

PHOTOGRAPHY

CHAPTER 234

H. B. No. 131—(Shure, Beede and Aker)
(Special Committee on Code Revision)

USE OF PHOTOGRAPHY IN MAKING COUNTY RECORDS

An Act Authorizing the Use of Photography in the Making of Permanent County Records.

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

§ 1. That whenever it shall be deemed expedient by the board of county commissioners to use photography in the making of permanent county records, such use is hereby authorized, and when permanent photographic or photostatic copies of any instrument, document, or decree which are required to be recorded are thus made, such copies may be filed and kept instead of the record books or records of instruments or documents required by any provision of the laws of this State.

Approved February 18, 1941.

PROCEDURE

CHAPTER 235

S. B. No. 130—(Thatcher and Kehoe)

PROCEEDINGS TO ESTABLISH CITIZENSHIP

An Act Defining Citizens of the State of North Dakota; providing for a Judicial Proceeding for the Establishment of Citizenship for the State of North Dakota; And Repealing Section 13 of Chapter 1 of the 1913 Compiled Laws of the State of North Dakota.

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

§ 1. WHO ARE CITIZENS.] The citizens of the State are all persons who are citizens of the United States of America and who are bona fide residents of the State of North Dakota.

§ 2. PROCEEDING TO ESTABLISH CITIZENSHIP AUTHORIZED.]

Any citizen of the State of North Dakota may maintain a proceeding in accordance with this Act in the district court of the county in which he resides for the purpose of establishing the fact that he is a citizen of the State of North Dakota.

§ 3. HOW PROCEEDING INSTITUTED; CONTENTS OF PETITION.] Such proceeding shall be instituted by the filing of a petition with the clerk of the district court of the county in which the petitioner resides setting forth:

1. That the petitioner is a resident of and resides within the State of North Dakota;
2. That the petitioner is a citizen of the United States of America;
3. The place and date of birth of the petitioner;
4. If the petitioner was born within the United States of America, whether or not the parents of the petitioner were transient aliens or alien public ministers or consuls;
5. If the petitioner was born without the boundaries of the territorial United States of America, facts sufficient to show that the petitioner is a citizen of the United States of America, and the basis upon which citizenship rests.

§ 4. NOTICE TO BE GIVEN BY CLERK OF THE DISTRICT COURT.] Upon the filing of a petition of the kind described in this Act, the Clerk of the district court with whom such petition is filed shall issue a notice under the seal of the said district court fixing the time and place for the hearing upon such petition. Such notice shall be published in the official newspaper of the county for three successive weeks, the last publication to be at least ten days before the time set for the hearing. A copy of such notice and of such petition shall be served upon the Attorney General of the State of North Dakota and upon the state's attorney of the county of which the petitioner is a resident at least thirty days before the time set for the hearing. Proof of the publication and service required by this section shall be filed in the office of the clerk of the district court on or before the date set for the hearing on such petition.

§ 5. HEARING; WHO MAY APPEAR; DUTY OF ATTORNEY GENERAL AND STATE'S ATTORNEY.] Any citizen of the State of North Dakota may appear at the hearing provided for in this Act and shall be heard in favor of or in opposition to the petition. The Attorney General, if he has reason to believe that the petitioner is not a bona fide citizen of the State of North Dakota or of the United States of America, shall appear at the hearing in opposition to the petition. The Attorney General, if he has any doubt relative to the citizenship of the petitioner, shall secure any information required for such hearing from any department of the Government of the United States of America. The state's attorney of the county in

which the proceeding is pending shall appear at any hearing on a petition filed under the provisions of this Act.

§ 6. JUDGMENT.] If, after the hearing, the court is satisfied that the petitioner is a bona fide citizen of the State of North Dakota, it shall make appropriate findings of fact and conclusions of law and shall order a judgment to that effect and such judgment shall be entered in the office of the clerk of the district court upon such order. If the court is not satisfied that the petitioner is a bona fide citizen of the State of North Dakota, it shall make appropriate findings of fact and conclusions of law and shall order the entry of a judgment denying the petition and a judgment shall be entered upon such order reciting the dismissal and denial of the petition. A judgment establishing the citizenship of a petitioner shall be entitled to full faith and credit in the same manner as any other judgment of the courts of this State.

