the District Court before whom proceedings have been commenced under the terms of this act, may be disqualified to act as such judge at any time thereafter by the filing of an affidavit of prejudice with the clerk of such court, as now provided by law in Civil cases, by any interested person or persons who have, or own, or control a beneficial interest in the trust estate of twenty-five per cent or over, and the said presiding judge shall be disqualified to further act therein; and the Supreme Court shall designate another judge to preside in place of the disqualified judge. But the same person or persons who obtained the change of judges shall be entitled to only one change of judges.

§ 28. REPEAL.] That all acts or parts of acts in conflict herewith are hereby repealed.

Approved March 13, 1935.

## CHAPTER 251

H. B. No. 72—(McIlraith)

### INVESTMENT TRUST FUNDS BY EXECUTORS, ADMINISTRATORS OR GUARDIANS

An Act providing for the investment of trust funds of executors, administrators and guardians and procedure required; repealing all acts or parts of acts in conflict herewith; and declaring an emergency.

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

§ 1. No executor, administrator or guardian shall invest trust funds unless authorized to do so by an order made and entered in the County Court of the county in which such executor, administrator or guardian was appointed; except that investments may be made without liability, in bonds of the State of North Dakota and/or of the United States of America.

§ 2. No order shall be made authorizing investment of trust funds by an executor, administrator, or guardian until a hearing be had upon petition therefor, and all heirs, devisees, legatees, and the Veterans Administration Bureau, Fargo, North Dakota, in case of beneficiaries thereof, and mother or father, or if not living, upon all brothers and sisters over the age of sixteen in guardianship proceedings, (other than petitioner), shall have had ten days notice of such hearing by registered mail addressed to such respondents at their last addresses shown of record in said court. And in event of the address of any respondent not appearing of record in such court and being unknown to the petitioner, the court may, on proper

showing made, dispense with such notice by order made and entered therein.

§ 3. REPEAL.] All acts or parts of act in conflict herewith are hereby repealed.

§ 4. EMERGENCY.] Whereas an emergency exists, therefore this act shall be effective from and after its passage and approval.

Approved March 13, 1935.

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## CHAPTER 252

S. B. No. 241—(Committee on Judiciary)

### CONDITIONAL EXAMINATIONS GRAND JURY OR COURT WITNESSES

An Act to provide for the conditional examination of witnesses held to appear before a Grand Jury or Court when such witnesses are unable to give the security required by the Court.

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

§ 1. Whenever it satisfactorily appears by examination on oath of a witness who has been required to give further security for his appearance as provided for by Section 10618 or Section 10621 of the Compiled Laws of 1913, or upon oath of any other person in his behalf, that such witness is unable to give the said further security, the magistrate shall make an order finding such fact and the witness shall be detained pending application for his conditional examination. Within three days from the entry of the order last mentioned, the witness so detained may be conditionally examined on behalf of the state or the defendant on application made for that purpose. Such examination shall be by question and answer in the presence of the other party, or when a witness for the state is being examined, after notice to the defendant. The examination shall be conducted in the same manner as the examination of witnesses before a committing magistrate is required by Code of Criminal Procedure to be conducted. At the completion of the examination the witness shall be discharged, and his deposition may be admitted in evidence at the trial. If no conditional examination is had within the above mentioned period of three days, the witness so detained shall be forthwith discharged.

Approved March 7, 1935.