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CHAPTER 1.

GENERAL DEFINITIONS AND DIVISIONS.

§ 4328. Comp. Laws, 1913.

Common law adopted, as basic law applicable to civil rights and remedies not defined by statute. Reeves & Co. v. Russell, 28 N. D. 265, L.R.A.1915D, 1149. 148 N. W. 654.

Common law is applied where there is no express constitutional or statutory declaration on the subject. *Brignall v. Hannah*, 34 N. D. 174, 157 N. W. 1042.

Recognizes doctrine of stare decisis. *Young v. Salzer Lumber Co.* — N. D. —, 204 N. W. 8.

See also *State ex rel. Twichell v. Hall*, 44 N. D. 459, 171 N. W. 213; *Holland v. Johnson*, 42 N. D. 360, 174 N. W. 874.

§ 4329. Comp. Laws, 1913.

Priority of artisan's common law lien construed to grant priority to common law lien adopted by statute, but silent as to priority. *Reeves & Co. v. Russell*, 28 N. D. 265, L.R.A.1915D, 1149, 148 N. W. 654.

Common law is applied where there is no express constitutional or statutory declaration on the subject. *Brignall v. Hannah*, 34 N. D. 174, 157 N. W. 1042.

See also *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 4330. Comp. Laws, 1913.

Common law adopted as basic law applicable to civil rights and remedies not defined by statute. *Reeves & Co. v. Russell*, 28 N. D. 265, L.R.A.1915D, 1149, 148 N. W. 654.

Common law is applied where there is no express constitutional or statutory declaration on the subject. *Brignall v. Hannah*, 34 N. D. 174, 157 N. W. 1042.

See also *Dorr County State Bank v. Adams*, — N. D. —, 199 N. W. 941; *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 4331. Comp. Laws, 1913.

Common law is applied where there is no express constitutional or statutory declaration on the subject. *Brignall v. Hannah*, 34 N. D. 174, 157 N. W. 1042.

See also *Hennessy v. Ginsberg*, 46 N. D. 229, 180 N. W. 796; *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

CHAPTER 2.

PERSONS.

§ 4335. Comp. Laws, 1913.

Casement v. Callaghan, 35 N. D. 27, 159 N. W. 77.

§ 4338. Comp. Laws, 1913.

Power of minor to make a contract. *Casement v. Callaghan*, 35 N. D. 27, 159 N. W. 77.

§ 4339. Comp. Laws, 1913.

Right of minor to disaffirm contract. *Casement v. Callaghan*, 35 N. D. 27, 159 N. W. 77.

Minor cannot disaffirm his express contract when partially performed, and recover in action based on the contract. *Yancey v. Boyce*, 28 N. D. 187, 148 N. W. 539.

§ 4340. Comp. Laws, 1913.

Infant desiring to avoid contract must perform some positive act of disaffirmance, clearly showing intent not to be bound by his act. *Casement v. Callaghan*, 35 N. D. 27, 159 N. W. 77.

Upon election by infant to disaffirm contract, disaffirmance relates back to inception thereof, destroying the contract, and leaving the parties to their rights and remedies, as though there had been no contract. *Yancey v. Boyce*, 28 N. D. 187, 148 N. W. 539.

§ 4343. Comp. Laws, 1913.

Rescission of note and mortgage by incompetent person. *Thronson v. Blough*, 38 N. D. 574, 166 N. W. 132.

Intoxication as affecting contract. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *Bergerson v. Mattern*, 41 N. D. 404, 170 N. W. 877.

- § 4344. Comp. Laws, 1913.
Rescission of note and mortgage by incompetent person. *Thronson v. Blough*, 38 N. D. 574, 166 N. W. 132.
See also *Buchanan v. Prall*, 39 N. D. 423, 167 N. W. 488.
- § 4348. Comp. Laws, 1913.
Yancey v. Boyce, 28 N. D. 187, 148 N. W. 539.

CHAPTER 3.

PERSONAL RIGHTS.

- § 4350. Comp. Laws, 1913.
Right of individual to protection from personal injury or defamation. *McCue v. Equity Co-op. Pub. Co.* 39 N. D. 190, 167 N. W. 225.
See also *Englund v. Townley*, 43 N. D. 118, 174 N. W. 755.
- § 4351. Comp. Laws, 1913.
McCue v. Equity Co-op. Pub. Co. 39 N. D. 190, 167 N. W. 225; *Englund v. Townley*, 43 N. D. 118, 174 N. W. 755.
- § 4352. Comp. Laws, 1913.
As to what is libelous. *McCue v. Equity Co-op. Pub. Co.* 39 N. D. 190, 167 N. W. 225; *Englund v. Townley*, 43 N. D. 118, 174 N. W. 755; *Langer v. Courier News*, 46 N. D. 430, 179 N. W. 909.
Language charging one with telling falsehoods, not libelous per se. *Leonard v. Roberge*, 48 N. D. 638, 186 N. W. 252.
See also *Meyerle v. Pioneer Pub. Co.* 45 N. D. 568, 178 N. W. 792.
- § 4352a. **Libel; retraction; exemplary damages.** Before any suit for libel can be brought against a newspaper, other than a libel of, or concerning a female, the party aggrieved must, at least three days before filing his complaint, serve notice on the publisher of such newspaper at the principal office of its publication, specifying the statement alleged to be false and defamatory, and then if on the trial it appears that the article was published in good faith, and its falsity was due to a misapprehension in regard to the facts, and a full and fair retraction of the erroneous statement was published in the next issue of the paper, or in the case of a daily paper within three days after the mistake was brought to the attention of the publisher, in as conspicuous a place and type as the original article, the plaintiff will be entitled to recover only such damage as he can show he has sustained to his property, business, trade, profession or occupation. But if the libel is against a candidate for office, the retraction must also be made editorially, and in the case of a daily paper at least three days, and in the case of a weekly paper, at least ten days before the election. [R. C. 1905, § 8889; Laws 1901, ch. 119.]
In action for publication in a newspaper of an article libelous per se, allegation of demand for retraction, and of special damages, unnecessary. *Meyerle v. Pioneer Pub. Co.* 45 N. D. 568, 178 N. W. 792.
- § 4353. Comp. Laws, 1913.
Words imputing crime, slander. *Martinson v. Freeberg*, 44 N. D. 363, 175 N. W. 618.
- § 4354. Comp. Laws, 1913.
McCue v. Equity Co-op. Pub. Co. 39 N. D. 190, 167 N. W. 225; *Englund v. Townley*, 43 N. D. 118, 174 N. W. 755; *Langer v. Courier-News*, 46 N. D. 430, 179 N. W. 909.
- § 4355. Comp. Laws, 1913.
Chastity of daughter presumed. *Dwire v. Stearns*, 44 N. D. 199, 172 N. W. 69.
Alienation of husband's affections. *Rott v. Goehring*, 33 N. D. 413, L.R.A.1916E, 1086, 157 N. W. 294.
See also *State ex rel. Nyhus v. Ross*, 24 N. D. 586, 139 N. W. 1051.

CHAPTER 4.

MARRIAGE CONTRACT.

§ 4357. Comp. Laws, 1913.

Contract of marriage de praesenti, followed by cohabitation, good everywhere unless declared void by statute. *Powers v. Buckey*, — N. D. —, 190 N. W. 312. See also *Woodward v. Blake*, 38 N. D. 38, L.R.A.1918A, 88, 164 N. W. 156.

§§ 4359, 4360. Comp. Laws, 1913.

Woodward v. Blake, 38 N. D. 38, L.R.A.1918A, 88, 164 N. W. 156.

§ 4362a1. **Marriage licenses; additional requirements.** The county judge of each county in this state, when applied to by any person for a marriage license, shall, in addition to the requirements now provided by law, require each of the contracting parties to file an affidavit under oath, setting forth the fact as to whether or not either or both have been divorced, and in case it appears from such affidavits that a decree of divorce has theretofore been granted to either or both of such parties, the county judge shall require a certified copy of such decree or decrees of divorce to be filed with such application. [Laws 1917, ch. 153, § 1.]

Marriage, 38 C. J. pp. 1306-1307, §§ 73-74.

Liability for improperly issuing marriage license. L.R.A.1917E, 869.

Marriage licenses. 18 R. C. L. 399 and Supps.

§ 4362a2. **When license refused.** No marriage license shall be issued to such parties which would in any manner contravene any provision contained in such decree or decrees of divorce mentioned in section 1 hereof. [Laws 1917, ch. 153, § 2.]

Marriage, 38 C. J. p. 1295, § 47; Divorce, 19 C. J. pp. 182-185, §§ 455-456.

§ 4368. Comp. Laws, 1913.

Requirements of complaint to annul marriage for fraud. *Kawabata v. Kawabata*, 48 N. D. 1160, 189 N. W. 237.

See also *Woodward v. Blake*, 38 N. D. 38, L.R.A.1918A, 88, 164 N. W. 156.

§ 4369. Comp. Laws, 1913.

Woodward v. Blake, 38 N. D. 38, L.R.A.1918A, 88, 164 N. W. 156.

CHAPTER 5.

REGULATING MARRIAGES.

§ 4378a1. **Registration of marriages.** In addition to being recorded in the office of the judge of the county court, all marriages hereafter occurring within the state shall be registered with the state registrar of vital statistics at the state capitol as hereinafter provided. [Laws 1925, ch. 162, § 1.]

Marriage, 38 C. J. p. 1314 § 87.

Registration of marriages. 12 R. C. L. 1277 and Supps.

§ 4378a2. **Transmitting license and certificate to registrar of vital statistics.** The judge of the county court as soon as he has recorded a marriage license by him issued and the certificate of the person performing the marriage ceremony thereunder, shall transmit such license together with such certificate to the registrar of vital statistics at the state capitol. [Laws 1925, ch. 162, § 2.]

Marriage, 38 C. J. p. 1314 § 87.

§ 4378a3. **Recording licenses and certificates; index; account of fees received; credited to state health department.** As soon as received by him the state registrar shall record all marriage licenses together with the certificate of the person performing the marriage ceremony thereunder in a book of rec-

ord in his office kept for that purpose, and as soon as the same has been recorded he shall return said license and certificate to the said county judge. He shall index all records by him kept and when applied to shall issue a certified copy of the same which shall be prima facie evidence in all courts and places of the facts stated therein, and for which he shall receive a fee of one dollar. He shall keep an accurate account of all fees received, and turn the same over to the state treasurer not later than the 15th day of each month; the fees thus collected and turned over to the state treasurer shall be credited to the state department of health to be used by the said department in addition to all appropriations made by the legislature for any and all purposes of such department. [Laws 1925, ch. 162, § 3.]

Marriage, 38 C. J. p. 1314 § 387, p. 1333 § 106; Records, 34 Cyc. 586-588.

Recording of marriage certificates. 18 R. C. L. 397.

CHAPTER 6.

DISSOLUTION OF MARRIAGE.

- ARTICLE 1. CAUSES FOR GRANTING DIVORCE, §§ 4379-4386.
 2. CAUSES FOR DENYING DIVORCE, §§ 4392-4400.
 3. GENERAL PROVISIONS, §§ 4401-4406.

ARTICLE 1.—CAUSES FOR GRANTING DIVORCE.

§ 4379. Comp. Laws, 1913.

Marriage contracted by divorced person less than three months after decree, not void, and may not be assailed collaterally upon probate of such person's estate. *Woodward v. Blake*, 38 N. D. 38, L.R.A.1918A, 88, 164 N. W. 156.

See also *Kawabata v. Kawabata*, 48 N. D. 1160, 189 N. W. 237.

§ 4380. **Causes for divorce.** Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction of felony.

7. Insanity for a period of five years, the insane person having been an inmate of a state institution for the insane in the state of North Dakota, or an inmate of a state institution for the insane in some other state for such period, and affected with any one of the following types of insanity; paranoia, paresis, dementia praecox, Huntington's chorea, and epileptic insanity; provided, that no divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians who are recognized authorities on mental diseases, one of which physicians shall be the superintendent of the state hospital for the insane, the other two physicians to be appointed by the court before whom the action is pending, all of whom shall agree that such insane person is incurable; provided, however, that no divorce shall be granted to any person whose husband or wife is an inmate of a state institution in any other than the state of North Dakota, unless the person applying for such divorce shall have been a resident of the state of North Dakota for at least five years previous to the passage of this act. [Laws 1915, ch. 121, § 1.]

Explanatory note. Laws 1917, ch. 241, amending this section, was vetoed by the governor. See Laws 1917, page 374.

Unjustifiable conduct on part of either spouse, grievously wounding mental feelings of other as to impair bodily health, or cause destruction of ends of marriage, constitutes extreme cruelty. *Thompson v. Thompson*, 32 N. D. 530, 156 N. W. 492.

See also *Wolf v. Wolf*, 41 N. D. 109, 169 N. W. 577; *Random v. Random*, 41 N. D. 163, 170 N. W. 313.

Divorce, 19 C. J. pp. 41-42 §§ 74-75, pp. 43-56 §§ 80-107, pp. 56-58 §§ 108-128, p. 69 §§ 131-136, p. 56 § 106, pp. 69-71 §§ 137-141, pp. 42-43 §§ 77-79, p. 71 § 142.

Retrospective effect of statute prescribing grounds of divorce. L.R.A.1917C, 160.

Effect of fact that habit relied upon as ground for divorce was contracted before marriage. L.R.A.1918C, 867.

Degeneracy as ground for divorce. 51 L.R.A.(N.S.) 282.

Failure to entertain wife or unsociability as ground for divorce. 51 L.R.A.(N.S.) 460.

Relations or association of spouse with persons of opposite sex as cruelty or abusive treatment. L.R.A.1918D, 427.

Refusal of marital intercourse as ground for divorce. L.R.A.1915B, 770.

Antenuptial pregnancy or unchastity as ground for divorce. L.R.A.1915E, 650.

Confinement in asylum or prison as affecting right to divorce upon ground of living apart, desertion or abandonment. L.R.A.1918A, 1186.

Inability of husband to support himself or wife as excuse for leaving her. 52 L.R.A.(N.S.) 675.

Relations between one spouse and relatives of other as affecting question of desertion. L.R.A.1915E, 161.

Subsequent adultery as recriminatory defense to desertion. L.R.A.1915E, 972.

Reformation as affecting right to divorce on ground of drunkenness. L.R.A.1917D, 364.

Constitutionality of discrimination as between husband and wife as to grounds of divorce. 17 A.L.R. 793.

Veneral disease as ground for divorce. 5 A.L.R. 1016; 8 A.L.R. 1540.

Adultery by deserted spouse after desertion as ground of divorce in favor of other spouse. 25 A.L.R. 1051.

Concealment of pregnancy as fraud. 13 A.L.R. 1435.

Forcing spouse to get rid of child by former marriage as cruelty constituting ground for divorce. 3 A.L.R. 803.

Conduct amounting to danger to life within statute defining grounds for divorce. 5 A.L.R. 712.

Charge of insanity or attempt to have spouse committed to insane asylum as ground for divorce. 18 A.L.R. 572.

Abuse by relatives of other spouse as cruelty constituting ground for divorce. 3 A.L.R. 993.

Single act as basis of divorce on ground of cruelty. 24 A.L.R. 918.

Insanity as affecting divorce for desertion. 4 A.L.R. 1333.

Offer after lapse of statutory period of desertion to resume marital relations. 18 A.L.R. 630.

Desertion as affected by remonstrance or resistance. 3 A.L.R. 503.

Desertion as affected by intimations of a possible consent to renewal of marital relations in the future. 12 A.L.R. 1391.

Divorce for desertion predicated upon conduct subsequent to decree of separation. 25 A.L.R. 1047.

Religious differences as affecting right to divorce. 28 A.L.R. 1163.

Religious belief interfering with cohabitation as affecting right to divorce. 28 A.L.R. 1166.

Grounds for divorce. 9 R. C. L. 306 et seq.

§ 4382. Comp. Laws, 1913.

Unjustifiable conduct on part of either spouse, grievously wounding mental feelings of other, as to impair bodily health, or cause destruction of ends of marriage, constitutes extreme cruelty. *Thompson v. Thompson*, 32 N. D. 530, 156 N. W. 492.

Evidence held insufficient to sustain charge of cruelty. *McBride v. McBride*, 43 N. D. 328, 174 N. W. 870.

§ 4384. Comp. Laws, 1913.

Evidence held insufficient to sustain charge of wilful neglect. *Johnson v. Johnson*, 46 N. D. 606, 180 N. W. 794.

§ 4385. Comp. Laws, 1913.

Evidence held insufficient to sustain charge of intemperance. *McBride v. McBride*, 43 N. D. 328, 174 N. W. 870.

§ 4386. Comp. Laws, 1913.

McBride v. McBride, 43 N. D. 328, 174 N. W. 870.

ARTICLE 2.—CAUSES FOR DENYING DIVORCE.

§ 4392. Comp. Laws, 1913.

Johnson v. Johnson, — N. D. —, 197 N. W. 773.

§ 4393. Comp. Laws, 1913.

What constitutes "recrimination." *Hoellinger v. Hoellinger*, 38 N. D. 636, 166 N. W. 519.

§ 4398. **Term of residence.** A divorce must not be granted unless the plaintiff has in good faith been a resident of the state for twelve months next preceding the commencement of the action and is either a citizen of the United States or has declared his intention to become such or is an Indian. Provided, however, that where the defendant is an Indian a copy of the summons and complaint in such divorce action shall be served upon the superintendent of the reservation on which the defendant resides in like manner as upon the defendant. [Laws 1915, ch. 122, § 1.]

Divorce, 19 C. J. pp. 26-27 §§ 36-37, p. 29 § 41; Indians, 31 C. J. p. 483 § 12, p. 543 § 147.

Character of residence essential to give jurisdiction in divorce proceeding. L.R.A.1915D, 852.

Questioned domicile of spouse granted divorce as basis of attack on decree. L.R.A.1917B, 439.

Effect of appearance by non-resident to give jurisdiction in divorce case. L.R.A.1917A, 1041.

Constitutionality of discrimination as to jurisdictional requisite of residence in divorce suit. L.R.A.1916A, 710.

Time of residence. 9 R. C. L. 402 and Supps.

§ 4398a. **Emergency.** Whereas, an emergency exists in that there is no definite provision of law permitting an Indian who has not become a citizen of the United States to procure a divorce, therefore, this act shall take effect and be in force from and after its passage and approval. [Laws 1915, ch. 122, § 3.]

§ 4400. **Affirmative proof required.** No divorce can be granted, except at regular term time in the county in which the action is brought or to which the place of trial is changed by order of the court, or upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee, but the court must in addition thereto require proof of the facts alleged. And all divorce actions must be filed in the office of the clerk of court of the proper county and by the clerk placed upon the court calendar upon receiving the regular filing fees as though issue had been joined therein. [Laws 1921, ch. 57, § 1.]

Corroboration of statement, admission or testimony of parties in action for divorce. *Thompson v. Thompson*, 32 N. D. 530, 156 N. W. 492.

See also *Johnson v. Johnson*, — N. D. —, 197 N. W. 773.

Divorce, 19 C. J. p. 147 § 373, pp. 149-150 §§ 377-380, p. 156 § 397, p. 135 §§ 351-352.

Granting of divorce on admissions and confessions of parties. 9 R. C. L. 435 and Supps.

Granting of divorce on uncorroborated testimony of parties. 9 R. C. L. 435 and Supps.

ARTICLE 3.—GENERAL PROVISIONS.

§ 4401. Comp. Laws, 1913.

Court may award maintenance money to wife, where divorce is denied, upon showing of reasonable necessity. *Pulkrabek v. Pulkrabek*, 48 N. D. 243, 183 N. W. 850.

See also *Hoellinger v. Hoellinger*, 38 N. D. 636, 166 N. W. 519.

§ 4404. Comp. Laws, 1913.

Validity of order forbidding mother to permit child, awarded to her, from associating with certain person. *Thorp v. Thorp*, 46 N. D. 113, 180 N. W. 26.

§ 4405. Comp. Laws, 1913.

Section authorizes division of property between parties to a divorce, only when divorce is granted. *Hoellinger v. Hoellinger*, 38 N. D. 636, 166 N. W. 519.

See also *Sinkler v. Sinkler*, — N. D. —, 194 N. W. 817; *Bauer v. Bauer*, 32 N. D. 297, 155 N. W. 792; *Rindlaub v. Rindlaub*, 28 N. D. 168, 147 N. W. 725.

§ 4406. Comp. Laws, 1913.