§ 7. APPEAL.] The petitioner may appeal to the Supreme Court of the State of North Dakota from a judgment of the district court denying his petition for the establishment of citizenship. Notice of such appeal must be served upon the Attorney General of the State of North Dakota and upon the state's attorney of the county of which the petitioner is a resident. The Attorney General or the state's attorney of the county of which the petitioner is a resident may appeal to the Supreme Court of the State of North Dakota from a judgment of the district court establishing citizenship. Notice of such appeal shall be given to the petitioner. An appeal under this section must be taken within thirty days after the entry of a judgment establishing citizenship or denying and dismissing the petition for the establishment of citizenship and shall be heard by the Supreme Court in the same manner as other appeals from actions tried by the district court without a jury. If the appeal under this section is taken by the Attorney General or state's attorney, no appeal bond shall be required.

§ 8. REPEAL.] Section 13 of Chapter 1 of the 1913 Compiled Laws of the State of North Dakota is hereby repealed.

Approved March 17, 1941.

CHAPTER 236**H. B. No. 297—(Bergesen)**

DESCENT OF HOMESTEAD ESTATE AND EXEMPTION

An Act to Amend and Re-enact Section 5631 of the 1913 Compiled Laws of North Dakota, Relating to Descent of Homestead Estate and Exemption; Repealing Section 5632 of the 1913 Compiled Laws of North Dakota.

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

§ 1. AMENDMENT.] That Section 5631 of the 1913 Compiled Laws of the State of North Dakota relating to descent of homestead estate and exemptions, is hereby amended and re-enacted to read as follows:

§ 5631. DESCENT AND DISTRIBUTION OF REAL PROPERTY SUBJECT TO HOMESTEAD ESTATE.] The real property subjected to such homestead estate shall, subject to the full satisfaction of such estate, descend and be distributed in the same manner as real property not subject to a homestead estate, or as directed in the decedent's will after the payment of the decedent's debts.

§ 2. REPEAL.] That Section 5632 of the 1913 Compiled Laws of North Dakota, be and the same are hereby repealed.

Approved March 14, 1941.

CHAPTER 237**S. B. No. 123—(Morgan of Richland & Kehoe)**

REAL ESTATE CONVEYANCE BY ADMINISTRATORS

An Act to amend and re-enact Section 8793 of the Compiled Laws of North Dakota, relating to petition for conveyance of real estate sold on contract, and contents of petition and decree, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 8793 of the 1913 Compiled Laws of North Dakota is hereby amended and re-enacted to read as follows:

§ 8793. PETITION FOR SUCH CONVEYANCE, CONTENTS OF AND DECREE.] On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated,

all persons interested in the estate must be cited as in other cases. If after all full hearing and examination of the facts and circumstances of the claim, the court is satisfied that petition should be granted, a decree must be made authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner, and such conveyance must be executed accordingly. Such petition may also be presented by the executor or administrator of the estate of the person who had contracted in writing to make such conveyance.

§ 2. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 14, 1941.

CHAPTER 238

S. B. No. 103—(Kehoe, Olson of Mountrail and Fowler)
(Special Committee on Code Revision)

SUPREME COURT, POWER AND PROCEDURE

An Act Recognizing the Rule Making Powers of the Supreme Court; Providing that Existing Statutes of Procedure shall be Continued in Effect as Rules of Court Until Altered by the Supreme Court; Providing that Procedural Statutes Exist as Rules of Court; Authorizing the Supreme Court to Amend Rules Promulgated by it and Statutes Governing Procedure; Permitting the Supreme Court to Make New Rules; Providing for Hearings on Rules Before the Same are Promulgated by the Court; Providing for the Making of a Complaint to the Supreme Court Against Rules and for Hearing on Such Complaint; Providing for Giving Notice of the Effective Date of the Rules Promulgated by the Court; and Authorizing the Supreme Court to Make Rules Governing the Practice of Law and for the Admission, Disbarment, Discipline, and Reinstatement of Attorneys at Law.

