

JUDICIAL REMEDIES

CHAPTER 248

S. B. No. 264

(Wartner)

SERVICE OF GARNISHEE SUMMONS

AN ACT

To amend and reenact sections 32-09-05, 32-09-14, and 32-09-15 of the North Dakota Century Code, relating to the time period allowed for answering a garnishee summons and service of a garnishee summons upon the state auditor.

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

§ 1. **Amendment.)** Section 32-09-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-09-14. Affidavit Denying Liability.) Within twenty days after the service of a garnishee summons, the garnishee, if the truth warrants, may serve upon the plaintiff and may file, and upon order of the court shall file, in the office of the clerk of the district court, the same as other pleadings in a civil action, his affidavit in substantially the following form:

State of North Dakota,) _____ Court
County of _____) ss

A. B., Plaintiff,

VS.

C. D., Defendant, and

E. F., Garnishee.

E. F., being duly sworn, says that on the.....day of
....., A.D. 19....., he was served with a
garnishee summons in the above entitled action; that he then
was and now is in no manner and upon no account whatever
indebted or under liability to the defendant (naming him),
and that he then had and now has in his possession or under
his control, no real estate and no personal property, effects, or
credits of any description whatever, belonging to said defend-
ant or in which he has any interest; and is in no manner liable
as garnishee in this action.

Subscribed and sworn to before me this day of
....., A.D. 19.....

§ 2. **Amendment.)** Section 32-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-09-15. Affidavit When Liability Admitted — Question May Be Submitted to Court.) Unless the garnishee shall make the affidavit provided for in section 32-09-14, within twenty days after the service of the garnishee summons, he shall file and serve in like manner an affidavit in which he shall state:

1. Whether at the time of service of the garnishee summons he was or since has become indebted, or under any liability, to the defendant named in the garnishee summons, in any manner upon any account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether in absolute or contingent liability, and all the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, he may set forth all the facts and circumstances concerning the same and may submit the question to the court;
2. Whether at the time of such service he held or at the time of making the affidavit holds, the title or possession of any real estate, or any interest in land of any description, or of any personal property, effects, or credits, or any instruments or papers relating to such, belonging to the defendant or in which he is in anywise interested. If he shall admit any such liability as garnishee or shall be in any doubt respecting the same, he shall set forth the description of such property and all the facts and circumstances concerning the same, and the title, interest, or claim of the defendant in or to the same;
3. If he shall claim any setoff or defense to any indebtedness or liability or any lien or claim to said property, he shall set forth the facts and circumstances thereof fully;
4. He may state any claim of exemption from execution on the part of the defendant, or other objection known to him against the right of the plaintiff to apply upon his demands the indebtedness or property disclosed; and
5. If he shall disclose any indebtedness, or the possession of any property to which the defendant, and any other persons as well, make claim, he may set forth the names and residences of such other claimants and so far as known the nature of their claims.

§ 3. **Amendment.)** Section 32-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-09-05. Service on Department of Accounts and Purchases—Fee.) Service upon the state of North Dakota, or any institution, department, or agency thereof, as garnishee, may be made upon the director of the department of accounts and purchases in the manner by law provided for such service in garnishment proceedings, except that the fee to be tendered and paid the department of accounts and purchases for making affidavit of disclosure and filing the same shall be three dollars. Such fees shall be paid into the state treasury.

Approved March 18, 1963.

CHAPTER 249

H. B. No. 639
(Stockman)

EMINENT DOMAIN COMPENSATION

AN ACT

To provide for the payment by a condemnor, or prospective condemnor, of the actual cost of moving personal property located on the property taken, or to be taken, at the time of taking of the real estate or possession thereof, and providing for a judicial determination of disputes as to moving expenses.

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

§ 1. **Eminent Domain—Compensation for Moving Personal Property.)** Whenever property is taken or is about to be taken under eminent domain, and the owner or former owner of such property has, at the time of the taking or of taking possession of the property, personal property located on it, he shall be compensated for the actual cost of moving such personal property to a new location within this state, selected by him, such cost to be evidenced by actual paid receipts to be produced to the condemning authority; provided, however, that such cost shall not exceed the value of the property to be moved. The amount therefor shall be paid directly to the owner or former owner by the condemning authority, and in case of inability to agree, either party may bring an action in the same court in which the condemnation action has been or might have been brought, for a judicial determination of the issues between the parties, or, the matter may be determined in the condemnation action itself.

Approved March 18, 1963.

CHAPTER 250

S. B. No. 330
(Chesrown, Wartner)

PARTITION OF PROPERTY

AN ACT

To amend and reenact sections 32-16-01 and 32-16-46 of the North Dakota Century Code, relating to partition of property.

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

§ 1. Amendment.) Section 32-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-16-01. When May Be Brought.) When several cotenants hold and are in possession of real or personal property as partners, joint tenants, or tenants in common, in which one or more of them have an estate or inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof according to the respective rights of the persons interested therein and for a sale of such property or a part thereof, if it appears that a partition cannot be made without great prejudice to the owners. Real and personal property may be partitioned in the same action.

§ 2. Amendment.) Section 32-16-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-16-46. Single Referee.) The court, with the consent of the parties or when the complaint petitions and prays for the appointment of a single referee and there is no objection thereto, may appoint a single referee instead of three referees in the proceeding under this chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties of the three referees.

Approved March 6, 1963.

CHAPTER 251

S. B. No. 223
(Longmire)

FORECLOSURE OF UNRECORDED CONVEYANCE

AN ACT

Relating to the effect of foreclosure action upon unrecorded conveyance or lien and providing for conclusive judgment against holders thereof.

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

§ 1. Persons Holding Unrecorded Conveyance Need Not Be Made Parties, When.) In any action to foreclose a mortgage or other lien upon real property, no person holding a conveyance from or under the mortgagor of the property mortgaged, or other owner thereof, nor one having a lien upon such property, if such conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered and the proceedings therein had shall be as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

Approved March 21, 1963.