Order requiring plaintiff wife to comply with decree in her favor as to deed to homestead, not prejudicial to her. *Gray v. Gray*, 44 N. D. 89, 176 N. W. 7.

CHAPTER 7.

HUSBAND AND WIFE.

§ 4411. Comp. Laws, 1913.

Either spouse may deal with the other, or with any other person, as if unmarried; wife has same rights and liabilities after marriage as before marriage. *McDowell v. McDowell*, 37 N. D. 367, 164 N. W. 23.

Liability on contract for improvements on house belonging to the wife, made with her knowledge, but without her entering into the contract, is on the husband alone. *Minot Plumbing & Heating Co. v. Bach*, 44 N. D. 71, 177 N. W. 507.

Conveyance of statutory homestead by husband to wife, valid, although wife did not join in execution of deed, pursuant to law then existing. *Wehe v. Wehe*, 44 N. D. 280, 175 N. W. 366.

Husband may become indebted to wife, and debt may be paid like other debts owing other creditors. *Finch, Van Slyke & McConville v. Styer*. — N. D. —, 199 N. W. 444.

See also *Martin v. Yager*, 30 N. D. 577, 153 N. W. 286; *Sinkler v. Sinkler*, — N. D. —, 194 N. W. 817.

§ 4412. Comp. Laws, 1913.

Sinkler v. Sinkler, — N. D. —, 194 N. W. 817.

§ 4414. **Separate and mutual rights and liabilities.** Neither the husband nor the wife, as such, is answerable for the acts of the other.

2. The earnings of the wife are not liable for the debts of the husband and the earnings and accumulations of the wife and of her minor children living with her, or in her custody, while she is living separate from her husband, are the separate property of the wife; provided, however, that husband and wife shall be jointly and severally liable for any debts contracted by either while living together, for necessary household supplies, of food, clothing and fuel and for shelter for themselves and family, and for the education of their minor children.

3. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

4. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

5. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband. [Laws 1915, ch. 171, § 5.]

Validity of section as to liability of wife for necessaries. *Banner Mercantile Co. v. Hendricks*, 24 N. D. 16, 138 N. W. 993.

Husband and Wife, 30 C. J. p. 787 § 417, pp. 794-795 §§ 421-422, p. 520 § 36, p. 553 § 83, pp. 825-828 §§ 477-480, pp. 867-869 §§ 555-556, pp. 516-520 §§ 29-35, pp. 918-923 §§ 621-628, p. 924 § 630, pp. 589-611 §§ 124-162, pp. 585-587 § 119, pp. 864-926 §§ 550-637; *Parent and Child*, 29 Cyc. 1623; *Dower*, 19 C. J. pp. 458-460 §§ 5-9; *Curtesy*, 17 C. J. p. 414 § 2; *Constitutional Law*, 12 C. J. pp. 961-962 §§ 503-504.

Personal liability of married woman for domestic or household services. 36 A.L.R. 389.

Liability of husband for funeral expenses as affected by fact that wife was living apart. 34 A.L.R. 812.

Extent and effect of exception in Married Women's Acts as to husband's right by the curtesy. 29 A.L.R. 1338.

Clandestine marriage as affecting right to recover from husband for support furnished wife. 30 A.L.R. 802.

Husband's liability for funeral expenses of wife. 31 A.L.R. 1499.

Right of wife not living with husband to her own earnings. 10 A.L.R. 778.

Articles or services for husband personally as necessaries within statute making wife liable therefor. 13 A.L.R. 1403.

Liability of wife for husband's torts. 12 A.L.R. 1459.

Coverture as affecting criminal responsibility of woman. 4 A.L.R. 266.

Criminal responsibility of husband for violation of liquor law by wife. 19 A.L.R. 136; 27 A.L.R. 312.

Liability of husband for independent tort of wife. 20 A.L.R. 528; 27 A.L.R. 1218.

Husband's liability for legal services in attempting to restore wife's capacity after adjudication of insanity. 26 A.L.R. 559.

Liability of husband in independent action for services rendered by attorney to wife in divorce suit. 25 A.L.R. 354.

Furniture and household goods as necessaries for which husband is liable. 24 A.L.R. 1483.

Question whether goods were purchased on husband's credit as affected by wife's possession of separate means. 27 A.L.R. 564.

Duty of husband to provide necessaries for wife as affected by her possession of independent means. 18 A.L.R. 1131.

Question whether goods were purchased on husband's credit as affected by fact that parties were separated. 27 A.L.R. 573.

Husband's liability for necessaries furnished wife where credit was given to third person. 27 A.L.R. 575.

Liability of husband for necessaries as affected by question whether or not they were purchased on his credit. 27 A.L.R. 554.

Liability of married woman for legal services in divorce suit. L.R.A.1917F, 362.

What constitutes necessaries within statute rendering wife or her property liable therefor. L.R.A.1917E, 861.

Liability of married woman for necessaries purchased by her. L.R.A.1915D, 1184; 15 A.L.R. 833.

Liability of estate of married woman for funeral expenses. 52 L.R.A.(N.S.) 1154.

Liability for wife's conduct in alienating affection of another's husband. L.R.A. 1918A, 517.

Effect of married women's acts upon husband's liability for wife's torts. L.R.A. 1915A, 491.

Liability for necessaries furnished reputed wife. L.R.A.1917B, 1290.

Liability of husband for necessaries furnished wife while living apart from him. L.R.A.1917A, 958.

Liability of husband for necessaries furnished wife while living with him. 47 L.R.A.(N.S.) 279; 7 B. R. C. 396.

Husband's liability for services rendered wife in divorce suit. L.R.A.1915C, 467.

Liability of estate of husband for wife's funeral expenses. 52 L.R.A.(N.S.) 1154.

Liability of wife's separate property for husband's debts. 13 R. C. L. 1146, 1159 and Supps.

Earnings and profits of sole trade or business by wife. 13 R. C. L. 1145.

Liability of husband for necessaries. 13 R. C. L. 1198 et seq. and Supps.

Estate by curtesy. 8 R. C. L. 387 et seq.

Estate in dower. 9 R. C. L. 561 et seq. and Supps.

CHAPTER 8.

PARENT AND CHILD.

§ 4421. Comp. Laws, 1913.

Larson v. Dutton, 43 N. D. 21, 172 N. W. 869.

§ 4424. **Who entitled to the custody of a child.** A father and mother of a legitimate unmarried minor child are entitled equally to its custody, services and earnings, and neither can transfer such custody, services and earnings to any other, without the written consent of the other, except in case of death, desertion or abandonment. [Laws 1923, ch. 153, § 1.]

Ex parte Solberg, — N. D. —, 203 N. W. 898.

Parent and Child, 29 Cyc. 1586-1600, 1623-1625; Guardian and Ward, 28 C. J. pp. 1070-1072 §§ 33-34.

Exactng bond for production of child as condition of awarding custody to one parent as against other. L.R.A.1915A, 576.

Taking of child by or at instance of one parent from custody of other as kidnapping. L.R.A.1915B, 189.

Nonresidence as affecting one's right to award of custody of child. 20 A.L.R. 838.

Agreement between parents as to its religious education and nurture. 12 A.L.R. 1153.

One parent's attempt to bastardize child as affecting right to custody as between parents. 4 A.L.R. 1119; 37 A.L.R. 531.

Right to custody of child. 20 R. C. L. 595 and Supps.

Minority of parent as affecting right to custody of child. 19 A.L.R. 1043.

Transfer of custody of child by agreement. 20 R. C. L. 603 and Supps.

§ 4440. Comp. Laws, 1913.

Larson v. Dutton, 43 N. D. 21, 172 N. W. 869.

CHAPTER 8A.

TRANSFER OF RIGHTS IN CHILDREN.

Explanatory note. Laws 1919, ch. 77, referred to above, made it unlawful to separate a child less than six months old from its mother without specified requirements.

§ 4440a1. **Assignment of children prohibited.** No person, partnership, voluntary association or corporation, other than the parents or relatives of a child, may assume the permanent care and custody of a child under the age of eighteen years, unless authorized so to do by an order or decree of a district court having jurisdiction. No parent shall assign, or otherwise transfer his rights or duties with respect to the care and custody of his child under eighteen years of age, and any such transfer or assignment, written or otherwise, hereafter made shall be void. Provided, that this section shall not affect the right of the parent to consent in writing to the legal adoption of his child, but such written consent shall not operate to transfer any right in the child in the absence of a decree by the district court. [Laws 1923, ch. 152, § 1.]

Infants, 31 C. J. pp. 990-993 §§ 8-12; Guardian and Ward, 28 C. J. p. 1070 § 34; Parent and Child, 29 Cyc. 1591; Adoption of Children, 1 C. J. p. 1376 § 17, p. 1382 § 40.

Transfer of custody of child by agreement. 20 R. C. L. 603 and Supps.

§ 4440a2. **Repeal.** Chapter 77, Laws of 1919, and all other acts or parts of acts inconsistent herewith, are hereby repealed. [Laws 1923, ch. 152, § 2.]

§ 4440a3. **Penalty.** Any person who violates any of the provisions of this act shall upon conviction be guilty of a misdemeanor. [Laws 1923, ch. 152, § 3.]

CHAPTER 9.

ADOPTION.

§ 4441. **Adoption of minors and adults.** Any minor child or adult person may be adopted by any adult person in the cases and subject to the rules prescribed in this chapter. [Laws 1919, Sp. Sess. ch. 1, § 1.]

Adoption of Children, 1 C. J. p. 1376 § 13.

Adoptive parents' statutory right of action for death of child. L.R.A.1916E, 126.

Adopted child as beneficiary under contract of benefit association. L.R.A. 1916B, 905.

Domicil of adopted children. 49 L.R.A.(N.S.) 863.

Effect of second adoption of child. L.R.A.1918A, 824.

Right of children of adopted child to take share which parent would have taken if he had survived testator. 8 A.L.R. 1012.

Right of child adopted after testator's death to take under will. 5 A.L.R. 1280.

Validity and effect of preadoption agreement derogating from status or rights of adopted child as fixed by statute. 9 A.L.R. 1627.

Right of adopted child to enforce contract to provide for him by will. 33 A.L.R. 740.

Dependency of adopted child within meaning of Workmen's Compensation Act. 30 A.L.R. 1265.

Agreement to leave property to child in consideration of surrender of its custody as affected by failure to comply with adoption statute. 15 A.L.R. 233.

Do terms "children," "issue," etc., in a will include adopted children. L.R.A. 1918B, 123, 2 A.L.R. 974.

Presumptive heir's right to object to adoption. 16 A.L.R. 1020.

Misconduct of child as defense to suit to enforce agreement to adopt child taken into family. 11 A.L.R. 819.

Right of adopting parent to disinherit adopted child. L.R.A.1916D, 424.

Persons authorized to be adopted. 1 R. C. L. 596 and Supps.

§ 4444. **Consent of parents or guardian.** Except as herein provided no adoption of a minor child shall be permitted without the consent of its parent or parents, but the consent of a parent who has abandoned the child, or who can not be found, or who is insane or otherwise incapacitated from giving consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one, or if there be no guardian by the board of administration. In case of illegitimacy the consent of the mother shall suffice; provided, however, that her consent may be dispensed with for any of the reasons hereinbefore stated.

When the parents of any minor child are dead, or have abandoned it, and can not be found, and such child has no duly appointed guardian in the state, the court shall order a hearing, with, three weekly published notices to be given, the last publication to be at least ten days before the time set for the hearing. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable; provided, that if there be no duly appointed guardian, a parent who has lost custody of the child through divorce proceedings, and the father of an illegitimate child who has acknowledged its paternity in writing, or against whom paternity has been duly adjudged, shall be served with notice in such manner

as the court shall direct in all cases where the residence is known or can be ascertained. [Laws 1923, ch. 151, § 1.]

Adoption of Children, 11 C. J. pp. 1385-1389 §§ 71-90.
Consent of parents or guardian. 1 R. C. L. 607 and Supps.

§ 4446. Petition for adoption; notice; report. Any person may petition the district court, or county court having increased jurisdiction, in the county in which he is a resident, for leave to adopt a minor child, and if desired for a change of the child's name. Such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein.

Upon the filing of such petition the court shall require notice to be sent to the board of administration, together with a copy of the petition so filed. It shall then be the duty of the board to verify the allegations of the petition; to investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption; and to make proper inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing with a recommendation as to the granting of the petition and any other information regarding the child or the proposed foster home which the court shall require, and no petition shall be granted until the child shall have lived for six months in the proposed foster home; provided, however, that such investigation and period of residence may be waived by the court in exceptional cases upon good cause shown and when the court is satisfied that the proposed home and the child are suited to each other. Provided, that in all such cases the board shall receive notice of the filing of the petition and a copy thereof, together with the order of the court waiving investigation.

The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than the parties interested and their attorneys and representatives of the board of administration, except upon an order of the court expressly permitting the same. [Laws 1923, ch. 151, § 2.]

Adoption of Children, 1 C. J. pp. 1383-1385 §§ 51-66, p. 1389 §§ 91-93.
Necessity of notice to parents before adoption of child. 24 A.L.R. 416.
Petition for adoption. 1 R. C. L. 603 and Supps.

CHAPTER 10.

GUARDIAN AND WARD.

§§ 4470, 4471. Comp. Laws, 1913.
Christenson v. Grandy, 46 N. D. 418, 180 N. W. 18.

CHAPTER 11.

MASTER AND SERVANT.

§ 4486. Assignment allowed. The master under an indenture specified in section 4484 may assign it by writing indorsed thereon and with the approval also indorsed of a magistrate mentioned in section 4485. [R. C. 1905, § 4154; Civ. C. 1877, § 151; R. C. 1899, § 2842.]

CHAPTER 12.

CORPORATIONS.

ARTICLE 1. THE CREATION OF CORPORATIONS, §§ 4495-4515.
1a. RENEWAL OF CORPORATE EXISTENCE OF CORPORATIONS, §§ 4516a1-4516a4.

- ARTICLE 2. ANNUAL REPORTS OF CORPORATE EXISTENCE, §§ 4518-4523.
 3. CORPORATE STOCK, §§ 4525-4531.
 4. CORPORATE POWERS, §§ 4533-4559.
 5. CORPORATE RECORDS, § 4560.
 6. AMENDING ARTICLES OF INCORPORATION, §§ 4561, 4562.
 7. CHANGING CORPORATE NAME, § 4563.
 8. CHANGING CORPORATE HEADQUARTERS, § 4564.
 9. DISSOLUTION OF CORPORATIONS, §§ 4565-4567.
 10. ASSESSMENTS OF STOCK, §§ 4570-4583.

ARTICLE 1.—THE CREATION OF CORPORATIONS.

§ 4495. Comp. Laws, 1913.

Mohall Farmers Elevator Co. v. Hall, 44 N. D. 430, 176 N. W. 131.

§ 4497. Misdemeanor in simulating name, see § 9912a, post.

§ 4503. **Religious and charitable limited.** No corporation or association for religious or charitable purposes shall acquire or hold real estate in this state of greater value than five hundred thousand dollars. [Laws 1925, ch. 110, § 1.]

Charities, 11 C. J. p. 374 § 104; Religious Societies, 34 Cyc. 1151.

Limitation of amount of land to be held by religious societies. 23 R. C. L. 445.

§ 4509. Comp. Laws, 1913.

Equity Co-op. Packing Co. v. Hall, 42 N. D. 523, 173 N. W. 796.

§ 4510. **Fee in case of increase of stock.** No increase of the capital stock of any corporation heretofore or hereafter formed, other than those excepted in the last section, shall be valid until such corporation shall have paid into the state treasury the sum of five dollars for every ten thousand dollars, or fraction thereof, of such increase in the capital stock of such corporation; provided, that a railroad corporation, incorporated in one or more other states, shall be required to pay such fees on only such proportion of such increase in said railroad corporation's capital stock, as said railroad corporation's mileage in this state bears to the total mileage of said railroad corporation in the several states of its incorporation. [Laws 1915, ch. 205, § 1.]

Equity Co-op. Packing Co. v. Hall, 42 N. D. 523, 173 N. W. 796.

Corporations, 14 C. J. p. 505 § 750, p. 158 § 157.

Increase in capital stock of corporations. 7 R. C. L. 202 et seq. and Supps.

§ 4515. Comp. Laws, 1913.

One does not become a stockholder or obligated to pay for subscription to stock, unless subscription is accepted, by the corporation. Jackson v. Sabie, 36 N. D. 49, 161 N. W. 722.

ARTICLE 1a.—RENEWAL OF CORPORATE EXISTENCE OF CORPORATIONS.

§ 4516a1. **Renewal of corporate existence.** Any corporation heretofore organized under the laws of this state, whose period of duration has expired and the same has not been renewed and such corporation has continued to transact its business, may renew its corporate existence from the date of the expiration of its period of duration for an additional period not exceeding twenty (20) years from and after the time of its expired period of duration, with the same force and effect as if renewed prior to the expiration of its term of existence, by taking the same proceedings and by paying into the state treasury twenty-five dollars in addition to the fees as now provided by law for the renewal of the corporate existence of such corporations in cases where such renewal is made before the end of its period of duration. [Laws 1925, ch. 113, § 1; Laws 1923, ch. 181, § 1; Laws 1921, ch. 47, § 1.]

Corporations, 14 C. J. p. 180 § 183, 14a C. J. p. 1099 § 3689.

Renewal of corporate existence. 7 R. C. L. 101 and Supps.

§ 4516a2. **Two year limitation.** Such proceedings to obtain such extension shall be taken within two (2) years after the taking effect of this act. [Laws 1925, ch. 113, § 2; Laws 1921, ch. 47, § 2.]

Explanatory note. By Laws 1921, ch. 47, § 2, the limitation period was one year. Corporations, 14 C. J. p. 180 § 183.

§ 4516a3. **Original acts declared valid.** When such steps are taken within such period, such proceedings shall relate back to the date of the expiration of said original corporate period, and when said period is extended as provided by this act, any and all corporate acts and contracts done, performed, made and entered into after the expiration of said original period, shall be and each is hereby declared to be legal and valid. [Laws 1925, ch. 113, § 3; Laws 1923, ch. 181, § 2; Laws 1921, ch. 47, § 3.]

Corporations, 14 C. J. pp. 180-181 § 183, p. 203 § 213, 14a C. J. p. 335 § 2177, p. 1099 § 3689.

Validation of irregular organization of corporation. 7 R. C. L. 29 and Supps.

§ 4516a4. **Application.** This act shall not apply to any corporation the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction in this state, nor to any corporation as to which there is any action or proceeding pending in any of the courts in this state for the forfeiture of its charter, nor to any corporation whose directors have acted as trustees under the provisions of section 4567, Compiled Laws of 1913. [Laws 1925, ch. 113, § 4; Laws 1923, ch. 181, § 3; Laws 1921, ch. 47, § 4.]

Corporations, 14 C. J. p. 180, § 183, 14a C. J. p. 1206, § 3903.

ARTICLE 2.—ANNUAL REPORTS OF CORPORATE EXISTENCE.

§ 4518. Comp. Laws, 1913.

State has no power to impose burdens on interstate commerce, in absence of congressional authority. *Dahl Implement & Lumber Co. v. Campbell*, 45 N. D. 239, 178 N. W. 197.

Time for reinstatement of charter after cancellation, starts from time of cancellation. *Missouri Slope Agr. & Fair Asso. v. Hall*, 46 N. D. 300, 177 N. W. 369.

Failure to pay annual fee does not ipso facto work forfeiture of corporate charter. *Farmers State Bank v. Brown*, — N. D. —, 204 N. W. 673.

§ 4519. **Charters validated; reports filed with the secretary of state.** All corporations heretofore organized under the laws of the state of North Dakota, whose charters have become forfeited and cancelled under the provisions of section 4518 of the revised codes of 1913, by reason of the failure to make and file with the secretary of state a report as in said sections required, be and the same are hereby validated for all purposes. Upon condition, however, that all corporations desiring to come under the provisions hereof shall, on or before the first day of August, 1915, make and file with the secretary of state full and complete reports as in said section prescribed, pay a penalty of ten (\$10.00) dollars and all arrearages in fees, and the charters of any corporation complying with the provisions of this statute within said period are hereby declared valid in all respects. [Laws 1915, ch. 98, § 1.]

Explanatory note. The preceding section plainly supersedes original § 4519, the only difference of importance the use of "1915" in place of "1913" used in the original.

Farmers State Bank v. Brown, — N. D. —, 204 N. W. 673.