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

§ 1. SUPREME COURT HAS POWER TO MAKE RULES OF PRACTICE AND PROCEDURE.] The Supreme Court of North Dakota has the power to make all rules of pleading, practice, and procedure which it shall deem necessary for the administration of justice in all civil and criminal actions, remedies, and proceedings in any and all courts of the state and for the method of taking, hearing, and deciding appeals to the courts from all decisions of public officers, boards, commissions, departments, and institutions exercising quasi judicial functions, in any case where an appeal from any such decision is allowed by law.

§ 2. SUPREME COURT MAY MAKE RULES GOVERNING PRACTICE OF LAW.] The Supreme Court may make all necessary rules for the admission, disbarment, discipline, and reinstatement of attorneys at law to practice the profession of law in this state, and for the restraint of persons unlawfully engaging in the practice of law.

§ 3. STATUTES REGULATING PROCEDURE EFFECTIVE AS RULES OF SUPREME COURT.] All statutes relating to pleadings, practice, and procedure in civil or criminal actions, remedies, or proceedings, now existing or hereafter enacted by the Legislative Assembly, shall have force and effect only as rules of court and shall remain in effect unless and until amended, or otherwise altered by rules promulgated by the Supreme Court.

§ 4. LIMITATION ON POWER TO MAKE RULES.] No rule promulgated under this act shall in any manner abridge, enlarge, or modify the substantive rights of any litigant.

§ 5. NOTICE OF RULES TO BE PROMULGATED: RIGHT OF INTERESTED PERSONS TO BE HEARD.] No new rule shall be promulgated by the court until it first shall have given sixty days notice of intention so to do by filing such proposed new rule, or amendment, in the office of the Clerk of the Supreme Court and by publishing notice of the filing of the same, indicating its proposed purpose in general terms and fixing a time and place when the Supreme Court will afford any person interested an opportunity to appear and be heard with reference to the adoption of the same. Such notice shall be given by publishing the same once each week for two successive weeks in a newspaper of general circulation published at Bismarck, North Dakota, the first publication to be at least sixty days before the date fixed for such hearing, and in such other manner as the Court may prescribe.

§ 6. COMPLAINTS AGAINST RULES; WHEN HEARING REQUIRED.] Whenever at least five lawyers from each judicial district in the state shall join in a complaint against any rule or statute relating to pleading, practice, or procedure, setting forth the alleged defect in the old rule and the amendment or proposal for its improvement, or shall join in a petition proposing any new rule and showing necessity therefor, the Supreme Court shall fix a time and place for hearing the same and shall give notice in the same manner as provided in this act for notice of intention to adopt a new rule. In such cases, the court shall not hold more than two hearings in each year, and in its discretion, may join in one notice and hearing several complaints or petitions.

§ 7. NOTICE OF ADOPTION OF RULES; PUBLICATION OF NOTICE; FILING OF RULE.] No new rule shall become effective until the Supreme Court shall have made an order in writing adopting the same, shall have caused the same to be signed by the Chief Justice and at-

tested by the Clerk under the seal of the Court, and shall have filed the same in the office of the Clerk of the Supreme Court and given notice thereof as hereinafter prescribed. Upon the filing of any such rule, the Clerk of the Supreme Court shall prepare and certify copies thereof and forward one to the office of the clerk of the district court of each organized county of the state by registered mail with return receipt requested and shall publish notice of the adoption of such rule once in a newspaper of general circulation published at Bismarck, North Dakota. Such publication shall be made within ten days after the mailing of said certified copies. Such notice shall state the date of the mailing of the said copies and the purpose of the rule in general terms, and shall specify that such rule may be inspected at the office of any clerk of the district court in the state. Notice of adoption of several rules may be given at one time and in the same published notice. The clerk shall file proof of such mailing and publication of the notice with the original record of such rule. The Clerk shall mail a copy of each rule adopted by the Supreme Court under the provisions of this act to each district judge, judge of a county court with increased jurisdiction, and to each attorney who has been currently licensed to practice law in this state. The Supreme Court may make any additional provisions for publication or notice of the promulgation of any rule as to it may seem advisable or necessary.

