

change of the place where the principal business of the corporation is to be transacted as if a meeting were called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

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 All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 7, 1890.

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## COUNTY COURTS.

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### CHAPTER 50.

[H. F. 11]

#### COMPENSATION OF JUDGES.

AN ACT to Fix the Compensation of the Judges of the County Courts and Provide a Fund to Reimburse the County for the Same.

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

§ 1. JUDGES' SALARY FIXED BY POPULATION OF COUNTY.] As compensation for their services, there shall be allowed and paid to the judges of the county courts in all counties an annual salary, based upon the population thereof as follows, viz.: For the first 3,000 inhabitants or fraction thereof, the sum of three hundred (300) dollars per annum, for the next 3,000 inhabitants, the sum of one hundred (100) dollars per annum, for each 1,000 inhabitants or fraction thereof, and for each additional 1,000 inhabitants or fraction thereof the sum of fifty (50) dollars per annum, to be paid by the treasurer of the county upon the warrants of the county auditor or clerk; and in all counties, whenever the county courts shall have civil and criminal jurisdiction, the judges of such county courts, as compensation for such additional services, in addition to that hereinbefore provided, shall be paid one-half as much more; *Provided, always,* That the salary of the county judge in any county shall not exceed the sum of \$2,000; *Provided, further,* That the judges of the county courts may receive such fees as are allowed by law, in taking acknowledgement of deeds or other instruments and other acts, other than in the settlement of the estates of decedents, of wards, the guardianship of infants and the adjudication of civil and criminal actions;

and that all causes in probate commenced prior to the taking effect of this act shall not be effected thereby.

§ 2. PROVISION FOR CLERK HIRE.] In all counties having a population of 15,000 inhabitants, there shall be allowed and paid to the judge of the county court thereof, as clerk hire, the sum of six hundred (600) dollars per annum, and in counties having a greater population than 15,000 inhabitants then an additional sum of fifty (50) dollars per annum for each additional 1,000 inhabitants or fraction thereof, and such other and further sum as may be necessary for the proper transaction of the business of such county court, the sum to be paid in the same manner as the salary of the county judge.

§ 3. POPULATION, HOW DETERMINED.] The county auditor or county clerk shall determine the population of his respective county by multiplying by five the total vote cast in the last general election of county officers prior to the year in which said salary is to be paid: the result shall be taken as the population of such county.

§ 4. HOW COUNTY TREASURER TO BE REIMBURSED.] For the purpose of reimbursing the county treasurer for the salaries provided in the foregoing sections to be paid to the judges of the county courts, each petition for letters testamentary, administration or of guardianship, before filing the same in the county court, shall pay or cause to be paid into the county treasury, for the use and benefit of the county in whose county court proceedings are to be instituted to settle the estate of any deceased person or for the appointment of a guardian, the following sums, according to the value of the estate of such deceased person or of such ward, as appears by the sworn statement in the petition of such applicant, that is to say: Five (5) dollars when the value of such estate does not exceed the sum of five hundred (500) dollars; ten (10) dollars when the value of such estate does not exceed the sum of \$1,500; fifteen (15) dollars when the value of such estate does not exceed \$2,500; twenty (20) dollars when the value of such estate does not exceed \$5,000, but does exceed \$2,500; twenty-five (25) dollars when the value of such estate exceeds the sum of \$5,000, and shall not exceed \$10,000; thirty (30) dollars when such estate exceeds the sum of \$10,000, but not \$15,000; forty (40) dollars when the value of such estate shall exceed the sum of \$15,000, but not of \$20,000; fifty (50) dollars when the value of such estate exceeds the sum of \$20,000, but not of \$25,000, and seventy-five (75) dollars in all cases where the value of such estate shall exceed the sum of \$25,000, and in all cases in addition, all sums necessarily expended in publishing or serving notices required by law. And in the adjudication of all civil and criminal actions the same fees and costs shall be paid as in like actions and matters in the district court, the same to be paid to the judge of the county court, a record [to] be kept of, and by him turned over to the county treasurer.

§ 5. PAYMENTS MADE TO TREASURER —RECEIPTS.] When the payments provided for in the foregoing sections shall be made to the treasurer of the proper county, he shall execute therefor duplicate receipts, one of which shall be filed with the county auditor, and one with the judge of the county court of such county.

§ 6. CLERK.] In any county of less population than those in which provision is made for clerk hire, the judge thereof may at his option be *ex-officio* clerk, or he may appoint and have a clerk; *Provided*, That an appointed clerk under this section shall receive no compensation whatever for his services from the county.

§ 7. EMERGENCY.] Whereas, the Constitution of the State of North Dakota provides that the judges of the county courts shall receive a salary in compensation of their services, and the amount of the same not being therein determined but to be fixed by law, and it being necessary that the same be immediately determined and fixed; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 18, 1890.