Corporations, 14a C. J. p. 1206, § 3903, p. 1102, § 3698.

Failure to file annual reports of financial condition. 7 R. C. L. 914 et seq. and Supps.

§ 4519a. **Emergency.** Whereas, an emergency exists, in that the charters of many corporations have been cancelled by reason of the failure to make reports as required by law; therefore, this act shall take effect and be in force from and after its passage and approval. [Laws 1915, ch. 98, § 2.]

§ 4521. **Corporations may be reinstated; how.** Any domestic corporation which is engaged in active business under its charter or any foreign corporation authorized to transact business in the state of North Dakota engaged in active business under its certificate of authority to transact business, failing to make said report as required by section 4518 of this chapter, may be reinstated upon the records of the office of the secretary of state upon the filing of complete annual corporation reports as provided for by section 4518 and the payment of a fee of \$2.50 and in addition thereto the payment of a fee of \$5.00 for such reinstatement; and filing in the office of the secretary of state an affidavit stating the further fact that such corporation was at the time of such default and still is engaged in active business in the state of North Dakota. Said corporations shall be reinstated at any time upon filing said full and complete annual report within a period of six months from the time of cancellation as provided by section 4518, and the payment of said fees; and at any time after the said six months upon filing of all and complete annual reports for all years in default with a fee of \$2.50 for each of said reports and the payment of \$15.00 for each and every year the said corporation has failed and neglected to file full and complete report. [Laws 1918, Sp. Sess. ch. 4, § 1; Laws 1917, ch. 99, § 1.]

State has no power to impose burdens on interstate commerce, in absence of congressional authority. *Dahl Implement & Lumber Co. v. Campbell*, 45 N. D. 239, 173 N. W. 197.

Time for reinstatement of charter after cancellation, starts from time of cancellation. *Missouri Slope Agr. & Fair Asso. v. Hall*, 46 N. D. 300, 177 N. W. 369.

Failure to pay annual fee does not ipso facto work forfeiture of corporate charter. *Farmers State Bank v. Brown*, — N. D. —, 204 N. W. 673.

Ex parte certificate of Secretary of State that corporate charter is cancelled, and not reinstated, incompetent to prove facts therein stated. *Farmers State Banks v. Brom*, — N. D. —, 204 N. W. 673.

Corporations, 14a, C. J. p. 1102, § 3698, p. 1206, § 3903.

Failure to file annual report of financial condition. 7 R. C. L. 514 et seq. and Supps.

§ 4521a. **Emergency.** Whereas, an emergency exists, in that the charters of many corporations have been cancelled by the secretary of state by reason of the failure to make annual reports as required by law; and there being no method for validating and reinstating such corporations; and whereas, it is necessary for the public peace, health and safety, therefore, this act shall take effect and be in full force from and after its passage and approval. [Laws 1918, Sp. Sess. ch. 4, § 2.]

§ 4523. **Fees, how disposed of.** The secretary of state shall keep an accurate account of all moneys coming to his department, and shall turn over and pay to the state treasurer any and all moneys for fees collected by him under the provisions of this article. Such fees must be paid in advance, and when collected must be paid into the state treasury at the end of each month and placed to the credit of the general fund. [Laws 1913, ch. 106; R. C. 1905, § 4190.]

ARTICLE 3.—CORPORATE STOCK.

§ 4525. *Comp. Laws, 1913.*

Cross v. Farmers Elevator Co. 31 N. D. 116, 4 A.L.R. 13. 153 N. W. 279.

§ 4526. *Comp. Laws, 1913.*

As to forfeiture of corporate stock for nonpayment purchase price. *Jensen v. Northwestern Underwriters Asso.* 35 N. D. 223, 159 N. W. 611.

See also *Lavell v. Bullock*, 43 N. D. 135, 174 N. W. 764.

§ 4527. *Comp. Laws, 1913.*

Lavell v. Bullock, 43 N. D. 135, 174 N. W. 764; *Jackson v. Sabie*, 36 N. D. 49, 161 N. W. 722.

§ 4528. Comp. Laws, 1913.

Lavell v. Bullock, 43 N. D. 135, 174 N. W. 764.

§ 4529. Comp. Laws, 1913.

As to validity of note given in payment for corporate stock. Marlatt v. Couture, 41 N. D. 127, 169 N. W. 582.

Phrase "shall be considered" means, that when note is given, it shall not in law, be a payment. German Mercantile Co. v. Wanner, 25 N. D. 479, 52 L.R.A.(N.S.) 453, 142 N. W. 463.

See also Farmers' & Merchants' State Bank v. Behrens Mfg. Co. — N. D. —, 198 N. W. 467; Jackson v. Sabie, 36 N. D. 49, 161 N. W. 722.

§ 4531. Comp. Laws, 1913.

As to validity of note given in payment for corporate stock. Marlatt v. Couture, 41 N. D. 127, 169 N. W. 582.

See also Jackson v. Sabie, 36 N. D. 49, 161 N. W. 722; Chaffee v. Farmers Co-op. Elev. Co. 39 N. D. 585, 168 N. W. 616.

ARTICLE 4.—CORPORATE POWERS.

§ 4533. Powers of corporations. Every corporation as such has power:

1. To have succession by its corporate name for the period limited, not exceeding twenty years, if a corporation for profit; and if not a corporation for profit, perpetually, subject to the power of the legislative assembly as hereinbefore declared.

2. To sue and be sued in any court.

3. To make and use a common seal and alter the same at pleasure.

4. To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding in any case any amount limited by law.

5. To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws not inconsistent with the law of the land for the management of its property, the regulation of its affairs and for the transfer of its stock.

7. To admit stockholders or members and to sell their stock or shares for the payment of assessments or installments.

8. To enter into any obligations or contracts essential to the transacting of its ordinary affairs, or for the purposes of the corporation.

9. The powers of banking corporations are prescribed in sections 4640 and 4641 (§§ 5151, 5152, 5155 of the Compiled Laws of 1913).

In addition to the above enumerated powers and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given. [R. C. 1905, § 4200; Civ. C. 1877, § 402; R. C. 1895 § 2882.]

Explanatory note. Sections 4640, 4641 referred to in subdiv. 9 of this section were the sections in Rev. Codes 1905. Section 4640 was expressly repealed by Laws 1911, ch. 54, § 5, and by Laws 1913, ch. 52, § 5. Sections 5151, 5152 of the Compiled Laws of 1913 are regarded as substitutes for such § 4640, and § 4641 is § 5155 of the Compiled Laws. For apparent conflict with § 5205, see § 5205a, post.

§ 4534. Comp. Laws, 1913.

More v. Courier News, 29 N. D. 385, 151 N. W. 2.

§ 4536. Comp. Laws, 1913.

John Bendewald v. Ley, 39 N. D. 272, 168 N. W. 693.

§ 4537. Comp. Laws, 1913.

More v. Courier News, 29 N. D. 385, 151 N. W. 2.

§ 4541. **Number and power of directors.** Unless otherwise expressly provided, the corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than fifteen directors, to be elected from among the holders of stock; or when there is no capital stock, then, from the members of such corporation, and at least one of such directors must be a resident of this state and the removal of such resident director from the state shall create a vacancy in his office. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed, or act done, is valid, as against the corporation. Whenever a vacancy occurs in the office of a director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board; provided, that the trustees or directors of any private corporation created for religious educational or benevolent purposes, may number not less than three nor more than twenty-one, and may be elected at such times, and for such periods, and in such manner, and their qualifications be such as may be provided by the articles of incorporation or by-laws of such corporation. [Laws 1925, ch. 112, § 1.]

First Nat. Bank v. Casselton Realty & Invest. Co. 44 N. D. 353, 29 A.L.R. 911, 175 N. W. 720.

Corporations, 14a, C. J. pp. 49-50, § 1800, p. 354, §§ 2215-2216, p. 81, § 1482, p. 49, § 1800, pp. 67-68, §§ 1827-1830, p. 90, § 1850, p. 77, § 1838.

Director's right to inspect books and papers. 22 A.L.R. 59.

Power of directors to change time for stockholders' meetings. 2 A.L.R. 558; 8 A.L.R. 678.

Power of directors to sell property of corporation without consent of stockholders. 5 A.L.R. 930.

Liability for exceeding powers of corporation. L.R.A.1918A, 922.

Right of holding corporation to maintain action against its own director for injury to subsidiary corporation. L.R.A.1915F, 617.

Limitation of actions against directors for malfeasance or nonfeasance. L.R.A. 1917A, 980.

Liability of directors under statutes purporting to make them liable for contracting debts in excess of fixed limit. L.R.A.1915D, 1028.

Liability of directors directly to creditors of corporation suing in their own right for negligence or other breach of duty owed primarily to corporation. 45 L.R.A.(N.S.) 421.

Personal liability of directors for personal injuries resulting from tort. L.R.A. 1915C, 874.

Duty of directors toward one from whom he purchases stock. L.R.A.1916B, 708.

Number of directors authorized to act in general. 7 R. C. L. 444.

Power of directors to enact by-laws. 7 R. C. L. 144.

Power of directors to fix salary of officers. 7 R. C. L. 466 and Supps.

General authority of directors. 7 R. C. L. 427.

General management of corporate affairs by directors. 7 R. C. L. 473 et seq. and Supps.

Necessity for collective action by directors. 7 R. C. L. 439 and Supps.

Election of directors. 7 R. C. L. 426 and Supps.

Necessity that directors be stockholders. 7 R. C. L. 424 and Supps.

Qualifications of directors. 7 R. C. L. 423 and Supps.

Necessity for and what constitutes quorum of directors. 7 R. C. L. 446

§ 4543. **Dividends only from profits; limitations of indebtedness; excertions.** The directors of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock, nor must they create debts beyond the subscribed capital stock, or reduce or increase the capital stock, except as specially provided by law; provided, however, that the above limitation as to the creation of debts shall not apply to the policy risks of insurance companies on which no loss has occurred, or the notes, bonds or debentures of any loan or trust company, or public utility, com-

pany or corporation, organized under the provisions of this chapter, when payment of such notes, bonds or debentures shall be secured by the actual transfer of real estate by trust deed or mortgage for the payment of such notes, bonds or debentures, which said real estate so transferred shall be of twice the value of the par value of such notes, bonds and debentures; provided further that the limitation as to the value of property conveyed by trust, deed or mortgage shall not apply to the bonds or debentures of public utility corporations; provided, further, that such limitation shall not apply to any loan or trust company's guarantee of payment after transfer of any note, bond or debenture when the same is secured by trust deed or mortgage as above stated; provided, further that the above limitation as to the creation of debts shall not apply to certificates and debentures issued by investment companies for the creation of an investment fund where the holder of such certificates or debentures shall by the terms of the same, participate in the earnings of such investment fund. [Laws 1925, ch. 109, § 1.]

Missouri Valley Grocery Co. v. Hall, 45 N. D. 419, 178 N. W. 193; John Miller Co. v. Harvey Mercantile Co. 45 N. D. 503, 178 N. W. 802.

Corporations, 14 C. J. pp. 491-495, §§ 723-729, pp. 799-806, §§ 1209-1225, 14a C. J. p. 564, § 2506, p. 574, § 2215, p. 589, § 2584, pp. 605-607, §§ 2544-2555, pp. 614-615, §§ 2565-2567, p. 658, § 2651.

Rights of holders of preferred stock in respect to dividends. 6 A.L.R. 802; 13 A.L.R. 426.

Guaranteeing dividends as contrary to public policy. 24 A.L.R. 986.

Right of preferred stockholder to maintain actions for dividends. 6 A.L.R. 832:

Liability of stockholders who received dividends paid out of capital. L.R.A. 1917C, 397.

Declaration of dividends by stockholders. L.R.A.1918B, 1051.

Validity of individual contract of director to pay dividends. L.R.A.1917A, 1077.

Power of corporation to rescind declaration of dividend. L.R.A.1917B, 736.

Accretions in value of corporate assets as basis of dividends. L.R.A.1915D, 1052.

Dividends only from profits. 7 R. C. L. 283 and Supps.

Reduction or increase of capital stock. 7 R. C. L. 202 et seq., and Supps.

§ 4543a. To what corporations applicable. The provisions of this act shall apply to corporations heretofore and hereafter organized. [Laws 1925, ch. 109, § 2.]

Corporations, 14 C. J. p. 184, § 189.

§ 4544. Penalty for violation of statute. For a violation of the provisions of the last section, [§ 4543] the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen, are in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted. There may, however, be a division and distribution of the capital stock of any corporation which remained after the payment of all its debts, upon its dissolution or the expiration of its terms of existence. No action or proceeding to enforce or recover any penalty, forfeiture or liability hereunder shall be commenced more than six months after the aggrieved party shall have had actual notice of the violation of the preceding section [§ 4543]. [Laws 1919, ch. 100, § 1.]

John Miller Co. v. Harvey Mercantile Co. 45 N. D. 503, 178 N. W. 802.

Corporations, 14a C. J. pp. 197-202, §§ 1986-1990, pp. 218-222, §§ 2028-2035, p. 226, § 2030, p. 231, § 2048.

Personal liability of directors declaring dividends from capital. 7 R. C. L. 285 and Supps.

§ 4547. Comp. Laws, 1913.

More v. Courier News, 29 N. D. 385, 151 N. W. 2.

§ 4551. Repealed by Laws 1897, ch. 116, § 2.

§ 4553. **When called by a justice.** Whenever from any cause there is no person authorized to call or preside at a meeting of a corporation, any justice of the peace of the county or city where such corporation is established may, upon written application of three or more stockholders or members, issue a warrant to one of the stockholders or members directing him to call a meeting of the corporation by giving notice thereof (which notice shall state the purpose of such meeting, time and place of holding the same, and shall be published three times, once in each week for three successive weeks, in some newspaper published in the county in which the principal place of business of the corporation is located,) or if none is published therein then in a newspaper printed at the seat of government, and [the] justice may, in the warrant, direct such person to preside at such meeting, until a clerk is chosen and qualified if there is no other officer present legally qualified or authorized to preside thereat. [Laws 1915, ch. 97, § 1.]

Corporations, 14 C. J. pp. 887-894, §§ 1359-1376.

Mandamus to compel calling of meeting. L.R.A.1915E, 774.

Notice of stockholders' meeting. 7 R. C. L. 336 and Supps.

§ 4553a. **Emergency.** Whereas, an emergency exists in that there is no mode of giving notice of special meetings of corporations where such is not provided in the by-laws thereof, this act shall take effect and be in force on and after its passage and approval. [Laws 1915, ch. 97, § 2.]

§ 4554. **Comp. Laws, 1913.**

Section creates no cause of action in favor of creditors as against bona fide purchaser of stock illegally issued as fully paid. *Lavell v. Bullock*, 43 N. D. 135, 174 N. W. 764.

Signers of subscription agreements, not liable, as stockholders, to creditors who knew subscriptions, to be invalid. *Baldwin v. Timber Invest. Co.* 43 N. D. 638, 176 N. W. 662.

§ 4557. **Powers of corporation; increasing or diminishing stock.** Every corporation may increase or diminish its capital stock at a regular or special meeting, called for that purpose, by the directors as follows:

1. Notice of the time and place of the meeting stating its object and the amount to which it is proposed to increase or diminish its capital stock, must be served on each stockholder by depositing and registering the same in the post office, postage paid, properly directed to each stockholder at the post office of his last known place of residence as shown by the stock register of such corporation and return receipt demanded at least sixty days prior to the time of such meeting; and the notice must be given to stockholders whose place of residence is unknown or who are not residents in the state by the publication of such notice in a newspaper published in the county where the principal office of the corporation is situated, not less than once a week for thirty days prior to such meeting; provided, that the capital stock of any railway company under the laws of this state may be increased to such an amount as may by its stockholders be deemed necessary for the purchase or construction of any railroad which it may be legally empowered to purchase or construct; for additions to or improvements of its railroad or property; for additional equipment which may be necessary in the operations of its railroad and for real estate that may be needed by said corporations for railway purposes, by a majority vote of all its stock, in person or by proxy at any annual meeting, or at any meeting called by its directors for that purpose, by a notice in writing to each stockholder to be served on him personally or by depositing the same in the post office, postage paid, properly directed to him at the post office nearest his usual place of residence at least sixty days prior to such meeting. Such notice shall state the time and place of such meeting, its object and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the

names of all the stockholders voting therefor and the amount of stock owned by each shall be entered upon the records of such corporation. Every such corporation so increasing its capital stock shall file with the secretary of state, whenever issues of stock shall be made under this section, a report showing the amount issued and the purposes to which it has been, or is to be, devoted, which report shall be verified by the oath of the president or the general manager thereof and of the chief engineer.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock except as hereinbefore provided, must be represented by the vote in favor of the increase or diminution before it can be effected.

4. A certificate must be signed by the chairman and the secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the capital stock shall be so increased or diminished. [Laws 1921, ch. 46, § 1.]

Phrase "entire capital stock" means entire issued or subscribed stock and not entire authorized stock. *Missouri Valley Grocery Co. v. Hall*, 45 N. D. 419, 178 N. W. 193.

Corporations, 14 C. J. pp. 491-506, §§ 723-751, pp. 836-920, §§ 1354-1435; Railroads, 33 Cyc. 63.

Assets of corporation as consideration for increase of stock. 50 L.R.A.(N.S.) 68.

Right of existing stockholder to subscribe for increase of stock. L.R.A.1918D, 741.

Notice of stockholders' meeting. 7 R. C. L. 336 and Supps.

Power of corporations to increase or diminish capital stock. 7 R. C. L. 202 and Supps.

Proceedings to effect alteration of capital stock. 7 R. C. L. 204 and Supps.

§ 4559. Comp. Laws, 1913.

Missouri Valley Grocery Co. v. Hall, 45 N. D. 419, 178 N. W. 193.

ARTICLE 5.—CORPORATE RECORDS.

§ 4560. Comp. Laws, 1913.

Court in exercise of equitable discretion will refuse writ of mandamus to compel right of stockholder to examine records of a corporation, upon showing of improper motives, and purposes. *Lien v. Savings, Loan & Trust Co.* 43 N. D. 260, 174 N. W. 621, overruling *Schmidt v. Anderson*, 29 N. D. 262, 150 N. W. 871, on this point.

ARTICLE 6.—AMENDING ARTICLES OF INCORPORATION.

§ 4561. Comp. Laws, 1913.

Missouri Valley Grocery Co. v. Hall, 45 N. D. 419, 178 N. W. 193.

§ 4562. Renewal of existence after expiration or cancelation of charter, see §§ 4516a1-4516a4.

ARTICLE 7.—CHANGING CORPORATE NAME.

§ 4563. Comp. Laws, 1913.

More v. Courier-News, 29 N. D. 385, 151 N. W. 2; *Missouri Valley Grocery Co. v. Hall*, 45 N. D. 419, 178 N. W. 193.

ARTICLE 8.—CHANGING CORPORATE HEADQUARTERS.

§ 4564. Comp. Laws, 1913.

Missouri Valley Grocery Co. v. Hall, 45 N. D. 419, 178 N. W. 193.

ARTICLE 9.—DISSOLUTION OF CORPORATIONS.

§ 4565. **Involuntary; voluntary; how.** A corporation is dissolved:

1. By the expiration of the time limited by its articles of incorporation.
2. Its involuntary dissolution is provided for in chapter 27 of the codes of civil procedure.

3. If voluntary, its dissolution may be effected in the following manner:

(a) A corporation may be dissolved by the district court of the county where its office or principal place of business is situated upon its voluntary application for that purpose.

(b) The application must be in writing and must set forth, that at a meeting of the stockholders or members called for that purpose the dissolution of the corporation was resolved upon by a two thirds vote of all the stockholders or members, and that all claims and demands against the corporation have been satisfied and discharged.

(c) The application must be signed by a majority of the board of directors, trustees or other officers having the management of the affairs of the corporation and must be verified in the same manner as a complaint in a civil action.

(d) If the court is satisfied that the application is in conformity with this article, it must order the application to be filed and that the clerk give not less than thirty nor more than fifty days' notice of the application by publication in some newspaper published in the county and if there are none such, then by advertisement posted in five of the principal places in the county.

(e) At any time before the expiration of the time of publication any person may file objections to the application.

(f) After the time of publication has expired the court may upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, the court may declare the corporation dissolved, provided, however, that upon such hearing the court shall have the power to impose such terms or conditions as justice and equity may require and shall order a distribution of the assets of the corporation among the various stockholders in such proportion as equity and good conscience requires them to be distributed.