§ 8. EFFECTIVE DATE OF RULES PROMULGATED BY COURT.] A rule promulgated by the Supreme Court under the provisions of this act shall become effective on the sixtieth day after the mailing of the certified copies by the Clerk as above provided unless the Supreme Court, in its order, shall fix a longer term before the effective date of such rule, in which case the date so fixed shall be the effective date of such rule.

§ 9. DUTY OF CLERK OF DISTRICT COURT.] The clerk of the district court of each county, upon the receipt of a certified copy of any rule as provided in this act, shall file it and endorse upon it the date of its filing, and shall notify the Clerk of the Supreme Court in writing of the date of its receipt and filing. He shall register and index such rule, and the same shall thereafter remain available to public inspection in his office.

Approved March 6, 1941.

CHAPTER 239

H. B. No. 203—(Bergesen)

ADMINISTRATION OF TRUSTS

An Act to Amend and Re-enact Section 20, of Chapter 250 of the Session Laws of North Dakota for the year 1935, relating to the Administration of Trusts.

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

§ 1. AMENDMENT.] Section 20, of Chapter 250 of the Session Laws of North Dakota for the year 1935, is hereby amended and re-enacted to read as follows:

§ 20. EXPENSES AND NECESSARY FEES ALLOWED.] 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 the compensation of the trustee that shall be the full compensation for his services. 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, such compensation shall be fixed and allowed by the judge of the district court who has supervision of the administration of such trust, and shall be no more than in the judgment of the court will reasonably compensate him for such services as may have been rendered: Reasonable attorney fees shall be allowed by the court 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.

Approved March 4, 1941.

CHAPTER 240

S. B. No. 108—(Kehoe, Fowler, and Olson of Mountrail. Special Committee on Code Revision.)

ADMINISTRATIVE AGENCIES UNIFORM PRACTICE ACT

An Act to prescribe uniform rules of practice for administrative agencies from the determination of which an appeal to the Court is provided; and to provide a uniform method of reviewing determinations of administrative agencies by the Courts.

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

§ 1. DEFINITION OF TERMS.] For the purposes of this act:

1. "Administrative agency" or "the agency" shall mean and include any officer, board, commission, bureau, department, or tribunal other than a court, having state-wide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state;

2. "Rules and regulations" shall mean and include rules, regulations, and orders, and amendments thereto, of general application issued by any officer, board, commission, bureau, or department interpreting, regulating the application of, or regulating the procedure with, the statutes which they are charged respectively with administering. Such term shall not apply to rules or regulations adopted or orders made by an administrative agency relating solely to the internal operation of the agency, nor to rules or regulations adopted or orders made relating to the management, admission, expulsion, or graduation of students from educational institutions, nor to rules or regulations adopted or orders made relating to the management, confinement, discipline, or release of inmates of any penal or charitable institution:

3. "Person" shall include individuals, associations, partnerships, and corporations.

§ 2. RULE MAKING POWER OF AGENCY.] Every administrative agency shall have the authority to promulgate and from time to time to amend or repeal reasonable rules and regulations in conformity with the provisions of any statute administered or to be administered, enforced or to be enforced, by such agency and to prescribe methods and procedure required in connection therewith. Every rule or regulation proposed by any administrative agency, before being adopted, shall be submitted as to its legality, and the Attorney General shall promptly furnish his opinion as to the legality of any such proposed rule or regulation.