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## CHAPTER 51.

[S. F. 213.]

### MANNER OF CONFERRING ADDITIONAL JURISDICTION.

AN ACT to Provide for Submitting the Question of Conferring Additional Jurisdiction upon County Courts.

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

§ 1. SUBMITTED TO VOTE OF PEOPLE.] It shall be the duty of the board of county commissioners in each county in this State having a population of 2,000 or over to submit to a vote of the electors of such county, at the next general election, the question of increasing the jurisdiction of the county court, and persons who desire to vote for said proposition shall have written or printed on their ballot, "For increasing the jurisdiction of the county courts," and all persons desiring to vote against said proposition shall have written or printed on their ballots, "Against increasing the jurisdiction of the county court."

§ 2. CONCURRENT JURISDICTION, HOW CONFERRED.] If a majority of all the votes cast for and against said proposition be in favor of increasing such jurisdiction, then said county courts shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed \$1,000, exclusive of costs, and in all criminal actions below the grade of

felony, and in all counties where it is decided by the voters to so increase the jurisdiction of said county court, the jurisdiction in cases of misdemeanors arising under State laws which may have been conferred upon police magistrates, shall cease.

§ 3. POPULATION, HOW DETERMINED.] The county commissioners shall determine the population of their respective counties by multiplying by five the total vote cast in the general election of county officers for the year 1888.

§ 4. All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 20, 1890.

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## CHAPTER 52.

[S. F. 215.]

### DEFINING PRACTICE OF COURTS HAVING CRIMINAL JURISDICTION.

#### AN ACT Fixing the Terms of Court and Defining the Practice in County Courts Having Civil and Criminal Jurisdiction.

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

§ 1. TERMS OF COURT.] It shall be the duty of the county judge in each county in this State, in which the jurisdiction of the county court shall be hereafter increased by vote of the people, to hold a regular term of the county court at his office at the county seat or at some place at the county seat to be designated by him, commencing at 9 o'clock a. m., on the first Monday of each calendar month, for the trial of such civil actions as may be brought before such court. Such regular term shall be deemed to be open without any formal adjournment thereof until the third Monday of the same month, when all causes not then finally determined shall be continued by such court to the next regular term, but such courts shall be deemed to be always open for the filing of papers and issuance of process in civil actions, and for the purpose of taking and entering judgment by confession.

§ 2. SUMMONS, WHEN RETURNABLE.] In all cases commenced in said courts, it shall be the duty of the county judge to issue a summons, returnable on the first day of the next term of said court, if there be ten days intervening between the issuance of the summons and the first day of the term and if not then to be made returnable on the first day of the next term thereafter, which summons shall be directed and delivered to the sheriff or any constable of said county, and the sheriff or constable shall serve the

same upon the defendant as in other civil cases, at least ten days before the return day thereof. When the summons has not been served ten days before the first day of the term the cause shall stand continued until the next regular term of said court, and shall then stand for trial, without further notice to the defendant.

§ 3. COMPLAINT AND ANSWER.] In all civil actions in the county court, the plaintiff, his agent or attorney shall, before the summons is issued therein, file in such court a complaint, setting forth in ordinary and concise language, his demands; and the defendant shall also, on or before the first day of the term at which the cause stands for trial, file in such court his answer containing any counter-claim or other defense he may have. Such pleadings shall be verified in like manner as pleadings are required to be verified in the district court.

§ 4. MOTIONS AND DEMURRERS.] In actions before said court, motions and demurrers shall be allowed, and the rules of practice concerning pleadings and processes in the district court shall be applicable, so far as may be, to pleadings in the county court.

§ 5. JUDGMENT.] If no answer is filed on or before the first day of the term, in any action to be tried during such term, the plaintiff may have the default of the defendant entered, and may proceed to judgment on the same on any succeeding day during the term, upon proving his cause of action.

§ 6. JURY MAY BE DEMANDED.] Either party may demand a jury for the trial of any cause pending in the county court, wherein the amount exceeds fifty (50) dollars; but such demand must be in writing and entered on the docket on or before the filing of the answer in such case.

§ 7. JURY, HOW SELECTED.] Upon the filing of such demand for a jury, the county judge shall cause a jury to be selected and summoned in the same manner as is provided for selecting jurors in civil actions before justices of the peace.

§ 8. CALENDAR.] The county judge shall, on the first day of each term, or as soon thereafter as may be, prepare a calendar of the causes standing for trial at such term, placing the causes upon such calendar in the order in which the same are numbered on the docket, and setting the causes for trial, in such order, upon convenient days during such term; and the provisions of the code of civil procedure relative to the trial docket in the district court, shall, so far as they are in their nature applicable, apply to such calendar.