(g) The application, notices and proof of publication, objections, if any, and the court's order and any judgment entered thereon shall constitute the judgment roll, and from the judgment and [an] appeal may be taken in the same manner as in other actions. [Laws 1917, ch. 98, § 1.]

Langer v. Fargo Mercantile Co. 43 N. D. 237, 174 N. W. 90.

Corporations, 14a C. J. pp. 1082-1093, §§ 3671-3685, pp. 1129-1134, §§ 3753-3765.

Insolvency or appointment of receiver to work dissolution which will affect right of corporation to sue. 50 L.R.A.(N.S.) 383.

Inherent jurisdiction of equity, at instance of stockholders, to wind up corporation because of mismanagement or fraud of officers. L.R.A.1915A, 606.

Appointment of receiver for dissolved corporation. L.R.A.1917D, 1035.

Proceedings for dissolution of corporations. 7 R. C. L. 724 et seq., and Supps.

§ 4566. Comp. Laws, 1913.

Porter v. Northern F. & M. Ins. Co. 36 N. D. 199, 161 N. W. 1012.

§ 4567. Comp. Laws, 1913.

Directors of dissolved corporation continuing after expiration of charter, are trustees for stockholders. Langer v. Fargo Mercantile Co. 48 N. D. 545, 186 N. W. 104.

See also Langer v. Fargo Mercantile Co. 43 N. D. 237, 174 N. W. 90; Murphy v. Missouri & K. Land & Loan Co. 28 N. D. 519, 149 N. W. 957.

ARTICLE 10.—ASSESSMENTS OF STOCK.

Porter v. Northern F. & M. Ins. Co. 36 N. D. 199, 161 N. W. 1012.

§ 4570. Comp. Laws, 1913.

Assessment may be made upon issued and paid up stock unless declared non-assessable by by-laws. *More v. Courier-News*, 29 N. D. 385, 151 N. W. 2.
See also *Porter v. Northern F. & M. Ins. Co.* 36 N. D. 199, 161 N. W. 1012.

§ 4571. **Limitation of.** No assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

4. The directors of banking associations may assess such percentage of the capital stock as they deem proper, not exceeding one hundred per cent of the face value thereof, during any three years. [Laws 1923, ch. 179.]

Assessment may be made upon issued and paid up stock unless declared non-assessable by by-laws. *More v. Courier-News*, 29 N. D. 385, 151 N. W. 2.

See also *Porter v. Northern F. & M. Ins. Co.* 36 N. D. 199, 161 N. W. 1012.

Corporations, 14 C. J. pp. 633-638. §§ 922-948; Railroads, 33 Cyc. 64; Insurance, 32 C. J. p. 1008, § 50; Banks and Banking, 7 C. J. p. 509, § 82, p. 515, § 93.

Liability as on unpaid subscription of transferees of stock issued in exchange for property or services at an overvaluation. 12 A.L.R. 449.

Liability to creditors of stockholders whose stock is forfeited or sold for non-payment of assessments. 19 A.L.R. 1096.

Liability for unpaid subscriptions. L.R.A.1918D, 1049.

Assessments on stock. 7 R. C. L. 211, 212 and Supps.

Assessment of bank stock. 3 R. C. L. 388 and Supps.

§ 4572. Comp. Laws, 1913.

Assessment may be made upon issued and paid up stock unless declared non-assessable by by-laws. *More v. Courier-News*, 29 N. D. 385, 151 N. W. 2.

See also *Porter v. Northern F. & M. Ins. Co.* 36 N. D. 199, 161 N. W. 1012.

§ 4583. Comp. Laws, 1913.

Missouri Valley Grocery Co. v. Hall, 45 N. D. 419, 178 N. W. 193.

CHAPTER 13.

CO-OPERATIVE ASSOCIATIONS.

Explanatory note. Laws 1921, ch. 43, now constituting this chapter, repealed in § 18 (§ 4609a19, post), the original chapter (§§ 4603-4609) and Laws 1915, ch. 92, which defined co-operative associations; Laws 1917, ch. 95, which amended original § 4606; and Laws 1917, ch. 96, which provided for limitations on voting privileges and ownership of stock. Laws 1921, ch. 43, is a re-enactment of Laws 1917, ch. 97, as amended by Laws 1919, ch. 99, and Laws 1919, Sp. Sess. ch. 29.

Does not contravene constitutional requirement that subject of act be expressed in title. *Chaffee v. Farmers' Co-op. Elev. Co.* 39 N. D. 585, 168 N. W. 616.

§ 4603. Repealed by § 4609a19, post. See § 4609a1, post.

Co-operative association has power to regulate and limit right of stockholders to transfer their stock, to make by-laws, containing terms and limitations of stock ownership. *Chaffee v. Farmers' Co-op. Elev. Co.* 39 N. D. 585, 168 N. W. 616.

See also *Equity Co-op. Packing Co. v. Hall*, 42 N. D. 523, 173 N. W. 796.

§§ 4604. 4605. Repealed by § 4609a19, post.

§ 4606. Repealed by § 4609a19, post. This section had previously been amended by Laws 1917, ch. 95.

Equity Co-op. Packing Co. v. Hall, 42 N. D. 523, 173 N. W. 796.

§§ 4607, 4608. Repealed by § 4609a19, post.

§ 4609. Repealed by § 4609a19, post. See § 4609a16, post.

§ 4609a1. **Definitions.** For the purposes of this act, the words, "company," "corporation," or "association" shall be construed to mean the same, and a co-operative company, corporation or association is defined to mean a company, corporation or association which authorized the distribution of its earnings in part or wholly, on the basis of, or in proportion to the amount of property bought from or sold to members, or to members and to other customers or of labor performed, or other services rendered to the association. [Laws 1921, ch. 43, § 1; Laws 1917, ch. 97, § 1; Laws 1915, ch. 92, § 1.]

Equity Co-op. Packing Plant v. Hall, 42 N. D. 523, 173 N. W. 796.

Industrial Co-operative Societies, 31 C. J. p. 964, § 9.

§ 4609a2. **How formed; purposes.** A co-operative association may be formed for the purpose of conducting any one or more of the following lines of business: Agricultural, grain elevators, dairy, mercantile, mining, manufacturing, mechanical, telephone; upon complying with the provisions of this act, and the provisions of chapter 12 of the Civil Code, Compiled Laws 1913 and Acts amendatory thereof and supplementary thereto; except as herein otherwise provided, and except as to provisions thereof inconsistent with the provisions of this Act. [Laws, 1921, ch. 43, § 2.]

Industrial Co-operative Societies, 31 C. J. p. 961, § 2.

§ 4609a3. **Articles of incorporation.** Any number of persons, not less than 15, may form a co-operative association. They shall make and subscribe written articles of incorporation in duplicate, and acknowledge the same before any officer authorized to take the acknowledgment of deeds.

One copy shall be retained for the records of the association, the other copy shall be filed with and recorded by the secretary of state. The secretary of state shall issue a certificate of incorporation, upon receipt of the articles of incorporation and the payment of the fees provided. [Laws 1921, ch. 43, § 3; Laws 1915, ch. 92, § 2.]

Industrial Co-operative Societies, 31 C. J. pp. 961-963, §§ 2, 3, 7.

Articles of incorporation. 7 R. C. L. 54, 55.

§ 4609a4. **Fees.** For filing and recording articles of incorporation and issuing certificate of filing and acceptance, there shall be paid to the secretary of state \$10; for issuing certificate of incorporation \$3; for filing and recording an amendment \$3; for issuing certificate of amendment \$3. [Laws 1921, ch. 43, § 4; Laws 1917, ch. 97, § 4; Laws 1915, ch. 92, § 5.]

Industrial Co-operative Societies, 31 C. J. pp. 961-962, §§ 2-3.

Filing or recording of articles of incorporation. 7 R. C. L. 56 and Supps..

§ 4609a5. **Directors, election, duties, election of officers.** Every such association shall be managed by a board of not less than five directors and may be any number in excess thereof. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for time for which elected and until their successors are elected and shall enter upon the discharge of their duties; but a majority of the stockholders shall have the power at any regular or special stockholders meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director, or officer, so removed shall cease to be a director or officer of said association. The officers of every such association shall be a president, one or more vice presidents, a secretary, and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The office of secretary

and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer. [Laws 1921, ch. 43, § 5; Laws 1917, ch. 97, § 5.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 6.

General management of corporate affairs by directors. 7 R. C. L. 473 et seq. and Supps.

Election of directors. 7 R. C. L. 426 and Supps.

§ 4609a6. Amendments. The association may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders meeting or at any special stockholders meeting called for that purpose on 30 days written notice, such notice to be served personally on each stockholder of record or by registered letter mailed to each stockholder's last known post office address.

Said power to amend shall include the power to renew the term of corporate existence and to diminish the amount of capital stock and the number of shares; provided, the amount of capital stock shall not be diminished below the amount of paid up capital at the time the amendment is adopted.

A certificate must be made in duplicate, signed and acknowledged by the chairman and secretary of the meeting and a majority of the directors showing a compliance with the requirements of this section, the articles to be amended or changed, the entire number of stockholders, and the vote by which the object was accomplished.

One copy of such certificate shall be retained in the records of the association, one copy shall be filed and recorded in the office of the secretary of state.

The written assent of a majority of the stockholders shall be as effectual to authorize the change or amendment of the articles of incorporation as if a meeting of the stockholders, as prescribed by this section was called and held, and upon such written assent the directors may proceed to make the certificate as herein provided. [Laws 1921, ch. 43, § 6; Laws 1917, ch. 97, § 6.]

Mandamus to compel secretary of state to file amended articles of incorporation. Equity Co-op. Packing Plant v. Hall, 42 N. D. 523, 173 N. W. 796.

Industrial Co-operative Societies, 31 C. J. p. 962, § 3.

Filing and recording of amendment of articles of incorporation. 7 R. C. L. 56 and Supps.

§ 4609a7. By-laws; power to amend; quorum. The stockholders of any co-operative corporation or association shall have the power at their annual meeting to amend, modify, change or make new by-laws for the management and conduct of such corporations or associations, any provision in the by-laws contrary to the provisions of this act notwithstanding; provided, that a quorum at such stockholders' meeting shall consist of at least a majority of the stockholders who shall be present either in person or by proxy. [Laws 1925, ch. 111, § 1.]

Industrial Co-operative Societies, 31 C. J. p. 962, § 3.

Amendment of by-laws. 7 R. C. L. 143, 144 and Supps.

§ 4609a8. Increase of capital stock. The association may increase its capital stock at a meeting called for that purpose by the directors as follows:

Notice of the time and place of the meeting stating its object and the amount to which it is proposed to increase the capital stock must be served personally on each stockholder of record, or by registered letter mailed to each stockholder's last known post office address, sixty days prior to the time of such meeting.

A majority of the stockholders and the persons holding the larger amount in value of the stock must be represented by the vote in favor of the increase.

A certificate must be made, filed and recorded in the manner prescribed in section 6 of this act. [Laws 1921, ch. 43, § 7.]

Industrial Co-operative Societies, 31 C. J. pp. 963-964, §§ 5, 8.

Increase of capital stock of corporation. 7 R. C. L. 202 et seq. and Supps.

§ 4609a9. Stock; vote; certificates. No stockholder in any such association shall be entitled to more than one vote.

Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as stockholders; provided, part of the stock subscribed has been paid in cash. [Laws 1921, ch. 43, § 8; Laws 1919, Sp. Sess. ch. 29, § 1; Laws 1917, ch. 97, § 8.]

Industrial Co-operative Societies, 31 C. J. pp. 962-964, §§ 3, 7-8.
Limitation of stockholder to one vote. 7 R. C. L. 340 and Supps.

§ 4609a10. Subscriptions of stock in other associations. At any regular meeting, or any regularly called special meeting at which at least a majority of all its stockholders shall be present, or represented, an association organized under this act may by majority vote of stockholders subscribe for shares and invest its reserve fund, not to exceed twenty-five per cent of its capital, in the capital stock of any other co-operative association. [Laws 1921, ch. 43, § 9; Laws 1917, ch. 97, § 9.]

Industrial Co-operative Societies, 31 C. J. pp. 963-964, §§ 5, 8.

§ 4609a11. Purchasing business of other association; payment; stock issue. Whenever an association created under this act, shall purchase the business of another association, person or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued. [Laws 1921, ch. 43, § 10; Laws 1917, ch. 97, § 10.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 5.

§ 4609a12. Stock; transfers; commissions. The association may provide in the articles of incorporation or in the by-laws, the terms and limitations of stock ownership, not inconsistent with this act.

The full par value of all stock sold shall be covered into the association treasury, and no commission or expenses shall be paid on the sale of such stock in excess of 10 per cent of the par value thereof, such commission or expense to be added to the selling price of the stock. [Laws 1921, ch. 43, § 11.]

Industrial Co-operative Societies, 31 C. J. pp. 962-963, §§ 3, 7.

§ 4609a13. Stockholders may vote by mail. 1. At any regularly called general or special meeting of stockholders a written vote received by mail from any absent stockholder and signed by him may be read in such meeting, and shall be equivalent to a vote of such stockholder so signing; provided, he has been previously notified in writing through the mail of the exact motion or resolution upon which vote is taken and copy of same is forwarded with and attached to the vote so mailed by him.

2. Any association created under this act or which has adopted the provisions of this act, as herein provided, and which has more than twenty-five hundred stockholders may, by by-law, herein called the "principal-by-law," adopted by a vote of not less than two-thirds of the shareholders of the association at a general or special stockholders meeting, duly called to consider said by-law, enact that the stockholders of the company and those who thereafter become stockholders shall be grouped in local units or societies formed upon the basis of territorial area, or such other basis as may be determined in said by-law or by resolution or action of the directors as hereinafter provided.

3. The association shall enact by said principal by-law that said societies or units shall be formed by the directors of the association at the first directors' meeting following the annual election and that the directors shall then determine the territorial limits or other basis from or upon which each society or unit and membership therein is drawn or formed, which territorial limits or other basis shall remain the same until after the next annual election of directors.

4. Each of said societies or units shall be entitled to be represented at the annual or other stockholders' meeting of the association by a delegate chosen by each society or unit from its members. Each delegate shall have the same power at all such meetings as the shareholders of the association would have had if said principal by-law had not been adopted. Provided that each delegate shall have and be entitled to cast but one vote on each question for each member of the society or unit which he represents who is not present and voting in person or by proxy. Every question proposed for a consideration of the association shall be subject to the provisions herein contained.

5. The directors of the association shall have the power to do all things needful, whether by by-law, rule or otherwise, necessary to give effect to this section, and all rules or by-laws passed hereunder, including the power to fix the time and place and rules of conduct for the holding of meetings by said local societies or units for the selection of delegates and the doing by said societies or units of all things needful to insure the representation of said societies or units at meetings of the association, and the transaction by said societies or units of business proper or needful to be dealt with by them to carry out the objects of this act. Upon the enactment of said by-law with these provisions, or any of them, the directors shall be vested with the powers therein provided for.

6. The societies or units shall have power to do all things necessary to give effect to this section and any rules or by-laws adopted hereunder. [Laws 1921, ch. 43, § 12; Laws 1919, ch. 99, § 1; Laws 1917, ch. 97, § 12.]

Industrial Co-operative Societies, 31 C. J. pp. 962-964, §§ 3, 5-^c.

§ 4609a14. Earnings; apportionment. The directors subject to revision by the association at any regular or special meeting shall apportion the net earnings as follows:

1. By paying dividends upon the paid up capital stock which shall not exceed eight per cent per annum.

2. They may set aside not more than ten per cent of the net profits per annum for a reserve fund, until an amount has accumulated in said reserve fund equal to the paid up capital stock.

3. They may set aside not more than five per cent of the net profits per annum as an educational fund to be used in teaching co-operation.

The remainder, if any, shall be pro-rated by a dividend upon the amount of purchases or sales of raw material or both of shareholders or upon the above and either or both of the following items:

1. Wages and salaries of employees:

2. Purchases or sales of raw material or both of non-shareholders which shall be credited to such non-shareholders on account as payment or partial payment on the capital stock of the association. In productive associations such as creameries, canneries, elevators, factories and the like, dividends shall be on raw material, delivered instead of on goods purchased. In case the association is both selling goods and buying raw products, the dividends may be on both raw material and on goods purchased. No dividends or purchases or sales of raw material or both need be paid or credited unless the dividend claimants keep and surrender the sales slip, coupon, or receipt record of such purchasers or sales. [Laws 1921, ch. 43, § 13; Laws 1919, Sp. Sess. ch. 29, § 2; Laws 1917, ch. 97, § 13.]

Industrial Co-operative Societies, 31 C. J. p. 964, § 9.

Dividends. 7 R. C. L. 283 et seq. and Supps.

§ 4609a15. Distribution of dividends. The profits or net earnings of such association shall be pro-rated to those entitled thereto, at such time as the by-laws shall prescribe, which shall be as often as once in twelve months. [Laws 1921, ch. 43, § 14; Laws 1917, ch. 97, § 14.]

Industrial Co-operative Societies, 31 C. J. p. 964, § 9.

§ 4609a16. Annual report. Every association shall annually, within thirty days of the close of its fiscal year make a report to the secretary of state.

Said report shall be filed between July 1st and August 1st unless prior to July 1st such corporation has notified the secretary of state in writing that its fiscal year closes at some other time.

Such report shall contain the name of the association, its principal place of business, nature of business transacted, names, addresses, and salaries of its officers and directors and the date of the expiration of their terms of office, date of expiration of charter, number of stockholders, capital stock, authorized, subscribed and paid in, the amount of stock sold during the year and the commissions paid thereon, a general statement of its business showing amount of business transacted, total expenses of operation, profits and losses, amount of dividends paid and how apportioned and a detailed statement of its assets and liabilities.

Said report shall be signed and sworn to by the president, secretary, treasurer or manager of the corporation, or in case said corporation is in the hands of an assignee or receiver, then such report shall be signed and sworn to by such assignee or receiver, which said report together with a fee of two dollars and a half for filing the same shall be sent to the secretary of state in whose office it shall be filed.

Any person who shall subscribe or make oath or affirmation to any such report containing any false statement, known to such person to be false, shall upon conviction thereof be fined not exceeding \$5,000, or imprisoned not exceeding five years or both.

Failure to make said report and pay said fee shall be prima facie evidence that said corporation is out of business, and it is made the duty of the secretary of state to notify such corporation by registered letter, of its default, and unless such corporation shall within sixty days thereafter file such report and pay such fee, he shall enter upon the records of his office the cancellation of the charter of such corporation.

Such corporation may be reinstated in the manner provided by chapter 4, Special Session Laws of 1918 (§§ 4521, 4521a, ante), but if not so reinstated within one year after cancellation, such corporation shall be dissolved and its affairs wound up in the manner provided by section 4567 of the Compiled Laws of 1913. [Laws 1921, ch. 43, § 15; Laws 1917, ch. 97, § 15.]

Question as to whether majority stockholders are depriving minority stockholders of their rights cannot be raised by secretary of state. *Mohall Farmers Elevator Co. v. Hall*, 44 N. D. 430, 176 N. W. 131.

Industrial Co-operative Societies, 31 C. J. p. 963, § 5; *Corporations*, 14a C. J. p. 1111, § 3716, pp. 1134-1141, §§ 3767-3779, p. 1206, § 3903, p. 243, § 2073.

Annual reports of corporations. 7 R. C. L. 514 et seq. and Supps.

§ 4609a17. Co-operative associations and other corporations heretofore organized, may adopt provisions of this act. All co-operative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, under prior statutes, shall have the benefit of all the provisions of this act, and be bound thereby on filing with the secretary of state a written declaration signed and sworn to by the president and secretary to the effect that said co-operative company or association has, by a majority vote of its stockholders, decided to adopt the benefits of and be bound by the provisions of this act. Any corporation organized under the laws of this state and having not less than fifteen stockholders, which shall by the unanimous vote of its stockholders amend its articles of incorporation so that they provide for the co-operative distribution of net earnings in compliance with the provisions of this act shall have the benefit of and be bound by all the provisions of this act, upon filing with the secretary of state an affidavit of the president and secretary setting forth such amended articles of incorporation and stating that the same has been adopted by the

unanimous vote of the stockholders. [Laws 1921, ch. 43, § 16; Laws 1919, Sp. Sess. ch. 29, § 3; Laws 1919, ch. 99, § 2; Laws 1917, ch. 97, § 16.]