§ 3. FILING OF RULES AND REGULATIONS; EFFECT OF RULES.] A copy of each rule and regulation promulgated and adopted by an

administrative agency shall be filed in the office of the Attorney General, and when thus filed, shall have the force and effect of law until amended or repealed by the agency or until the same is declared invalid by a final court decision. A copy of each rule and regulation prescribed by any administrative agency, and the Attorney General's opinion thereon, shall be filed in the office of the clerk of the district court of each county in this state and shall be retained by such clerk of court for public inspection. A copy of each such rule and regulation, and the Attorney General's opinion thereon, shall be mailed by the agency to the Secretary of the State Bar Association. No fee shall be charged for the filing required by this section.

§ 4. PETITION FOR RECONSIDERATION OF RULE OR REGULATION; HEARING BY AGENCY.] Any person substantially interested in the effect of a rule or regulation promulgated by an administrative agency may petition such agency for a reconsideration of any such rule or regulation or for an amendment or modification thereof. Such petition shall state clearly and concisely the petitioner's alleged grounds for such reconsideration, modification, or amendment of such rule or regulation. The agency, in its discretion, may grant the petitioner a public hearing upon such terms and conditions as the agency may prescribe.

§ 5. RULES OF PROCEDURE REQUIRED WHEN CHARGE IS MADE BY AGENCY.] The following rules of procedure shall be observed by all administrative agencies in proceedings in which the same are applicable:

1. In any proceeding, other than a proceeding in court, where the enforcement of any rule, regulation, or statute is sought, a clear and concise statement or complaint in writing of the claims or charges made by an administrative agency or through an administrative agency against any person shall be served upon such person personally or by registered mail. A notice specifying the time and place fixed for a public hearing on the claims or charges contained in such statement or complaint shall be served therewith, and such notice shall notify the person against whom the claim or charge was made that unless an answer is served to such complaint upon the agency giving the notice at least three days before the time specified for hearing in such notice, the complaint will be deemed admitted and the appropriate action taken thereon by the agency. Unless waived in writing by the person against whom the claim or charge is made, such hearing shall be held not less than twenty days after service of the notice and complaint. Any party to such a proceeding shall be given a reasonable time to prepare for the hearing;

2. At such hearing, the person against whom the proceedings have been instituted shall be afforded the same opportunity to present evidence and to examine and cross-examine witnesses as is permitted to parties to an action in the district court.

§ 6. EVIDENCE TO BE CONSIDERED BY AGENCY.] The admissibility of evidence in any proceeding before an administrative agency shall be determined, insofar as circumstances will permit, in accordance with the practice in the district court. An administrative agency, or any person conducting an investigation or hearing for it, may waive the usual common law or statutory rules of evidence if such waiver is necessary to ascertain the substantial rights of all the parties to the proceeding, but only evidence of probative value shall be accepted. All objections offered to evidence shall be noted in the record of the proceeding. No information or evidence except such as shall have been duly offered and made a part of the official record of the hearing shall be considered by the administrative agency, except as provided in this act.

§ 7. CONSIDERATION OF INFORMATION NOT PRESENTED AT A FORMAL HEARING.] If an administrative agency shall desire to avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by such agency, in addition to the evidence presented at any formal hearing, it may do so after first transmitting a copy of such information or evidence or an abstract thereof to each party of record in the proceeding and after affording each such party, upon written request, an opportunity to examine such information or evidence and to present evidence in connection therewith and to cross-examine the person or persons furnishing such information at a further public hearing to be called and held upon at least ten days' notice, which notice may be given by registered mail. Nothing contained in this section shall prevent any administrative agency from taking notice of any fact or facts set forth in its duly established regulations or any facts which are judicially noticed by the courts of this state.

§ 8. SPECIFICATIONS OF ANY ISSUES TO BE FURNISHED BY AGENCY.] Whenever an administrative agency, pursuant to authority conferred upon it by law, shall institute an investigation upon its own motion or without the filing of a specified complaint, or shall hold any hearing or make any independent investigation upon the claim or request of any person, no decision shall be made by the agency until all parties in interest shall have been furnished with a written specification of the issues which are to be considered and determined, nor until an opportunity shall have been afforded to such parties to present evidence and to be heard upon the precise issues so specified.