§ 9. STAY OF EXECUTION.] Any person against whom a judgment is rendered, on all sums exceeding one hundred (100) dollars, may have stay of execution in like manner as upon judgments rendered in the district court, and upon the same conditions; and upon all sums of one hundred (100) dollars and under, the same as provided for in actions before justices of the peace.

§ 10. JUDGMENT LIENS.] Any person having a judgment ren-

dered by a county court may cause a transcript thereof to be filed in the office of the clerk of the district court in any county of this State, and when said transcript is so filed, and entered upon the judgment record, such judgment shall be a lien on real estate in the county where the same is filed, and when the same is so filed and entered upon such judgment book, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

§ 11. EXECUTION ON JUDGMENT.] The county judge shall issue execution on judgments rendered by said court, and the proceedings upon any such execution shall, in all cases, be as is provided by law governing executions issued upon the judgments of a justice of the peace.

§ 12. WRITS, HOW ISSUED.] All writs, citations, and all process in civil actions, issuing out of any county court, shall be under the seal thereof, and be signed by the county judge.

§ 13. PROCESS, PENALTY OF FAILURE TO SERVE.] All process in civil actions in such court shall be directed to the sheriff or any constable of the county and the same shall be served by the officer to whom it is directed, and return thereof made at the time therein directed; and for any neglect or omission to do so, he and his sureties may be proceeded against in like manner as in similar cases in the district court.

§ 14. PROCESS, HOW SERVED.] All writs, notices, orders, citations and other process, may be served in like manner as a summons in a civil action in the district court, and the service of the same by copy left at the usual place of residence of the party to be served, shall be deemed equivalent to personal service thereof in case personal service is required by law. In cases where writs, notices, citations or other process cannot be served as aforesaid in this State, the county court may, in cases where it may be necessary, order the service thereof to be made by publication in some newspaper in this State in such manner as the court may direct, and thereupon the same proceedings may be had as if such writ or other process had been served as aforesaid in this State. Nothing contained in this section shall limit or take away the power of the county court or judge thereof, to give notice or cause the same to be given by publication in the various cases provided by law.

§ 15. SAME.] All writs and other process, except subpoenas, may be executed and served, as the case may require, in any county in the State, and if it be a county other than that of the residence of the county judge, the same shall be directed to the sheriff of such other county.

§ 16. SHERIFF TO SERVE.] It shall be the duty of the sheriffs of the several counties to execute or serve all writs and process issued by any county court and to them directed, and to return the same; for any neglect or refusal so to do, they may be pro-

ceeded against in the county court the same as for a neglect or refusal to execute or serve process issued out of the district court.

§ 17. APPEAL—BOND.] In civil actions brought under the provisions of this act, either party may appeal from the judgment of the county court, in the same manner as provided by law in cases tried and determined by justices of the peace. The amount of the bond or undertaking shall be double the amount of the judgment and costs, and shall be approved by the county judge.

§ 18. DEPOSITIONS.] Depositions may be taken to be used in evidence in any cause, matter or proceeding pending in any county court, in the like manner and upon the like notice as in actions in the district court. Depositions so taken must be addressed and transmitted to the judge of the court in which the cause, matter or proceeding is pending.

§ 19. CONTINUED CAUSES.] When for any cause the county judge fails to attend at the commencement of any regular term, or at the time when any cause is assigned for trial, or at the time to which any cause may be continued, the parties shall not be obliged to wait more than one hour, and if he does not attend within the hour, the parties in attendance shall be required to attend at 9 o'clock a. m. of the following day, and if such judge shall not attend at that time, the cause shall stand continued until the first day of the next regular term.

§ 20. APPEARANCE.] In all actions brought in the county court in pursuance of the provisions of this act, parties, jurors and witnesses shall be obliged to appear at the time when the summons is returnable, or at which the cause is assigned for trial, or to which it may be continued.

§ 21. ADJOURNMENT.] The time for which any cause may be adjourned, shall be regulated by the county judge in the exercise of a reasonable discretion; *Provided*, That such cause cannot be adjourned over more than three regular terms of said court, upon the application of either party without the consent of the other.

§ 22. DOCKET.] The county judge shall keep a docket in which all of his proceedings in civil actions shall be entered in like manner as near as may be, as the proceedings before justices of the peace in civil actions; and the provisions of the justice code relating to justices' docket shall, as near as may be, apply to the docket of the county judge.

§ 23. COSTS.] In all civil actions brought in the county courts the prevailing party shall recover costs as follows: On all sums over one hundred (100) dollars the same as is provided by law for like cases in district court, on all sums cognizable by a justice of the peace the same as is provided by law in the justice court; in cases other than for the recovery of money costs shall be allowed the same as in like cases in the district court.