Mandamus, to compel secretary of state to file amended articles of incorporation for record. *Equity Co-op. Packing Co. v. Hall*, 42 N. D. 523, 173 N. W. 796.

See also *Mohall Farmers Elevator Co. v. Hall*, 44 N. D. 430, 176 N. W. 131.

Industrial Co-operative Societies, 31 C. J. pp. 961-962, §§ 2-3.

§ 4609a18. Use of term "co-operative" limited to corporations under this act. No corporation or association hereafter organized or doing business for profit in this state shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this act; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder. [Laws 1921, ch. 43, § 17; Laws 1917, ch. 97, § 17.]

Corporations, 14 C. J. p. 309, § 373.

§ 4609a19. Repeal. Chapter 13 of the Civil Code of the Compiled Laws of 1913, chapter 92 of the Session Laws of 1915 and chapters 95 and 96 of the Session Laws of 1917 are hereby repealed, but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate or articles of incorporation be thereby impaired or limited in any way, and nothing herein contained shall impair or annul, divert or disturb any vested rights, privileges or powers actually exercised and enjoyed in or by any corporation under any law hereby repealed. [Laws 1921, ch. 43, § 18.]

Explanatory note. See note preceding § 4603, ante.

CHAPTER 13A.

CO-OPERATIVE MARKETING ASSOCIATIONS.

§ 4609b1. Declaration of policy. In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operation and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing problems of agricultural products, this act is passed. [Laws 1921, ch. 44, § 1.]

Co-operative marketing of farm products by producers' associations. 25 A.L.R. 1113; 33 A.L.R. 247.

§ 4609b2. Definitions. As used in this act.

(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm products.

(b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

(c) The term "association" means any corporation organized under this act; and

(d) The term "person" shall include individuals, firms, partnerships, corporations and associations.

Associations organized hereunder shall be deemed nonprofit inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers. This act shall be referred to as the "Co-operative Marketing Act." [Laws 1921, ch. 44, § 2.]

§ 4609b3. Who may organize. Five (5) or more persons engaged in the production of agricultural products may form a nonprofit, co-operative association, with or without capital stock, under the provisions of this act. [Laws 1921, ch. 44, § 3.]

Industrial Co-operative Societies, 31 C. J. p. 961, § 2.

§ 4609b4. Purposes. An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof; of the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. [Laws 1921, ch. 44, § 4.]
Industrial Co-operative Societies, 31 C. J. p. 961, § 2, p. 963, § 5.

§ 4609b5. Preliminary investigation. Every group of persons contemplating the organization of an association under this act, is urged to communicate with the dean of the State Agricultural College, who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success. [Laws 1921, ch. 44, § 5.]

Industrial Co-operative Societies, 31 C. J. p. 961, § 2.

§ 4609b6. Powers. Each association incorporated under this act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery or equipment; or in the financing of any such activities, or in any or more of the activities specified in this section. No association, however, shall handle the agricultural products of any nonmember.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere. [Laws 1921, ch. 44, § 6.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 5.

4609b7. Members. (a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder. [Laws 1921, ch. 44, § 7.]

Industrial Co-operative Societies, 31 C. J. p. 963, §§ 5, 7.

§ 4609b8. Articles of incorporation. Each association formed under this act must prepare and file articles of incorporation, setting forth:

- (a) The name of the association.
- (b) The purposes for which it is formed.
- (c) The place where its principal business will be transacted.
- (d) The term for which it is to exist, not exceeding fifty (50) years.
- (e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of three-fourths of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the dean of the State College of Agriculture. [Laws 1921, ch. 44, § 8.]

Industrial Co-operative Societies, 31 C. J. pp. 962-964, §§ 3, 6-7, 9.
Articles of incorporation. 7 R. C. L. 54 et seq.

§ 4609b9. Amendments to articles of incorporation. The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this state. [Laws 1921, ch. 44, § 9.]

Industrial Co-operative Societies, 31 C. J. p. 962, § 3.

Filing of amendments of articles of incorporation. 7 R. C. L. 56 and Supps.

§ 4609b10. By-laws. Each association incorporated under this act must, within thirty (30) days after its incorporation, adopt for its government and

management, a code of by-laws, not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such by-laws. Each association under its by-laws may also provide for any or all of the following matters:

- (a) The time, place and manner of calling and conducting its meetings.
- (b) The number of stockholders or members constituting a quorum.
- (c) The right of members or stockholders to vote by proxy or by mail or by both, and the conditions, manner, form, and effects of such votes.
- (d) The number of directors constituting a quorum.
- (e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and mode and manner of giving notice thereof.
- (f) Penalties for violations of the by-laws.
- (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- (h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

(i) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal. [Laws 1921, ch. 44, § 10.]

Explanatory note. See § 4609a7, ante, re-enacted in 1925.

Industrial Co-operative Societies, 31 C. J. pp. 962-965, §§ 3, 6-10, 13.

By-laws of corporations. 7 R. C. L. 142 et seq. and Supps.

By-laws of societies. 25 R. C. L. 48 et seq. and Supps.

§ 4609b11. General and special meetings; how called. In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting; provided, however, that the by-laws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association. [Laws 1921, ch. 44, § 11.]

Industrial Co-operative Societies, 31 C. J. p. 964, § 8.

Notice of meeting of stockholders. 7 R. C. L. 336 and Supps.

§ 4609b12. Directors; election. The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary elections should be held in each district to elect the directors apportioned to such districts and the result of all such primary elections must be ratified by the next regular meeting of the association.

The by-laws may provide that one or more directors may be appointed by the dean of the College of Agriculture or any other public official or commission. The director or directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district.

When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy. [Laws 1921, ch. 44, § 12.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 6.
Election of directors. 7 R. C. L. 426 and Supps.

§ 4609b13. Election of officers. The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. [Laws 1921, ch. 44, § 13.]

Industrial Co-operative Societies, 31 C. J. p. 963.
Election of officers. 7 R. C. L. 421 et seq. and Supps.

§ 4609b14. Stock-membership certificates; when issued; voting; liability; limitations on transfer and ownership. When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note but such retention as security shall not affect the members' right to vote.

Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance or any promissory notes given in payment thereof.

No stockholder of a co-operative association shall own more than 1/20 of the common stock of the association; and an association, in its by-laws, may

limit the amount of common stock which one member may own to any amount less than one-twentieth of the common stock.

No member or stockholder shall be entitled to more than one vote.

Any association organized with stock under this act may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may at any time, except when the debts of the association exceed fifty per cent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter. [Laws 1921, ch. 44, § 14.]

Industrial Co-operative Societies, 31 C. J. p. 963, §§ 5, 7.

§ 4609b15. Removal of officer or director. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office. [Laws 1921, ch. 44, § 15.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 6.

Removal of officers of corporations. 7 R. C. L. 429 et seq. and Supps.

§ 4609b16. Referendum. Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; provided, however, that a special meeting may be called for the purpose. [Laws 1921, ch. 44, § 16.]

Industrial Co-operative Societies, 31 C. J. pp. 963-964, §§ 7-8.

§ 4609b17. Marketing contract. The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over five years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight per cent per annum upon common stock.

The by-laws and the marketing contract may fix, as liquidated damages,

specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state.

In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. [Laws 1921, ch. 44, § 17.]

Industrial Co-operative Societies, 31 C. J. pp. 963-965, §§ 5, 10, 13.

§ 4609b18. Purchasing business of other associations; persons; firms or corporations; payment; stock issued. Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. [Laws 1921, ch. 44, § 18.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 5.

§ 4609b19. Annual reports. Each association formed under this act shall prepare and make out an annual report on forms furnished by the commissioner of agriculture; (The State College of Agriculture; corporation commissioner; or the director of markets), containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a nonstock association; the total expenses of operations; the amount of its indebtedness, or liability and its balance sheets. [Laws 1921, ch. 44, § 19.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 5.

Annual reports of corporations. 7 R. C. L. 514 and Supps.

§ 4609b20. Conflicting laws not to apply. Any provisions of law which are in conflict with this act shall not be construed as applying to the associations herein provided for. [Laws 1921, ch. 44, § 20.]

§ 4609b21. Limitation of use of term "co-operative." No person, firm, corporation or association, hereafter organized or doing business in this state, shall be entitled to use the word "co-operative" as part of its corporate or other business name or title unless it is in fact a co-operative association or corporation.

Any person, firm, corporation or association now organized and existing, or doing business in this state, and embodying the word "co-operative" as part of its corporate or other business name or title, and which is not in fact a co-operative association or corporation, must, within six months from the date at which this act goes into effect eliminate the word "co-operative" from its said corporate or other business name or title. [Laws 1921, ch. 44, § 21.]

Corporations, 14 C. J. p. 309, § 373.

§ 4609b22. **Interest in other corporations or associations.** An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this or any other state or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. [Laws 1921, ch. 44, § 22.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 5.

§ 4609b23. **Contracts and agreements with other associations.** Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts, and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or in any other state, for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses. [Laws 1921, ch. 44, § 23.]

Industrial Co-operative Societies, 31 C. J. pp. 962-963, §§ 4-5.

§ 4609b24. **Association heretofore organized may adopt the provisions of this act.** Any corporation or association organized under previous existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this act by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the corporation commissioner, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this act. Articles of incorporation shall be filed as required in section 8, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation. [Laws 1921, ch. 44, § 24.]

Industrial Co-operative Societies, 31 C. J. pp. 961-962, §§ 2-3.

§ 4609b25. **Misdemeanor; breach of marketing contract of co-operative association; spreading false reports about the finances or management thereof.** Any person or persons or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00), for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500.00), for each such offense. [Laws 1921, ch. 44, § 25.]

Industrial Co-operative Societies, 31 C. J. p. 965, § 14.

§ 4609b26. **Association not in restraint of trade.** No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and

its members or any agreements authorized in this act be considered illegal or in restraint of trade. [Laws 1921, ch. 44, § 26.]

Industrial Co-operative Societies, 31 C. J. p. 962, § 4.

§ 4609b27. **Balance of act not affected by unconstitutionality of one section.** If any section of this act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby. [Laws 1921, ch. 44, § 27.]

Statutes, 36 Cyc. 976-978, 983, 985.

Partial unconstitutionality of statutes. 6 R. C. L. 121 et seq. and Supps.

§ 4609b28. **Application of general corporation laws.** The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act. [Laws 1921, ch. 44, § 28.]

Industrial Co-operative Societies, 31 C. J. p. 963, § 5.

§ 4609b29. **Annual license fees.** Each association organized hereunder shall pay an annual license of ten dollars (\$10.00) but shall be exempt from all franchise or license taxes. [Laws 1921, ch. 44, § 29.]

§ 4609b30. **Filing fees.** For filing articles of incorporation, and [an] association organized hereunder shall pay ten dollars (\$10.00), and for filing an amendment to the articles, two and 50-100 dollars (\$2.50). [Laws 1921, ch. 44, § 30.]

CHAPTER 13B.

RAILROAD COMMISSIONERS WITH REFERENCE TO PUBLIC UTILITIES.

Act provides for judicial review upon law and facts of orders of board establishing or changing rates. State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Municipal auditorium, not "public utility." State v. Vesperman, — N. D. —, 204 N. W. 202.

§ 4609c1. **Definitions.** (a) The term "commissioners" when used in this act means the board of railroad commissioners of the state of North Dakota. (b) The term "commissioner" when used in this act means one of the members of the board of railroad commissioners. [Laws 1919, ch. 192, § 1.]

§ 4609c2. **Jurisdiction of commissioners; what is a public utility.** The jurisdiction of the commissioners shall extend to and include: (a) common carriers, railroads, street railroads, express companies, sleeping car companies, toll bridges, ferries and steam and other boats engaged in the transportation of freight and passengers; (b) telegraph and telephone companies engaged in the transmission of messages or conversations; (c) pipe line companies for the transportation of gas, oil and water; (d) electric light companies for the purpose of generating and distributing light, heat or power; (e) gas companies for the manufacture or distribution of gas, natural or artificial; (f) water companies for the storage and distribution of water for domestic and all beneficial uses; (g) all heating companies for the distribution of heat; (h) warehouse, packing and cold-storage companies for the marketing, storage or handling of food and other agricultural products; (i) stock yard companies engaged in the business of caring for, feeding and watering live stock; (j) all other public utility corporations and all persons, associations, corporations, or agencies employed or engaged in any of the businesses hereinafter enumerated.

The words "public utility" used in this act shall include all associations,

persons, firms, corporations and agencies engaged or employed in any business herein enumerated or in any other public utility business, whether above enumerated or not and whether incorporated or not. The jurisdiction of the commissioners shall extend to and include all such public utilities engaged in business in this state or in any county, city, town, township or village of the state or any political subdivision of the state. [Laws 1919, ch. 192, § 2.]

Effect of rendering incidental service to members of public to make corporation, otherwise private, a public utility. L.R.A.1918A, 213; 18 A.L.R. 764.

Pipe line companies as public utilities. L.R.A.1918C, 855.

Per diem compensation of railroad commissioners. 1 A.L.R. 296.

Federal control of public utilities. 4 A.L.R. 1680; 8 A.L.R. 969; 10 A.L.R. 956; 11 A.L.R. 1450; 14 A.L.R. 234; 19 A.L.R. 678.

Irrigation company as a public utility. 8 A.L.R. 268.

Telephones, what companies are within Public Utilities Acts. 21 A.L.R. 1162.

Regaining of its private status by a corporation after having become subject to the duties and obligations of a public utility. 34 A.L.R. 175.

Municipal corporations owning or operating a public utility as within public utility acts. 10 A.L.R. 1432; 18 A.L.R. 946.

What are public utilities within provisions relating to municipal purchase, construction or repair of public utility. 35 A.L.R. 592.

Delegation to railroad commission of power to regulate carriers. 32 L.R.A. (N.S.) 639.

§ 4609c3. Commissioners; powers; orders by. The commissioners are hereby given the power to investigate all methods and practices of public utilities or other persons, subject to the provisions of this act; to require them to conform to the laws of this state and to all rules, regulations and orders of the commissioners not contrary to law; to require copies of reports, rates, classifications, schedules and time tables in effect and used by such utilities or other persons to be filed with the commissioners and all other information desired by the commissioners relating to such investigations and requirements.

The commissioners may compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings in the name of the state in any court having jurisdiction of the parties or of the subject matter, and such proceedings shall have priority over all pending cases.

The commissioners may change any intra-state rate, charge or toll which is unjust or unreasonable and may, after hearing and notice, prescribe such rate, fare, charge or toll as is just and reasonable, and change or prohibit any particular device or method of service in order to prevent undue discrimination or favoritism between persons, localities, or classes of freight.

Every order entered by the commissioners shall continue in force until the expiration of the time, if any, named by the commissioners in such order or until revoked or modified by the commissioners, unless the same be suspended, modified or revoked by order of or decree of a court of competent jurisdiction. [Laws 1919, ch. 192, § 3.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. p. 54, §§ 39-41, p. 60, § 46, p. 63, § 49, p. 432, § 673, p. 473, § 748, p. 474, § 751, p. 506, § 816, p. 649, § 1069, pp. 662-671, §§ 1081-1088; Trial, 38 Cyc. 1285; Gas, 28 C. J. p. 560, § 21, p. 576, § 39; Electricity, 20 C. J. pp. 320-332, §§ 23-27; Bridges, 9 C. J. p. 465, § 61; Toll Roads, 38 Cyc. 391, 397; Telegraphs and Telephones, 37 Cyc. 1629; Waters, 40 Cyc. 717, 798-800, 815, 836, 843; Railroads, 33 Cyc. 45-52; Warehousemen, 40 Cyc. 402, 404, 451; Street Railroads, 36 Cyc. 1447-1461.

Power of legislature to delegate to commissions the right to fix rates. 18 L.R.A. (N.S.) 713.

Regulation by public service commission as to checking and handling of baggage. 21 A.L.R. 323.

Jurisdiction of public service commission to fix rates for carriers transporting by motor trucks or busses. 1 A.L.R. 1460; 9 A.L.R. 1011.

Regulation of Pullman and sleeping car service. 11 A.L.R. 996.

Power of public service commission with respect to regulation of street railways. 5 A.L.R. 36.

Federal control as affecting power to regulate rates on railroad not under Federal control. 8 A.L.R. 982.

Federal control as affecting power to regulate telegraph and telephone rates. 8 A.L.R. 981.

Power of Public Service Commission to regulate commutation rates. L.R.A. 1918C, 480.

Power of public service commission to require carrier to furnish special type of cars. 23 A.L.R. 411.

Validity, construction and effect of provisions for the appropriation of excess income of public utility. 33 A.L.R. 488.

Constitutionality of statute empowering commission to determine amount of compensation in eminent domain proceedings. 52 L.R.A.(N.S.) 850.

Power of state to change contract rates. 9 A.L.R. 1423.

Power of Public Service Commission to prescribe the character of materials for depots. L.R.A.1918C, 495.

Jurisdiction of Public Utilities Commission over rates as limited by constitutional or statutory power of municipality to regulate utilities. L.R.A.1918D, 315.

Allowance for depreciation in plant in fixing rates. 38 L.R.A.(N.S.) 1209.

Power of Public Service Commission to regulate disposition of surplus products. L.R.A.1918C, 680.

What constitutes the return of a public service corporation for rate-making purposes. 52 L.R.A.(N.S.) 15.

Returns to which public service corporations are entitled. L.R.A.1915A, 5.

Powers of railroad commissioners. 6 R. C. L. 180 and Supps.

§ 4609c4. Same; application for increase of rates. The commissioners shall have the power, after notice and hearing, to enforce, originate, establish, modify or adjust and promulgate tariffs, rates, joint rates, tolls and charges of all public utility corporations and whenever the commissioners shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this act, the commissioners shall, by an order, fix reasonable rates, joint rates, tariffs, tolls, charges or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provision of law.

Provided, that when any public utility corporation, company or person operating said public utility shall in any proceeding before the commission, ask to have its rates raised, above the maximum rate contained in its charter, such public utility shall furnish the commission, the original cost of all its property, the date of the acquisition of said property, the amount of money invested in said property, the amount of stock outstanding, the amount of bonds outstanding against said property, blueprints showing the location and position of all mains, pole lines, wires, and all other property belonging to the company, and shall furnish the commission with all books, papers and memoranda of the company showing the financial condition of said utility and shall furnish the commission with the number of persons in its employ, the salary paid such employees, its total monthly salaries and wage expense for such time as the commission may request. Also an itemized statement of its expenditures and the details of its profit and loss account and any and all other books, papers, vouchers, accounts which the said board of railroad commissioners shall ask to have produced as evidence at such hearing. [Laws 1919, ch 192, § 4.]

Act does not affect rates for electric current under franchise. *Western Electric Co. v. Jamestown*, 47 N. D. 157, 181 N. W. 363.

See also *City Commission v. Bismarek Water Supply Co.* 47 N. D. 179, 181 N. W. 596; *State ex rel. Hughes v. Milhollan*, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. p. 406, § 627, pp. 413-429, §§ 634-669.

Power of public service commission to increase franchise rates. 3 A.L.R. 730; 9 A.L.R. 1165.

Regulation of rates by railroad commissioners. 4 R. C. L. 620 et seq. and Supps.

§ 4609c5. Hearings; rules and regulations; connections; spur line tracks; switching. Whenever the commissioners shall find, after hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commissioners shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, or methods to be observed, furnished, constructed, enforced or employed, and shall, after hearing, fix the same by its order, rule or regulation. The commission shall prescribe, after hearing, rules and regulations for the performance of any service or the furnishing of any commodity, of a character furnished or supplied by any public utility and, on demand and tender of rates, such public utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules.

Whenever the commissioners shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur line track and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him, the commissioners shall make an order requiring and providing for such connection or spur and the maintenance and use of the same upon reasonable terms which the commissioners shall have the power to prescribe.

The commissioners shall likewise have the power to require any railroad corporation to switch to private spurs and industrial tracks upon its own railroad, the cars of a connecting railroad corporation, and to prescribe the rules and compensation for such service. [Laws 1919, ch. 192, § 5.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. pp. 52-60, §§ 37-47, p. 64, § 53, pp. 649-652, §§ 1069-1071; Railroads, 33 Cyc. 45, 124, 648-696; Gas, 28 C. J. p. 560, § 21; Electricity, 20 C. J. p. 313, § 17, pp. 320-337, §§ 23-31; Bridges, 9 C. J. pp. 464-465, §§ 60-61; Toll Roads, 38 Cyc. 391; Telegraphs and Telephones, 37 Cyc. 1629-1638, 1650-1658; Waters, 40 Cyc. 774, 777, 798-800, 815, 836; Warehousemen, 40 Cyc. 402; Street Railroads, 36 Cyc. 1445-1462.