§ 9. SUBPOENA AND ATTENDANCE OF WITNESSES.] Any officer, examiner, chairman, or acting chairman of any administrative agency, upon request of any party to a hearing or proceeding conducted by it, or upon his own motion on behalf of the agency, shall require by subpoena the attendance and testimony of witnesses and the production of the documents and other objects described in

such subpoena at such hearing or proceeding; and the cost of serving such subpoena shall be paid by the person or agency requesting it. The deposition of a witness required in any proceeding before an agency may be taken in the same manner and on the same notice as in an action pending in the district court. Any witness who is subpoenaed under the provisions of this section and who appears at the hearing, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court, and such fees shall be paid by the party or agency at whose instance the witness appears or his deposition is taken.

§ 10. PROCEEDING WHEN SUBPOENA DISOBEYED.] If a subpoena issued as provided in this chapter is disobeyed, the officer, special examiner, chairman, or acting chairman of the administrative agency, or the person at whose request the subpoena has been issued, may apply to any judge of the district court for an order requiring the attendance of such witness and the production of all documents and objects described in the subpoena. The failure of any such witness to comply with such order of the district court shall be held to be a contempt of court and shall be punishable accordingly.

§ 11. ADMINISTRATION OF OATHS; FALSE TESTIMONY IS PERJURY.] The officer, special examiner, chairman, or acting chairman of an administrative agency before which a proceeding or hearing is held shall have the power to examine witnesses and records, and to administer oaths to witnesses. Any witness testifying falsely at any proceeding before an administrative agency after the oath has been administered to him shall be guilty of perjury and shall be punished accordingly.

§ 12. RECORD TO BE MADE OF TESTIMONY.] A record shall be made of all testimony adduced at any hearing before an administrative agency. Stenographic notes of such testimony and all evidence and exhibits produced on any hearing before the administrative agency shall be filed with the agency concerned. A transcript of the evidence taken by or before an administrative agency shall be furnished to any party to the proceeding upon written request therefor at a uniform charge to be set by the agency, and such transcript fee shall be paid into the general fund.

§ 13. FINDINGS OF FACT, CONCLUSIONS, AND DECISION OF AGENCY; NOTICE.] Within thirty days after the evidence has been received, briefs filed, and arguments closed in a proceeding before an administrative agency, or as soon thereafter as possible, the agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law, and the decision of the agency based upon such fact and conclusions. The agency shall give notice of its decision or determination in any proceeding heard by it by delivering a copy of such decision or determination to all the parties to the proceeding either personally or by registered mail, and if such notice

is given by registered mail, the notice shall be deemed given as of the date of the registry.

§ 14. PETITION FOR REHEARING.] Any party before an administrative agency who is aggrieved by the decision thereof, within fifteen days after a copy of such decision has been mailed or delivered to such party by the administrative agency, may request a rehearing by such agency. He shall submit with the request for rehearing a statement of any further showing to be made in the proceeding, and such request and statement shall constitute a part of the record in the proceeding. The administrative agency may deny such request for rehearing or may grant the same on such terms as it may prescribe. This section, however, shall not limit the right of any agency to reopen any proceeding under any continuing jurisdiction which is granted to any such agency by any law of this state.

§ 15. APPEAL FROM DETERMINATION OF AGENCY: TIME TO APPEAL; HOW APPEAL TAKEN.] Any party to any proceeding heard by an administrative agency, except in cases where the decision of the administrative agency is declared final by any other statute, may appeal from such decision within thirty days after notice thereof has been given, or if a rehearing has been requested as provided herein and denied, within thirty days after notice of such denial has been mailed to him. Such appeal may be taken to the district court designated by law, and if none is designated, then to the district court of the county wherein the hearing or a part thereof was held. Only final orders or decisions and orders or decisions substantially affecting the rights of parties are appealable. A procedural order made by an administrative agency during the pending of a hearing before it shall not be deemed a final order nor an order affecting a substantial right. Such appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken upon the administrative agency concerned, upon the Attorney General or an assistant attorney general, and upon all the parties to the proceeding before such administrative agency, and by filing the notice of appeal and specifications of error together with proof of service thereof, and the undertaking herein required, with the clerk of the district court to which such appeal is taken. An undertaking must be executed by the appellant, with sufficient surety to be approved by the judge of the district court, conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against him in the district court. Such undertaking shall be made to the State of North Dakota and may be enforced by the agency concerned for an (and) on behalf of the state as obligee.