Approved March 31, 1890.

## CHAPTER 53.

[H. F. 263.]

## REGULATING PROCEEDINGS IN PROBATE MATTERS.

AN ACT to Amend Sections 171, 172 and 173 of the Probate Code.

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

§ 1. WHEN SALE NECESSARY.] That Section 171 of the Probate Code be amended to read as follows:

"Sec. 171. When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against a decedent, or the debts, expenses or charges of administration, or legacies, or that such sale is for the best interests of the estate, and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the executors or administrators may also sell any real as well as personal property of the estate in his hands upon the order of the county court, and an application for the sale of real property may also embrace the sale of personal property."

§ 2. REQUISITES OF PETITION FOR SALE.] That Section 172 of the Probate Code be amended to read as follows:

"Sec. 172. To obtain an order for the sale of real property, he must present a verified petition to the county court, or to the judge thereof, setting forth the amount of personal property that has come into his hands as assets, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses and charges of administration already accrued, and the estimate of what will or may accrue during the administration; the facts showing the sale to be for the best interest of the estate, if the application is made upon that ground; a general description of all the real property, except the homestead, of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof; the names of the legatees and devisees, if any, and the heirs of the decedent, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition, but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree."

§ 3. ORDER FOR HEARING.] That Section 173 of the Probate Code be amended to read as follows:

"Sec. 173. If it appears to the court or judge, from such petition that it is necessary to sell the whole or some portion of such real estate for the purposes and reasons mentioned in the preceding section, or any of them, or that such sale is for the best interest of the estate, such petition must be filed and an order thereupon made, directing all persons interested in the estate to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executors or administrators to sell the whole or so much of the real estate of the decedent as is necessary, or for the best interest of the estate."

Approved March 15, 1890.

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## CHAPTER 54.

[S. F. 109.]

### GRANTING POWER TO DIRECT THE MORTGAGING OF REAL ESTATE BELONGING TO MINORS.

AN ACT Granting Power to County Courts to Direct the Mortgaging of Real Estate Belonging to the Estate of Deceased Persons and the Estate of Minors and Incompetent Persons.

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

§ 1. WHEN COURT MAY AUTHORIZE MORTGAGE.] The county court, if satisfied it would be clearly for the best interests of all concerned, after a full hearing upon the petition of anyone interested in the estate of a deceased person, or in the estate of a minor or incompetent person, and after an examination of the proofs and allegations of the parties interested, may authorize the executor, administrator or guardian, as the case may be, to borrow money upon the real estate belonging to said estate or some part thereof, and execute a mortgage therefor; *Provided*, That no mortgage shall be executed for an amount exceeding the one-half of the appraised value of the land sought to be mortgaged, including all former mortgages and said mortgage shall run for such a term of years as shall appear to the court for the best interest of all concerned.

§ 2. NOTICE BY ORDER TO SHOW CAUSE.] Before any such mortgage is authorized to be executed the court must direct notice by

order to show cause to be personally served upon all persons interested in the estate, and on any general guardian of a minor, or incompetent person, so interested, and any legatee, or devisee, or heir of a decedent provided they are residents of the county, at least two weeks before the time appointed for hearing the petition, and published once a week for two successive weeks in such newspaper of the county where the court is held as the judge shall direct. If there be no newspaper published in the county in which the proceedings are had, then it shall be published in such newspaper as the court or judge may direct, and shall be in all cases posted in three of the most public places in the county where the land is situated; *Provided*, That all parties interested in said estate shall, before final action is taken according to the provisions of Section 1 of this act receive due notice as provided by law for the sale of real estate of decedents. If all persons interested, in the estate join in the petition or assent in writing to the execution of the mortgage, the notice may be dispensed with and the hearing may be had any time.

§ 3. EMERGENCY.] As there is no law granting power to county courts to mortgage the real estate of deceased persons as provided in Section 1, an emergency arises and this act shall take effect and be in force from and after its passage and approval.

Approved February 26, 1890.

## COUNTY OFFICERS.

### CHAPTER 55.

[H. F. 272.]

#### SALARIES FIXED BY COUNTY COMMISSIONERS.

##### AN ACT to Provide for Fixing the Salaries of County Officers.

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

§ 1. SALARIES OF COUNTY OFFICERS, WHEN FIXED.] The board of county commissioners, at their quarterly meeting in the month of July, or at some special meeting during said month next prior to each and every general election, shall fix the amount of salary which shall be received by every county officer for the ensuing term, whose salary is fixed by the board of county commissioners, and is entitled by law to receive a salary, payable out of the county treasury. And the salary so fixed shall not be increased or diminished dur-