Right of public service corporation to prescribe fixtures to be used in connection with its service. 37 A.L.R. 1367.

Public service commission's power to require railroad to extend its line or build new line to new territory. 2 A.L.R. 983.

Public service commission's power with respect to extension of street car line. 5 A.L.R. 53.

Order of railroad commissioners requiring sidings, spurs, stations, etc. 4 R. C. L. 680 and Supps.

§ 4609c6. Track scales. The commissioners shall have the power to order and require the installation of track scales by common carriers at all points in the state where the same are deemed to be necessary and to enforce reasonable regulations for the weighing of cars and freight. [Laws 1919, ch. 192, § 6.]

Carriers, 10 C. J. p. 59, § 44; Railroads, 33 Cyc. 656.

Right to compel carrier to install stock scales at stations. 10 A.L.R. 1339.

§ 4609c7. Connections; telegraph and telephone rates. Whenever the commissioners shall find, after hearing that a physical connection can reasonably be made between the lines of two or more telephone corporations, or two or more telegraph corporations by the construction and maintenance of suitable connections for the transfer of messages or conversations, [and that] public conveniences and necessity will be subserved thereby, the commissioners may, by their order, require that such connection be made.

The commissioners may, after hearing, establish rates for the transfer of messages or conversations over two or more telephone companies or over two

or more telegraph companies and order that conversations be transmitted and messages transferred by such companies. [Laws 1919, ch. 192, § 7.]

Telegraphs and Telephones, 37 Cyc. 1654, 1656.

Rate regulations by commissioners. † R. C. L. 620 et seq. and Supps.

§ 4609c8. Use by one utility of other utility's conduits, tracks, equipment, etc. Whenever the commissioners have found that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment or any part thereof, on, over or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment, or any substantial detriment to the service and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commissioners may, by order, direct that such use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, tracks, wires, poles, pipes or other equipment for such damages as may result therefrom to the property of such owner or other users thereof. [Laws 1919, ch. 192, § 8.]

Electricity, 20 C. J. p. 320, § 23; Railroads, 33 Cyc. 658; Street Railroads, 36 Cyc. 1414; Telegraphs and Telephones, 37 Cyc. 1654, 1656.

§ 4609c9. Entering premises; tests; fees for; standards, classifications, etc.

(a) The commissioners and their officers and employes shall have the power to enter upon any premises occupied by any public utility for the purpose of making examinations and tests and exercising any of the powers provided for in this act and to set out and use on said premises any weights or appliances necessary therefor. (b) Any consumer or user of any produce or commodity or service of a public utility may have any appliance used in the measurement thereof tested by paying the fees fixed by the commissioners. The commissioners shall establish and fix reasonable fees to be paid for testing such appliances. (c) The commissioners shall have the power to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed by all public utilities; to ascertain and fix adequate and serviceable standards for the measurement, quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such products, commodity or service and for the measurement thereof; to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements, and to provide for the examination and testing of any and all such appliances used for the measurement of any product, commodity or service of any public utility. [Laws 1919, ch. 192, § 9.]

Electricity, 20 C. J. p. 320, § 23; Gas, 28 C. J. p. 560, § 21; Weights and Measures, 40 Cyc. 882; Waters, 40 Cyc. 795.

§ 4609c10. Valuation and revaluations of property. The commissioners shall have the power to ascertain the value of the property of every utility in this state and every fact which, in its judgment, may or does have any bearing on such value. The commissioners shall have power to make revaluations from time to time and to ascertain the value of all new construction, extensions, or additions to the property of every public utility. [Laws 1919, ch. 192, § 10.]

Carriers, 10 C. J. p. 416, §§ 639-640; Electricity, 20 C. J. pp. 329-332, §§ 26-27; Gas, 28 C. J. pp. 578-584, §§ 40-47; Waters, 40 Cyc. 798-800.

Valuation of property of public service corporation for taxation. 26 R. C. L. 179 and Supps.

§ 4609c11. System of accounts; memoranda. The commissioners shall have power to establish a system of accounts to be kept by the public utility, subject to its jurisdiction, or to classify said public utilities and to establish a system of accounts for each class and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion, prescribe the forms for accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys, which, in the judgment of the commissioners may be necessary to carry out any of the provisions of this act.

When the commissioners shall have prescribed the forms for accounts, records or memoranda to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda of such business other than those as prescribed by or under authority of any other state or of the United States excepting such accounts, records, or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commissioners. [Laws 1919, ch. 192, § 11.]

Carriers, 10 C. J. p. 60, § 45.

§ 4609c12. Charges to be reasonable. All charges made, demanded or received by any public utility or by any two or more public utilities of any produce or commodity furnished or to be furnished, or any service rendered or to be rendered, shall be just and reasonable. Every unjust and unreasonable charge made, demanded or received for such produce, commodity or service is hereby prohibited and declared unlawful. [Laws 1919, ch. 192, § 12.]

Carriers, 10 C. J. pp. 413-414, §§ 633-637, p. 665, § 1084; Electricity, 20 C. J. p. 329, § 26; Gas, 28 C. J. p. 571, § 4, pp. 576-583, §§ 40-46; Street Railroads, 36 Cyc. 1451; Toll Roads, 38 Cyc. 397; Warehousemen, 40 Cyc. 451; Bridges, 9 C. J. p. 465, § 61.

Reasonableness of telephone rates. 26 R. C. L. 522 and Supps.

Duty to fix reasonable rates for water. 27 R. C. L. 1443.

Reasonableness of rates of carriers. 4 R. C. L. 635 et seq. and Supps.

Elements entering into reasonableness of rates for gas. 12 R. C. L. 901 et seq. and Supps.

§ 4609c13. No discrimination or preference. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, convenient, just and reasonable and without any unjust discrimination or preference. [Laws 1919, ch. 192, § 13.]

Carriers, 10 C. J. p. 473, § 748; Electricity, 20 C. J. p. 336, § 30; Gas, 28 C. J. p. 572, § 35; Street Railroads, 36 Cyc. 1452-1453; Warehousemen, 40 Cyc. 404; Waters, 40 Cyc. 791, 802.

Discrimination between its patrons by public service corporation in regard to furnishing deposit or guaranty. 31 A.L.R. 1411.

Liability of railroad company operating under the Transportation Act for discrimination in furnishing cars. 19 A.L.R. 679.

Right of railroad to discriminate in respect of switching charges. 2 A.L.R. 585.

Discrimination by public utility company in respect of extension of credit. 12 A.L.R. 964.

Franchise provisions for free or reduced rates of public service corporations as within constitutional or statutory provision prohibiting discrimination. 10 A.L.R. 504; 15 A.L.R. 1200.

Right of electric company to discriminate against a concern which desires service for resale. 12 A.L.R. 327.

Prohibition of discrimination in charges for gas. 12 R. C. L. 891, 896 and Supps.

Discrimination against customers by electric companies. 9 R. C. L. 1196 and Supps.

N. D. C. L.—61.

Discrimination as to rates by telegraph and telephone companies. 26 R. C. L. 545 and Supps.

Discrimination in furnishing of water. 27 R. C. L. 1448 et seq. and Supps.

§ 4609c14. Changes in rates, etc. No change shall be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules or classifications, or service in force at the time this act takes effect, except after thirty days' notice to the commissioners, which notice shall plainly state the changes proposed, and, upon a showing before the commissioners and a finding by the commissioners that such increase is justified.

(b) Whenever there shall be filed with the commissioners a notice or any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, increasing or resulting in an increase in any rate, fare, toll, rental or charge, the commissioners shall have power and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once and, if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation and, pending the hearing and decision thereon, such rate, fare, toll rental, charge, classification, contract practice, rule or regulation shall not go into effect, provided that the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not extend beyond 120 days beyond the time when such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the commissioners, in their discretion, extend the period of suspension for a further period not exceeding six months. On such hearing, the commissioners shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. At any such hearing, after the passage of this act, the burden to show that the increased rate or proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. All such rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the commissioners, or of such lesser time as the commissioners may grant, go into effect and be the established and effective rates, tolls, fares, rentals, charges, classifications, contracts, practices, rules and regulations, subject to the power of the commissioners, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same. [Laws 1919, ch. 192, § 14.]

Increase in rates of public utility can only be ordered after hearing on question. Rate increase made without hearing or notice, void. *City Commission v. Bismarck Water Supply Co.* 47 N. D. 179, 181 N. W. 596.

Carriers, 10 C. J. p. 406, § 626; Gas, 28 C. J. p. 576, § 39.

Termination of Federal control as restoring rates fixed by commission. 19 A.L.R. 684.

Change of rates by public utility while another rate is undetermined. 16 A.L.R. 1219.

Public service commission's power with respect to regulation of street railway fares. 5 A.L.R. 60.

Rate regulation by commission. 4 R. C. L. 620 et seq.

Change of rates for water. 27 R. C. L. 1437.

Change of franchise or contract rates for water. 27 R. C. L. 1447 and Supps.

Regulation of rates and charges under police power. 6 R. C. L. 228 and Supps.

Regulation of rates of electric companies. 9 R. C. L. 1190 and Supps.

Changing rates of telegraph and telephone companies. 26 R. C. L. 541 and Supps.

§ 4609c15. Rules and regulations; reasonableness of. All rules and regula-

tions made by any public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. [Laws 1919, ch. 192, § 15.]

Carriers, 10 C. J. p. 64, § 53, p. 652, § 1071; Electricity, 20 C. J. p. 307, § 5; Gas, 28 C. J. pp. 565-566, §§ 26-28; Street Railroads, 36 Cyc. 1462.

Right of public utility company to discontinue its entire service. 11 A.L.R. 252.

Reasonableness of rules and regulations of gas companies. 12 R. C. L. 892 and Supps.

Reasonableness of rules and regulations of telephone and telegraph companies. 26 R. C. L. 493, 537.

Reasonableness of rules and regulations of water companies. 27 R. C. L. 1407 and Supps.

§ 4609c16. Unreasonable preferences or advantages; rebates, drawbacks, etc. It shall be unlawful for any public utility corporation subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular character of traffic or service in any respect whatsoever, or to subject any particular person, firm, corporation, company or locality or any particular character of traffic or service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. No public utility corporation subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect, charge or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered than he charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions.

Nothing in this act shall prohibit a public utility from entering into any reasonable agreement with its customers, consumers or employees, or for providing for a sliding scale of charges, unless the same is prohibited by the terms of the franchise or permit under which such public utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the commissioners. [Laws 1919, ch. 192, § 16.]

Western Electric Co. v. Jamestown, 47 N. D. 157, 181 N. W. 363.

Carriers, 10 C. J. p. 473, § 478, pp. 490-492, §§ 777-782, p. 497, § 793, p. 514, § 833; Electricity, 20 C. J. p. 336, § 30; Gas, 28 C. J. p. 572, § 35; Waters, 40 Cyc. 791, 802, 803; Bridges, 9 C. J. p. 447, § 34.

Discrimination as to water service and rates. 27 R. C. L. 1448, 1450 and Supps.

Discrimination as to service facilities and charges of telegraph and telephone companies. 26 R. C. L. 541 et seq. and Supps.

Discrimination against customers by electric companies. 9 R. C. L. 1196 and Supps.

Illegality of rebates by carriers. 4 R. C. L. 605 and Supps.

Statutory prohibition of discrimination by carriers. 4 R. C. L. 575 et seq. and Supps.

Discrimination by gas companies. 12 R. C. L. 891 and Supps.

§ 4609c17. Messages from other companies, receiving, etc. Every telephone corporation and telegraph corporation operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telephone and telegraph corporation with whose line a physical connection may have been made. [Laws 1919, ch. 192, § 17.]

Telegraphs and Telephones, 37 Cyc. 1656.

Duties of telegraph and telephone companies, as to other companies. 26 R. C. L. 545.

§ 4609c18. Reports. Every public utility shall annually furnish to the commissioners, at such time and in such form as the commissioners may require, a report in which the public utility shall specifically answer all questions propounded by the commissioners upon or concerning which the commissioners may desire information, and any and all other information required by it to

carry into effect the provisions of this act. The commissioners shall have the authority to require any public utility to file monthly reports of earnings and expenses and to file periodical or special reports concerning any matter about which the commissioners are authorized by this or any other act to inquire or to keep itself informed or which it is required to enforce. The reports shall be under oath when required by the commissioners. [Laws 1919, ch. 192, § 18.]

Carriers, 10 C. J. p. 60 § 46; Corporations, 14a C. J. p. 343 § 2201.

§ 4609c19. Obedience to orders, etc. Every public utility shall obey and comply with all and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commissioners in the matters herein specified or any other matter in any way relating to or affecting its business as a public utility and shall do everything necessary or proper in order to secure compliance with any observation of every such order, decision, direction, rule or regulation by all of its officers, agents or employees. [Laws 1919, ch. 192, § 19.]

Carriers, 10 C. J. p. 54 §§ 39-41, p. 586 § 994.

Federal control as affecting order of state commission as to depots and stations. 4 A.L.R. 718; 10 A.L.R. 969.

Remedy to enforce orders of public service commission. L.R.A.1918E, 303.

Federal control as affecting order of public service commission. 4 A.L.R. 1703; 8 A.L.R. 981; 10 A.L.R. 969.

Federal control as affecting right to enforce order of public service commission. 4 A.L.R. 1703; 10 A.L.R. 969.

§ 4609c20. Issuance of stocks, bonds, etc. The power of public utilities to issue stocks, bonds, notes, and other evidence of indebtedness, to create liens upon their property situated in this state, except such as are payable within one year from date of issue, is a special privilege and shall be exercised by such utilities under the supervision, regulation, restriction and control of the commissioners, subject to such rules and regulations as the commissioners may prescribe.

No provision of this act and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of North Dakota to pay or guarantee in any manner whatsoever, any stock, or stock certificate or bond, note or other evidence of indebtedness authorized, issued or executed under the provisions of this act. [Laws 1919, ch. 192, § 20.]

Electricity, 20 C. J. p. 312 § 14; Gas, 28 C. J. p. 557 § 18, p. 560 § 21; Railroads, 33 Cyc. 442; Street Railroads, 36 Cyc. 1431-1440; Waters, 40 Cyc. 779; Corporations, 14 C. J. p. 449 § 738, 14a C. J. pp. 551-552 §§ 2483-2484, p. 559 § 2498, p. 607 § 2555, p. 615 § 2570.

Power and duty of public authorities to control issuance of securities by public service corporations. 45 L.R.A.(N.S.) 629; 47 L.R.A.(N.S.) 1167.

Power and duty of public service commission to control the issuance of securities by public service corporations. 45 L.R.A.(N.S.) 629.

Issuance of bonds by railroad companies. 22 R. C. L. 1098 and Supps.

§ 4609c21. Consent of commissioners to transfer of franchise, etc. No public utility shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public not, at any time, directly or indirectly, merge or consolidate such works or system or franchise, or any part thereof with any other person, corporation or public utility, without first having secured from the commissioners an order authorizing it to do so. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made, other than in accordance with the order of the commissioners authorizing same, shall be void. [Laws 1919, ch. 192, § 21.]

Electricity, 20 C. J. p. 317 § 20; Gas, 28 C. J. p. 548 § 5, p. 555 § 15, p. 560 §

21; Railroads, 33 Cyc. 381-441, 484; Waters, 40 Cyc. 779; Corporations, 14a C. J. pp. 543-545 §§ 2467-2470, pp. 551-552 §§ 2483-2484, p. 559 § 2498.

Public service commission's approval as necessary before abandonment of street railway line. 5 A.L.R. 55.

Transfer of franchise by street railways. 25 R. C. L. 1128.

Sale of property or franchise by railroad companies. 22 R. C. L. 1070 et seq.

Lease of property or franchise by railroad companies. 22 R. C. L. 1074 et seq. and Supps.

Transfer of franchise or property of telegraph and telephone companies. 26 R. C. L. 491.

Sale of property or franchise of gas companies. 12 R. C. L. 887.

§ 4609c22. Acquiring stock or business of other utility. No public utility shall, directly or indirectly acquire the stock or business of any other corporation incorporated for or engaged in the same or similar business or proposing to operate or operating under a franchise from the same or any other authority unless authorized to do so by the commissioners. Every such transaction made, other than in accordance with the order of the commissioners authorizing the same shall be void. [Laws 1919, ch. 192, § 22.]

Waters, 40 Cyc. 779; Corporations, 14a C. J. p. 287 § 2131.

Acquisition of stock of other gas companies. 12 R. C. L. 887.

Acquisition of stock in other railroads. 22 R. C. L. 814.

Consolidation of street railways. 25 R. C. L. 1131.

§ 4609c23. Order as to rates, etc. Nothing in this act shall authorize the commissioners to make any order affecting rates, tolls or charges, contracts, or services rendered or the safety, adequacy, sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state, city, county, township, town or village or any other political subdivision of the state, or any public utility that is not operated for profit, but all other provisions herein shall apply to such utilities.

Provided, however, that any and all telephone and telegraph utilities so owned or operated shall be subject to the jurisdiction of the commissioners and to the provisions contained in sections 7 and 8 of this act. [Laws 1919, ch. 192, § 23.]

§ 4609c24. Hearings, investigations, etc.; experts, etc.; right to hire. All hearings, investigations and proceedings shall be public and shall be governed by this act and by the rules and practice and procedure to be adopted by the commissioners and in the conduct thereof the technical rules of evidence shall not be applied. No informality in any hearing, investigation or proceeding or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commissioners.

The commissioners shall have authority and power to employ any and all rate experts, engineers, accountants and any and all other experts, help and assistance, and fix the compensation and the bond of all such employees, provided, that the same shall not exceed the amount appropriated for the purpose of carrying out the provisions of this act. [Laws 1919, ch. 192, § 24.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Electricity, 20 C. J. p. 332 § 27; Railroads, 33 Cyc. 49-50.

Due process of law in procedure before commission. 4 R. C. L. 624.

§ 4609c25. Powers of commissioners; witness fees and mileage; subpoenas. The commissioners and each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Each witness who shall appear, by order of the commissioners or a commissioner, shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases. All subpoenas issued by the commis-

sioners shall extend to all parts of the state and shall be served in the manner provided for such service in courts of record. [Laws 1919, ch. 192, § 25.]

Electricity, 20 C. J. p. 332 § 27; Witnesses, 40 Cyc. 2156; Railroads, 33 Cyc. 49-50.

Authority to administer oath. 20 R. C. L. 505 and Supps.

Production of papers. 28 R. C. L. 420 and Supps.

Compensation of witnesses. 28 R. C. L. 662 and Supps.

§ 4609c26. Witnesses; compelling attendance; depositions; excusing from testifying; no immunity granted. (a) Any court of record in and for the county in which any inquiry, investigation, hearing or proceeding may be held by the commissioners or any commissioner, shall have the power, upon petition therefor, to compel the attendance of witnesses, the giving of testimony and the production of papers, including waybills, books, accounts and documents as required by any subpoena issued by the commissioners or any commissioner.

(b) The commissioners or any commissioner or any party may in any investigation or hearing before the commissioners, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state.

(c) No person shall be excused from testifying or giving evidence in any investigation or inquiry by or hearing before the commissioners or any commissioner, when ordered to do so, upon the ground that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified to [or] produced documentary evidence; provided that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind. [Laws 1919, ch. 192, § 26.]

Witnesses, 40 Cyc. 2156, 2543; Depositions, 18 C. J. p. 618 § 22.

Power of commission to compel production of papers and records for inspection. L.R.A.1917F, 1202.

Production of papers. 28 R. C. L. 420 and Supps.

Self-incrimination. 28 R. C. L. 423 et seq. and Supps.

§ 4609c27. Copies of documents, etc. Copies of all official documents and orders filed or deposited according to law in the office of the commissioners certified by a commissioner or by the secretary or assistant secretary under the official seal of the commissioners to be true copies of the originals, shall be evidence in like manner as the originals. [Laws 1919, ch. 192, § 27.]

Evidence, 22 C. J. p. 821 § 937.

Public documents that may be proved by copies. 10 R. C. L. 1102 and Supps.