§ 16. DOCKETING OF APPEALS.] Appeals taken in accordance with this act shall be docketed as other cases pending in the district court are docketed and shall be heard and determined by the court without a jury at such time as the court shall determine.

§ 17. AGENCY TO CERTIFY RECORD ON APPEAL.] Within thirty days, or such longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this act, and after the deposit by the appellant of the estimated cost of a transcript of the evidence, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire proceeding before the agency, or such abstract of the record as may be agreed upon and stipulated by the parties, including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact submitted to the agency, and the decision of the administrative agency in such proceeding. If the notice of appeal shall specify that no exception or objection is made to the agency's findings of fact, and that the appeal is concerned only with the agency's conclusions based on the facts found by it, the evidence submitted at the hearing before such agency shall be omitted. The court may permit amendments or additions to the record thus filed in order to complete the same.

§ 18. CONSIDERATION OF ADDITIONAL OR EXCLUDED EVIDENCE.] If an application for leave to adduce additional evidence is made to the court in which an appeal from a determination of an administrative agency is pending, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing or proceeding had before the administrative agency, or that such evidence is material to the issues involved and was rejected or excluded by the agency, the court may order that such additional evidence be taken, heard, and considered by such agency on such terms and conditions as the court may deem proper. After considering such additional evidence, the administrative agency may amend or modify its findings of fact, conclusions of law, and decisions, and shall file with the court a transcript of such additional evidence together with its new or modified findings of fact, conclusions of law, and decision, if any.

§ 19. SCOPE OF AND PROCEDURE ON APPEAL FROM DETERMINATION OF ADMINISTRATIVE AGENCY.] The court shall try and hear an appeal from the determination of an administrative agency without a jury and the evidence considered by the court shall be confined to the record filed with the court. If additional testimony is taken by the administrative agency or additional findings of fact, conclusions of law, or a new decision is filed pursuant to the preceding section, such evidence, findings, conclusions, and decision shall constitute a part of the record filed with the court. After such hearing, the court shall affirm the decision of the agency unless it shall find that such decision or determination is not in accordance with law, or that it is in violation of the constitutional rights of the appellant, or that

any of the provisions of this act have not been complied with in the proceedings before the agency, or that the rules or procedure of the agency have not afforded the appellant a fair hearing, or that the findings of fact made by the agency are not supported by the evidence, or that the conclusions and decision of the agency are not supported by its findings of fact. If the decision of the agency is not affirmed by the court, it shall be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the decision of the court.

§ 20. AN APPEAL FROM A DETERMINATION OF AN ADMINISTRATIVE AGENCY DOES NOT STAY PROCEEDINGS.] An appeal from a determination or decision of an administrative agency shall not stay the enforcement of such decision or determination unless the court to which the appeal is taken, upon application and after a hearing, shall order a stay. The court may impose such terms and conditions for a stay of the enforcement of the determination or decision appealed from as it shall deem proper.

§ 21. REVIEW IN SUPREME COURT.] The judgment of the district court in an appeal from a decision of an administrative agency may be reviewed in the Supreme Court on appeal in the same manner as any case tried to the court without a jury may be reviewed, except that the appeal to the Supreme Court must be taken within three months after the service of the notice of entry of judgment in the district court.

§ 22. EFFECTIVE DATE OF ACT.] This act, and the procedure herein specified, shall apply to all claims and proceedings filed in or commenced by any administrative agency subsequent to the date when this act becomes effective.

Approved March 17, 1941.