§ 4609c28. Charges for copies, records, etc. The commissioners shall determine and fix all charges for furnishing copies, records, reports and evidence and in all proceedings by the commissioners. All fees charged and collected under this section shall be paid into the state treasurer to the credit of the fees appropriated for the use of the commissioners. [Laws 1919, ch. 192, § 28.]

§ 4609c29. Inspection of accounts, etc.; examinations, right as to. The commissioners, each commissioner and each officer and person duly authorized by the commissioners shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public utility and the commissioners and each commissioner and any officer of the commissioners or any employee authorized to administer oaths shall have power to examine, under

oath, any officer, agent or employee of such public utility in relation to the business and affairs of said public utility. [Laws 1919, ch. 192, § 29.]

Corporations, 14a C. J. p. 342-343 §§ 2199-2201; Electricity, 20 C. J. pp. 329-332 §§ 26-27; Railroads, 33 Cyc. 45, 50.

§ 4609c30. Complaint; hearing on. Complaint may be made by the commissioners of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any fact or thing done or omitted to be done by any public utility, including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation of any provision of law or of any order or rule of the commissioners. The commissioners shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof upon the complainant and the utility affected thereby not less than ten days before the time set for such hearing, unless the commissioners shall find that public necessity requires that such hearing be held at an earlier date, provided, that no complaint shall be entertained by the commissioners, except on its own motion, as to the reasonableness of any rates or charges, of any heat, gas, electrical, water or telephone utility, unless the same be signed by the mayor, council, commission or other legislative body of the county, city, town or village, if any, within which the alleged violation occurred, or not less than fifteen consumers or purchasers or prospective consumers or purchasers of such heat, gas, electrical, water or telephone service. [Laws 1919, ch. 192, § 30.]

City Commission v. Bismarck Water Supply Co. 47 N. D. 179, 181 N. W. 596; State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Railroads, 33 Cyc. 50; Electricity, 20 C. J. p. 332 § 27.

Patron's right to question reasonableness of public utility rate authorized by legislature. 12 A.L.R. 404.

Railroad company as proper party to proceeding during Federal control to compel trains to stop at certain city. 19 A.L.R. 695.

§ 4609c31. Hearing; order; copy of. At the time fixed for a hearing before the commissioners or a commissioner, or the time to which the same may have been continued, the complainant and the utility or person complained of, and such corporations or persons as the commissioners may allow to intervene, shall be entitled to be heard and to introduce evidence. After the conclusion of the hearing, the commissioners shall make and file their order containing their decision. A copy of such order, certified under the seal of the commissioners, shall be served upon the corporation or person complained of or his or its attorney by registered mail. Said order shall become final twenty days after the service thereof. [Laws 1919, ch. 192, § 31.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. p. 54 § 41; Electricity, 20 C. J. p. 332 § 27; Railroads, 33 Cyc. 50-51.

§ 4609c32. Decisions; rescission or amendment of. The commissioners may, at any time, upon notice to the public utility affected and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions. [Laws 1919, ch. 192, § 32.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. p. 54 § 41; Electricity, 20 C. J. p. 332 § 27; Railroads, 33 Cyc. 50-51.

Decisions and orders of public service commission as to regulation of jitney busses. L.R.A.1915F, 845; L.R.A.1918B, 916.

§ 4609c33. Conclusiveness of orders and decisions. In all collateral actions or proceedings, the orders and decisions of the commissioners which have become final shall be conclusive. [Laws 1919, ch. 192, § 33.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. p. 54 § 41; Electricity, 20 C. J. p. 332 § 27; Railroads, 33 Cyc. 50-51.

§ 4609c34. Appeal; who may take. Any party to any controversy heard by the commissioners feeling aggrieved by the decision or by the entry of any final order of the commissioners therein may appeal therefrom [to] the district court in the district in which the hearings of the commissioners were held in the matter, by serving notice in writing on all other parties to said controversy and on the commissioners within thirty days after the rendering of said decision and entry of the final order therein by the commissioners. [Laws 1919, ch. 192, § 34.]

Board possesses only such authority, which is granted by act, to be exercised consonant with due process of law. State ex rel. Lemke v. Chicago & N. W. R. Co. 46 N. D. 313, 179 N. W. 378.

Rate order of Railroad Commissioners held void for lack of proper board action, and carriers restrained from enforcing increases in. State ex rel. Lemke v. Chicago & N. W. R. Co. 46 N. D. 313, 179 N. W. 378.

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. p. 63 §§ 49-51, p. 413 § 636, p. 438 § 686; Electricity, 20 C. J. p. 332 § 27; Railroads, 33 Cyc. 52; Gas, 28 C. J. p. 584 § 47.

Right to appeal to court from decision of public service commission. 49 L.R.A. (N.S.) 565.

Who may take appeal. 2 R. C. L. 49 et seq. and Supps.

§ 4609c35. Same; what considered on; stay; bond. On such appeal the lawfulness of the decision or final order shall be inquired into and determined on the record of the commissioners as certified to by it. No new or additional evidence shall be taken on such appeal or introduced in evidence by any party to such hearing on appeal in the district court. Any appeal from any final order of the commissioners shall not suspend or delay the execution or operation thereof pending the appeal and final determination thereof, but the court in which such appeal is pending may in its discretion suspend in whole or in part the operation of the commissioners' order or decision.

(b) In case the order or decision of the commissioners is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with and approved by the commissioners (or approved on appeal by the district court), payable to the people of the state of North Dakota, and sufficient in amount and security to insure the prompt payment, by the party appealing, of all damages caused by the delay in the enforcement of the order or decision of the commissioners, and of all the moneys which any person or corporation may be compelled to pay, pending the appeal, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the commissioners, in case said order or decision is sustained. The district court, in case it stays or suspends the order or decision of the commissioners in any matter affecting rates, fares, tolls, rentals, charges or classifications, shall also by order direct the public utility affected to pay into court, from time to time, there to be compounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum which corporation or person would have been compelled to pay if the order or decision of the commissioners had not been stayed or suspended. The commissioners, any public utility or person or complainant may after the entry of judgment in the district court in any such action, prosecute an appeal to the supreme court of this state. Such appeal shall

be prosecuted as appeals from the judgment of the district court in civil cases except as otherwise provided in this act. The record and testimony and exhibits, certified to by the commissioners and filed in the district court in any such action, together with a transcript of the proceedings in the district court shall constitute the record on appeal to the supreme court. The general laws relating to appeals to the supreme court shall, so far as applicable and not in conflict with the provisions of this act, apply to appeals taken under the provisions of this act. [Laws 1919, ch. 192, § 35.]

Rate order of Railroad Commissioners held void for lack of proper board action, and carriers restrained from enforcing increases in. State ex rel. Lemke v. Chicago & N. W. R. Co. 46 N. D. 313, 179 N. W. 378.

Carriers, 10 C. J. p. 63 §§ 49-51, pp. 413-414 §§ 636-637, pp. 434-438 §§ 678-687; Electricity, 20 C. J. p. 332 § 27; Railroads, 33 Cyc. 52; Gas, 28 C. J. p. 584 § 47.

Review of decision of commission with respect to regulation of street railways. 5 A.L.R. 76.

Stay bonds. 2 R. C. L. 124 and Supps.

Operation of appeal as stay. 2 R. C. L. 117 et seq. and Supps.

§ 4609c36. Preference on calendar. All actions and proceedings under this act and all actions or proceedings to which the commissioners or the state of North Dakota may be parties, and in which any question arises under this act, or under or concerning any order or decision of the commissioners, shall be preferred over all other civil causes and shall be heard and determined in preference to all other civil business, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney of the commissioners in any action or proceeding in which he may be allowed to intervene. [Laws 1919, ch. 192, § 36.]

Appeal and Error, 4 C. J. p. 614 §§ 2455-2456; Trial, 38 Cyc. 1285.

Preference on calendar. 26 R. C. L. 1013.

§ 4609c37. Valuation of property; matters considered. The commissioners, for the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration for the grant of such franchise or right by reason of a monopoly or merger. The commissioners shall prescribe the details of the inventory of the property of each public utility.

In ascertaining the value of the various kinds and classes of property of each public utility, the commissioners shall have authority to ascertain and report, in such detail as it may deem necessary, as to each piece of property owned or used by such public utility to show separately the following facts:

(a) The original cost, if any, of each parcel of land owned and used by such public utility and a statement of the conditions of acquisition, whether by direct purchase, by donation, by exercising the power of eminent domain or otherwise.

(b) The value, as of a date certain, of each parcel of land owned and used by such public utility by comparison with the value of contiguous and neighboring parcels of land and land of similar character as to location and use.

(c) If there should be any additional value to such utility by reason of the ownership by it of one or more parcels of land, and it is used as a continuous right of way for transportation purposes, or for other purposes, such additional value shall be separately and specifically set forth for each parcel.

(d) The cost of new production, as of a date certain, of all physical property other than land, owned and used by such public utility showing the valuation

of the separate item comprising such property, together with the unit basis of such valuation.

(e) Depreciation, if any, from the new reproductive cost, as of a date certain, of existing mechanical deterioration, of age, of obsolescence, of lack of utility or for any other cause, the percentage and amount of each class of depreciation, if any, to be specifically set forth in detail.

(f) The net value, as of a date certain, of all physical property other than land owned by such public utility, to be derived by deducting the sum of the amounts of depreciation from the sum of the new reproductive costs.

(g) The value of the property of a public utility company, as determined by the commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property. In valuing the property on the basis of the cost to reproduce the same, unit prices of material and labor entering into construction shall be based on the average prices of a sufficient period of years to secure normal results. Equipment shall be valued on the average prices of a sufficient period of years to secure normal results, and there shall be deducted from the total amounts, as thus determined, such sum as is properly chargeable to depreciation under the provisions of sub-division (e), section 37 [this section]. The commissioner shall exclude from such valuation all unearned values or unearned increment.

Such investigation and report shall also show, whenever the commissioners may deem necessary, the amounts and dates and rates of interest of all bonds outstanding against each utility, the property on which they are a lien, the amounts paid therefor and, in such detail as may be necessary the original capital stock and the moneys received by any such utility by reason of any issue of stock, bonds or other securities; the net and gross receipts of such utility; the method by which moneys were expended and the purpose of such payments. The commissioners shall have the power to establish rules and regulations to be followed in making such investigation and valuation. [Laws 1919, ch. 192, § 37.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Carriers, 10 C. J. pp. 415-426 §§ 638-666; Electricity, 20 C. J. p. 329 § 26; Gas, 28 C. J. pp. 578-583, §§ 40-46.

Fundamental principle of valuation of public service property. L.R.A.1916F, 599.

Valuations for rate making as affected by advance in price conditions due to world war. 20 A.L.R. 555.

Treatment of overhead charges in public service property valuation. 48 L.R.A. (N.S.) 1037.

Treatment of accrued depreciation in valuation of public service property. L.R.A.1916F, 761.

Special problems in respect to the treatment of appreciation, in public service property valuations. 51 L.R.A.(N.S.) 7.

Valuation of public-utility lands. 48 L.R.A.(N.S.) 1196.

Treatment of good will in public service property valuations. 48 L.R.A.(N.S.) 1146.

Treatment of going concern "value" in public service property valuations. 48 L.R.A.(N.S.) 1092.

Treatment of franchises, water rights, and miscellaneous intangibles in public service property valuations. 48 L.R.A.(N.S.) 1063.

Valuation of property of public service corporation for purposes of taxation. 26 R. C. L. 179 and Supps.

§ 4609c38. Revaluation. The commissioners, during the making of the valuation herein provided for and for the purpose thereof, shall thereafter in like manner keep itself informed through its experts and other assistants of all extensions and improvements or other changes in the condition and value of the property of all public utilities and shall ascertain the value of such extensions, improvements and changes and shall from time to time, as may be required for the proper regulation of such utilities, revise and correct its valua-

tion of such property. Such revaluation and correction shall be filed in the same manner as is provided for original reports. [Laws 1919, ch. 192, § 38.]
State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

§ 4609c39. Valuation; finality of; prima facie evidence. The commissioners, whenever they shall have completed a valuation of the property of any public utility and before such valuation shall have become final, shall give notice by registered letter to such public utility. If, within thirty days after such notice, no protest shall have been filed with the commissioners, then said valuation shall become final. If notice of protest shall have been filed, however, by any such public utility, the commissioners shall fix the time of hearing the same and shall consider at such hearing any matter material thereto presented by such public utility in support of its protest. If, after the hearing of any protest (if any valuation was fixed), the commissioners shall be of the opinion that its inventory is incomplete or incorrect or that its valuation is incorrect, it shall make such changes as may be necessary and shall issue an order making such corrected valuation final. The final valuation by the commissioners and all classifications made for the ascertainment of such valuations shall be public and shall be prima facie evidence relative to the value of the property. [Laws 1919, ch. 192, § 39.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

§ 4609c40. Hearings as to reasonableness of rates. For the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities or for any other purpose authorized by law, the commissioners may cause a hearing or hearings to be held at such time or times and place or places as the commissioners may designate to determine the value of the property of public utilities actually used or useful for the convenience of the public, excluding therefrom the value of any franchise or right, to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration of such franchise or right; and exclusive of any value to the right by reason of a monopoly or merger. [Laws 1919, ch. 192, § 40.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Electricity, 20 C. J. p. 332 § 27; Gas, 28 C. J. p. 584 § 47; Railroads, 33 Cyc. 50.

§ 4609c41. Notice of hearing; preliminary examination. Before any hearing is had, the commissioners shall give the public utility affected thereby at least thirty days' written notice, specifying the time and place of said hearing. This provision shall not prevent the commissioners from making any preliminary examination or investigation into the matters herein referred to or from inquiring into such matters in any other investigation or hearing. [Laws 1919, ch. 192, § 41.]

State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

§ 4609c42. Hearing; right to; evidence on; findings; review of. The public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The commissioners are empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commissioners. The commissioners shall make and file their findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which, in its judgment, have a bearing on the value of the property of the public utility. Such findings shall be subject to review by the supreme court of this state in the same manner and within the same time as other orders and decisions of the commissioners. [Laws 1919, ch. 192, § 42.]

Order of commissioners fixing valuation subject to appeal. State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Rate order of Railroad Commissioners held void for lack of proper board action, and carriers restrained from enforcing increases in. State ex rel. Lemke v. Chicago & N. W. R. Co. 46 N. D. 313, 179 N. W. 378.

§ 4609c43. Findings; admissibility; additional hearings. The findings of the commissioners, as made and filed, when properly certified by the commissioners, shall be admissible as evidence in any proceeding or hearing before the commissioners or any court in which the commissioners, the state or any officer, department or institution thereof or any county, city, municipality or other body politic and the public utility affected thereby may be interested, whether arising under the provisions of this act or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. The commissioners may, from time to time, cause further hearings and investigations to be had for the purpose of making re-valuations or ascertaining the value of any betterments, improvements, additions or extensions made by any public utility subsequent to any prior hearing or investigation and may examine into all matters which may change, modify or affect any finding of fact previously made and may at such time make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and be conducted in the same manner and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing, and finding, provided that such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of all original findings except insofar as such supplemental findings shall change or modify the findings made at the original hearing or investigation. [Laws 1919, ch. 192, § 43.]

State ex rel. Lemke v. Chicago & N. W. R. Co. 46 N. D. 313, 179 N. W. 378.

§ 4609c44. Improper charges; reparation. When complaint has been made to the commissioners concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility and the commissioners have found after investigation that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, in excess of the schedules, rates and tariffs on file with the commissioners, or has discriminated under said schedules against the complainant, the commissioners may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation. [Laws 1919, ch. 192, § 44.]

Carriers, 10 C. J. p. 451 § 709; Electricity, 20 C. J. p. 338 § 32; Gas, 28 C. J. p. 588 § 51.

Validity of statute requiring submission of claims for refund of overcharges to public service commission. 3 A.L.R. 203.

§ 4609c45. Aid in investigation by attorney general or state's attorney. Upon the request of the commissioners, it shall be the duty of the attorney general or the state's attorney of the proper district or county to aid in any investigation, hearing or trial under the provisions of this act, and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this state affecting public utilities and for the punishment of all violations thereof. [Laws 1919, ch. 192, § 45.]

Attorney General, 6 C. J. p. 812 § 18; District and Prosecuting Attorneys, 18 C. J. p. 1312 § 38.

§ 4609c46. Improper action taken; damages; who may sue; effect of recovery. In case any public utility shall do, cause to be done or permit to be done, any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the constitution, any law of this state or any order or decision of the commissioners, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting

therefrom, and if the court shall find that the act or omission was wilful, the court shall, in addition to the actual damages, award damages for the sake of example and by way of punishment. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person.

(b) No recovery as in this section provided shall in any manner affect a recovery by the state of the penalties in this act provided or the exercise by the commissioners of their power to punish for contempt. [Laws 1919, ch. 192, § 46.]

Carriers, 10 C. J. pp. 501-506 §§ 806-815, pp. 449-456 §§ 708-720, p. 63 § 49; Electricity, 20 C. J. pp. 338-339 §§ 32-34; Gas, 28 C. J. p. 588 § 51, p. 568 § 32.

§ 4609c47. Cumulative penalties. All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the commissioners of its power to punish for contempt. [Laws 1919, ch. 146, § 47.]

Carriers, 10 C. J. pp. 565-586 §§ 942-994.

§ 4609c48. Violation of provisions of order, etc.; act of officer, agent, etc., as that of principal. (a) Any public utility which violates or fails to comply with any provision of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part [part] or provision thereof of the commissioners, in a case in which the penalty has not hereinbefore been provided for such public utility, is subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense.

(b) Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand or requirement of the commissioners, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation, each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

(c) In construing and enforcing the provisions of this act relating to penalties, the act, omission or failure of any officer, agent or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of such public utility. [Laws 1919, ch. 192, § 48.]

Carriers, 10 C. J. p. 586 § 994; Railroads, 33 Cyc. 51.

§ 4609c49. Violation of provisions of act; personal liability of officer, agent, etc. Every officer, agent or employee of any public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any public utility of any provisions of the constitution of this state or of this act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commissioners, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand, requirement or any part or provision thereof, in a case in which the penalty has not hereinbefore been provided for such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment. [Laws 1919, ch. 192, § 49.]

Corporations, 14a C. J. p. 243 § 2073.

§ 4609c50. Same; liability of other persons. Every person who, either individually or acting as an officer, agent or employee of a corporation other than

a public utility, violates any provision of this act, or fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or portion thereof, of the commissioners, or who procures, aids or abets any such public utility in its violation of this act, or in its failure to obey, observe or comply with any such order, decision, rule, direction, demand or requirement, or any part or portion thereof, in a case in which a penalty has not hereinbefore been provided for such person, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment. [Laws 1919, ch. 192, § 50.]

§ 4609c51. Foreign commerce; nonapplicability to. Neither this act nor any provisions thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress. [Laws 1919, ch. 192, § 51.]

Carriers, 10 C. J. p. 52 § 38, p. 408 § 628; Commerce, 12 C. J. pp. 12-17 §§ 10-15, pp. 67-94 §§ 87-123.

§ 4609c52. Prosecution of inquiry, etc. The commissioners may, by one or more of the commissioners, prosecute any inquiry necessary or hearing, into any matter or question of fact pertaining to the business of any public utility, subject to the provisions of this act. [Laws 1919, ch. 192, § 52.]

Electricity, 20 C. J. p. 332 § 27; Railroads, 33 Cyc. 49-50.

§ 4609c53. Other statutes not affected or impaired. The provisions of this act shall not impair or affect any act of the legislative assembly establishing rates and charges for the transportation of freight or passengers by common carriers in this state and shall not authorize the commissioners or any common carrier to increase any such rates or charges, except in the manner provided by an act entitled "An Act relating to freight rates in North Dakota; the transportation of freight within the state; the classification of freight for the purpose of such transportation and the application of rates thereon; fixing the maximum rates and charges for transportation of freight intra-state; providing penalties and punishments for the violations of the provisions thereof and defining certain duties and powers of the board of railroad commissioners" (§§ 4795b1-4795b13, post), which act was adopted by the sixteenth legislative assembly of the state of North Dakota. Nor shall this act affect or impair the provisions of an act adopted at the sixteenth legislative assembly defining the powers and duties of the state inspector of grades, weights and measures. [Laws 1919, ch. 192, § 53.]

§ 4609c54. Construction with other statutes. This act is to be construed and interpreted with all other statutes of this state, having for their purpose the regulation and control of public utilities and is intended to be supplemental to such statutes and chapter 14 of the [Civil Code of the] Compiled Laws of North Dakota for 1913, chapters 202 (§ 4646, post), 203 (§§ 4665a1-4665a4, post), and 204 (§§ 4665b1-4665b3, post) of the Laws of North Dakota for 1915; chapters 185 (§ 4777, post), 186 (§ 4630, post), 187 (§§ 4800b1, 4800b2, post), 188 (§§ 4781a1-4781a11, post), 191 (§ 4767, post) and 192 (§§ 4765a1, 4765a2, post) of the Laws of North Dakota for 1917, except insofar as such statutes conflict with the provisions of this act, shall apply to such utilities. [Laws 1919, ch. 192, § 54.]

Provides that act to be construed and interpreted with all other statutes, regulating public utilities. State ex rel. Lemke v. Union Light, Heat & Power Co. 47 N. D. 402, 182 N. W. 539.

§ 4609c55. Repeals. Sections 584 and 4736 of the Compiled Laws of the state of North Dakota for 1913; chapter 208 (§§ 4609d1-4609d5, post) and Section 9 of chapter 209 (§ 4812a9, post), Laws of North Dakota for 1915;

and all other acts and parts of acts in conflict with this act are hereby repealed. [Laws 1919, ch. 192, § 55.]

§ 4609c56. **Appropriations.** The sum of fifty thousand dollars (\$50,000.00) or as much thereof as shall be necessary, is hereby appropriated for the purpose of carrying out the provisions of this act. [Laws 1919, ch. 192, § 56.]

CHAPTER 13C.

RATES FOR WATER, GAS OR ELECTRICITY FOR LIGHT, HEAT OR POWER.

Explanatory note. This chapter was repealed by § 4609c55, but as it contains matter which may be useful it is inserted here.

§ 4609d1. **Resolution on complaint as to rate charged.** Whenever the city council or commission of any city or the governing body of any town or village, organized under the laws of the state of North Dakota, shall by vote of the majority of such body adopt a resolution or when petitioned by 20 per cent of the qualified electors of any city, town or village in this state as to municipality owned plants, complaining that the rate charged within the municipality by any person, firm or corporation furnishing either water, gas or electricity for light, heat or power to said municipality or to the inhabitants thereof is excessive, and setting forth as near as may be the particulars wherein it is claimed that the rate charged is excessive, the auditor or other officer charged with the duties usually devolving upon a city auditor, shall, within ten days after the adoption of such resolution forward a certified copy of the same to the board of railroad commissioners for the state of North Dakota, and shall at the same time furnish to said board of railroad commissioners a statement showing the names and business addresses of the persons, firms or corporations furnishing the water, gas or electricity to the said municipality or the residents thereof the price of which is complained. [Laws 1915, ch. 208, § 1.]

Explanatory note. Repealed. See note preceding this section.

§ 4609d2. **Preliminary investigation.** As soon as may be after the receipt of such resolution and information provided for in section 1 by the board of railroad commissioners, the said board shall make or cause to be made a preliminary investigation of the matters complained of, and, if on such investigation such complaint appears to be well founded then the said board of railroad commissioners shall fix a time for a hearing on such complaint and upon the fixing of such time shall notify the said municipality by mailing a notice to its auditor or other officer charged with the usual duties of a city auditor and shall also notify any person, firm or corporation furnishing such water, gas or electricity the price of which is complained of, of the date and place of such hearing, giving to such parties not less than thirty days' notice thereof. [Laws 1915, ch. 208, § 2.]

Explanatory note. Repealed. See note preceding § 4609d1, ante.

§ 4609d3. **Procedure on hearing.** Upon such hearing proceedings shall be had according to the general rules of procedure in equity cases and the president of the board of railroad commissioners shall have power to issue process commanding the presence of witnesses who can be served within the state of North Dakota and the production of such books and records as are within their control. [Laws 1915, ch. 208, § 3.]

Explanatory note. Repealed. See note preceding § 4609d1, ante.

§ 4609d4. **Findings; order fixing rate.** Upon the completion of such hearing the said board of railroad commissioners shall make findings of fact and on such findings shall make an order fixing and establishing a just and reasonable rate as a maximum to be charged for the ensuing five years for the

commodity the rate for which is then under investigation, and said board shall cause notice in writing to be given to the said municipality and to the person, firm or corporation engaged in furnishing the commodity the price of which has been so fixed, fixing the time when such rate shall take effect, which shall not be less than sixty days after the service of such notice upon such municipality and such person, firm or corporation aforesaid. [Laws 1915, ch. 208, § 4.]

Explanatory note. Repealed. See note preceding § 4609d1, ante.

§ 4609d5. Purpose and intent of law. The purpose and intent of this law is to place the regulation of the rate to be charged by persons, firms or corporations operating within the state of North Dakota and furnishing water, gas and electricity for light, heat or power to any municipality or the residents thereof under the control of the board of railroad commissioners subject only to the rights of such person, firm or corporation to have the action of such board reviewed in the usual manner in an equitable proceeding in the courts of the state of North Dakota. [Laws 1915, ch. 208, § 5.]

Explanatory note. Repealed. See note preceding § 4609d1, ante.

Right of gas company to charge rates in excess of rate limited by charter, denied. *Bismarck Gas Co. v. District Ct. Burleigh Co.* 41 N. D. 385, 170 N. W. 878.

CHAPTER 14.

RAILROAD CORPORATIONS.

- ARTICLE 1. INCORPORATION AND REGULATION, §§ 4621-4646a3.
 4. LIABILITY OF RAILROADS FOR CAUSING FIRES, § 4654.
 5. CATTLE GUARDS AT RAILROAD CROSSINGS, § 4655.
 6. MAINTENANCE OF STATION HOUSES, § 4656.
 9a. CLEANING OF CATTLE CARS, §§ 4665a1-4665a4.
 9b. STOCK YARDS, §§ 4665b1-4665b3.
 10a. SAFETY OF EMPLOYEES AND TRAVELERS, §§ 4667a1-4667a4.
 11a. SHELTER AND PROTECTION FOR EMPLOYEES, §§ 4669a1, 4669a2.
 11b. ENGINE CURTAINS, §§ 4669b1-4669b3.
 12. SIZE AND CONSTRUCTION OF CABOOSE CARS, § 4671.
 13a. PROHIBITING CHILDREN FROM TRESPASSING ON RAILROAD PROPERTY, §§ 4682a1-4682a6.
 15. CROSSINGS, §§ 4686, 4687.
 15a. SIGNS FOR RAILROAD CROSSINGS, STREET AND PUBLIC HIGHWAYS, §§ 4688a1-4688a14.
 18. RAILROADS, CLEARANCE OF OBSTRUCTIONS, §§ 4700, 4704.
 20. COOPERAGE OF CARS, § 4707.
 20a. SHIPMENT OF CASES CONTAINING BOTTLES, §§ 4707a1, 4707a2.
 21. TO REGULATE COMMON CARRIERS AND DEFINE THE DUTIES OF THE COMMISSIONERS OF RAILROADS, §§ 4713-4781.
 22. RAILROADS TO MAINTAIN TELEPHONE CONNECTIONS, § 4784.
 24. DAILY TRAINS: RECIPROCAL DEMURRAGE, §§ 4789-4795.
 24a. RAILROAD FREIGHT RATES GENERALLY, §§ 4795a1-4795b13.
 24b. SPECIAL FREIGHT RATES, §§ 4795c1, 4795c2.
 25. MAXIMUM TRANSPORTATION RATES, §§ 4796-4798.
 25a. MAXIMUM LIGNITE RATES, §§ 4798a1-4798a5.
 26a. CARRIAGE OF SICK, §§ 4800a1, 4800a2.
 26b. PROTECTION OF PERSONS ACCOMPANYING LIVESTOCK SHIPMENTS, §§ 4800b1, 4800b2.
 27a. SEMI-MONTHLY PAY, §§ 4802a1, 4802a2.
 28a. EMPLOYERS' LIABILITY, §§ 4803a1-4803a7.
 29. FELLOW SERVANT AND CONTRIBUTORY NEGLIGENCE ACT, §§ 4804-4807.
 30. MISCELLANEOUS, §§ 4810, 4811.

ARTICLE I.—INCORPORATION AND REGULATION.

§ 4621. Comp. Laws, 1913.

Felton v. Midland Continental R. Co. 32 N. D. 223, 155 N. W. 23.

§ 4624. **Conveyances, etc., of railroad, telegraph and telephone corporations, how executed and recorded.** Every conveyance, or lease, deed of trust, mortgage, assignment or satisfaction thereof, made by any railroad, telegraph or telephone corporation, of any franchises, right-of-way, real estate, fixtures, poles, wire and general equipment used in carrying on the business of the corporation, or any real property in pursuance of law shall be executed and acknowledged in the manner in which conveyance of real estate by corporations is required to be to entitle the same to be recorded, and shall be recorded in the office of the Secretary of State, who shall endorse thereon his certificate thereof, specifying the day and hour of its reception, and the volume and page where recorded, which shall be evidence of such fact. Every such record of any such instrument shall from the time of reception, have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds may have by law as to property in his county, and shall be notice of the rights and interest of the grantee, lessee, or mortgagee, by said instrument to the same extent as if it was recorded in each and all of the several counties in which any property therein described may be situated. And provided, further, that every conveyance or lease, deed of trust, or mortgage, thus made, which covers any real property other than that used by said railroad, telegraph or telephone corporation, as right-of-way for its railroad or telegraph or telephone lines, shall likewise be recorded in the office of register of deeds for each and every county wherein such other real estate, or any part thereof is situated; and provided, further, that such conveyance, lease, deed of trust or mortgage shall not operate as a conveyance of, or as creating any lien upon, any such real estate other than railroad or telegraph or telephone right-of-way, until such instrument has been duly recorded in the office of the register of deeds of the county in which the same is situated. [Laws 1921, ch. 128, § 1.]

Corporations, 14a C. J. p. 539 § 2457, p. 669 § 2671; Railroads, 33 Cyc. 386, 523-524.

Sale of property or franchise by railroad companies. 22 R. C. L. 1070.

Lease of property or franchise by railroad companies. 22 R. C. L. 1074 and Supps.

Form and essentials of railroad mortgages. 22 R. C. L. 1109.

Recording of railroad mortgages. 22 R. C. L. 1110.

Transfer of franchise or property of telegraph and telephone companies. 26 R. C. L. 491.

§ 4624a. **Emergency.** Whereas there is now no provision for the recording of certain documents herein described in the office of the secretary of state, it is hereby declared that this act is an emergency measure and shall take effect and be in force from and after its passage and approval. [Laws 1921, ch. 128, § 2.]

§ 4625. **Conditional sale valid.** In all cases where railroad equipment and rolling stock may have been or shall be sold to any person, firm or corporation to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer or deliverer of the same until the price agreed upon or rent for such property shall have been fully paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer or deliverer until such payments are fully made shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors; provided, that the term during which the installments or

rents are to be paid shall not exceed fifteen years and such contract shall be in writing and acknowledged. [Laws 1923, ch. 271, § 1.]

Railroads, 33 Cyc. 462.

§ 4625a. Emergency. Whereas, the law of this state should be made uniform with the laws of other states as to the term during which the installments or rents under such contract may be paid, it is hereby declared that this act is an emergency measure, and shall take effect and be in force from and after its passage and approval. [Laws 1923, ch. 271, § 2.]

§ 4630. Annual reports must be made; contents. Every railroad corporation shall make an annual report to the stockholders, of its operations during the year ending on the 31st day of December, which report shall be verified by the affidavit of the secretary, treasurer, superintendent, and the directors of the corporation, and shall state:

1. The length of road in operation, the length of single track, the length of double track, the weight of the rail per yard.

2. The capital stock actually subscribed and the amount paid thereon.

3. The whole cost of the road, showing the amount expended for the right of way, bridging, grading, iron and buildings, respectively, and for all other purposes incidental to the construction of such road.

4. The amount and nature of its indebtedness, distinguishing the first, second and third mortgage bonds, and the unsecured indebtedness and the amount due the corporation.

5. The amount received for the transportation of passengers, property and mails, for interest and from other sources, respectively.

6. The amount of freight, specifying the quantity in tons or other usual mode of measurement.

7. The amount paid for the repairs of the road, buildings, engines and cars, respectively for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for wages of employees; the aggregate amount paid for salaries of officers, and for any other purpose incidental to the business of transportation so as to give a complete statement of the entire annual expense of the corporation.

8. The amount of loss to the corporation paid for loss and damage to freight and injury to person and property.

9. The number and amount of dividends and when made and in what manner such dividends have been paid.

10. The amount appropriated to sinking fund and the manner in which the same has been applied and the total amount then held by such sinking fund.

11. The number of persons killed or injured, the causes thereof and whether passengers or persons employed by the corporation.

12. Whether any such accidents have arisen from carelessness or negligence of any person in the employ of the corporation and whether such person is retained in the service of such corporation. The secretary of each railroad corporation shall mail to every stockholder thereof, whose postoffice address is known, a copy of its annual report, and shall file a certified copy thereof with the Commissioners of Railroads on or before the fifteenth day of March in each year. [Laws 1917, ch. 186, § 1.]

§ 4638. Comp. Laws, 1913.

Duty of carrier to carry passenger safely, and to afford him safe place to alight. *Faubion v. Minneapolis, St. P. & S. Ste. M. R. Co.* 45 N. D. 269, 177 N. W. 371.

§ 4642. Comp. Laws, 1913.

Error, to admit evidence that other trains did not signal at crossing. *Brown v. Minneapolis St. P. & S. Ste. M. R. Co.* 46 N. S. 582, 180 N. W. 792.

See also *Edwards v. Great Northern R. Co.* 42 N. D. 154, 171 N. W. 873; *Salewski v. Minneapolis St. P. & S. Ste. M. R. Co.* 47 N. D. 64, 181 N. W. 72; *Goldstein v. Northern P. R. Co.* 37 N. D. 602, L.R.A.1918A, 612, 164 N. W. 143.

§ 4644. Comp. Laws, 1913.

Presumption overcome by proof of gross negligence on part of owner of cattle

in permitting same to trespass on railroad right of way. *Stoeber v. Minneapolis St. P. & S. Ste. R. Co.* 40 N. D. 121, 168 N. W. 562.

See also *Brookings v. Northern P. R. Co.* 47 N. D. 111, 180 N. W. 972.

§ 4645. *Comp. Laws, 1913.*

Stoeber v. Minneapolis, St. P. & S. Ste. M. R. Co. 40 N. D. 121, 168 N. W. 562.

§ 4646. **Right of way to be fenced.** Every person, company or corporation owning or operating any line of railroad or railway within the state, shall, within eighteen months from the taking effect of this act, or within six months from the completion of any railway or railroad, construct, maintain and keep in repair on each side of its right of way a suitable fence. Such fences shall be constructed of not less than four barbed wires, securely fastened to good posts firmly set in the ground not more than twenty feet apart, the top wire to be not less than fifty-four inches above the ground, the bottom wire approximately sixteen inches above the ground, and two center wires equally distant between the two; or such fences shall be constructed of good posts firmly set in the ground not more than twenty feet apart with woven wire not less than forty-eight inches wide; provided, however, that every owner or lessee of any tract of land abutting upon or through which any railroad has or may be constructed, who shall have built a hog-tight fence upon said tract of land on all sides, excepting that abutting against the railroad right of way, may demand of the owners or operators of such railroad that it encloses its right of way adjacent to such tract of land with a hog-tight fence and maintain the same in good repair and condition so long as the owner of said tract shall continue to maintain a hog-tight fence around the other sides of such enclosure. A hog-tight fence for the purpose of this Act shall be: A woven wire fence not less than twenty-six inches high with not less than seven cables and meshes not to exceed six inches in length. The bottom mesh shall be not more than three inches wide; the second not more than three and one-half inches wide; the third not more than four inches wide; the fourth not more than four and one-half inches wide; the fifth not more than five inches wide; and the sixth not more than six inches wide. The bottom wire of the said woven wire fence shall be placed not to exceed two inches from the surface of the ground. And in addition to the woven wire already prescribed there shall be not less than three barbed wires placed above said woven wire. The first barbed wire above the woven wire shall be placed four inches above the top of the woven wire fence. The second barbed wire shall be placed eight inches above the first barbed wire; and the third barbed wire shall be placed eight inches above the second barbed wire; in all, forty-eight inches. The posts shall be of ordinary size for fence purposes and set in the ground at least two feet deep and not to exceed sixteen feet apart. The barbs on the barbed wire shall not exceed six inches apart, said wire to be of not less than No. 13 standard gauge. [Laws 1919, ch. 193, § 1; Laws 1915, ch. 202, § 1.]

Railroads, 33 Cyc. 311-317, 676.

Duty of railroad to fence tracks within limits of municipality. 16 A.L.R. 933.

Statute requiring railroad company to fence its tracks as applicable to railroad yards. 16 A.L.R. 948.

Liability for damage to trespassing cattle which enter upon rights of way and thence wander to adjoining property. L.R.A.1916E. 448.

Obligation of railroad company to employees as to fencing track. L.R.A.1916E. 207.

Private action for violation of statutory duty to fence right of way. L.R.A. 1915E, 539.

Duty of lessee as to railroad fences. L.R.A.1917A, 539.

Constitutionality of railroad fence statutes. 1 R. C. L. 1172 and Supps.

Duty of railroads to fence tracks. 1 R. C. L. 1171; 11 R. C. L. 890, et seq. and Supps.

Application to street railway of statutory duty to fence right of way. 22 R. C. L. 746 and Supps.

Requirement that railroads fence tracks as within police power. 6 R. C. L. 231, 349, and Supps.

Mandamus as proper remedy to compel railroad to fence tracks. 18 R. C. L. 158.

§ 4646a1. Cattle guards; swinging gates. It shall be the duty of every person, company or corporation owning or operating any line of railroad within the state to construct and maintain on both sides of all public crossings, suitable and safe cattle guards and on both sides of all private crossings suitable and safe swinging gates. [Laws 1919, ch. 193, § 2.]

Railroads, 33 Cyc. 311-317, 676.

Constitutionality of statute requiring railroad company to build cattle guards. 31 L.R.A.(N.S.) 861.

Duty of railroad company to keep cattle guards in condition. L.R.A.1915B, 134.

Liability for damage by trespassing cattle which enter upon railroad property because of absence of or defective condition of cattle guards, and thence wander to adjoining property. L.R.A.1916E, 448.

Private action for violation of statute as to building and maintenance of cattle guards. L.R.A.1915E, 539.

Effect of contributory negligence of owner of stock getting on track through defects in cattle guards. 36 L.R.A.(N.S.) 100.

Mandamus as proper remedy to compel construction of cattle guards by railroads. 18 R. C. L. 158.

Scope and import of term "owner" in statutes requiring construction of cattle guards. 2 A.L.R. 798.

Power of municipality to require safety gates at crossing. 45 L.R.A.(N.S.) 946.

Delegation of power to make regulations as to safety gates. 32 L.R.A.(N.S.) 646.

Constitutionality of railroad cattle guard statutes, 1 R. C. L. 1172 and Supps.

Duty of railroad companies to maintain cattle guards. 11 R. C. L. 893.

§ 4646a2. Not to apply in corporate limits. This act shall not apply to street railways or to the right of way of railroads within the limits of any incorporated city or village. [Laws 1919, ch. 193, § 3.]

Railroads, 33 Cyc. 315.

§ 4646a3. Penalties. Any person, company or corporation owning or operating any line of railroad within the state that refuses or neglects to comply with any of the provisions of this act shall be guilty of a misdemeanor, and every thirty days' continuance of such refusal or neglect shall constitute a separate and distinct violation of this law. Provided, that no prosecution or conviction under this act shall be construed to relieve such person, company or corporation from liability for the maiming or killing of live stock on such right of way by reason of their negligence or the negligence of their employees. [Laws 1919, ch. 193, § 4.]

Railroads, 33 Cyc. 377, 677, 1255.

ARTICLE 4.—LIABILITY OF RAILROADS FOR CAUSING FIRES.

§ 4654. Comp. Laws, 1913.

McGilvra v. Minneapolis St. P. & S. Ste. M. R. Co. 35 N. D. 275, 159 N. W. 854.

ARTICLE 5.—CATTLE GUARDS AT RAILROAD CROSSINGS.

§ 4655. This section is closely related to the matter in §§ 4646-4646a3, ante, and should be considered in connection with them. Much of the matter in it would seem to have been repealed thereby.

ARTICLE 6.—MAINTENANCE OF STATION HOUSES.

§ 4656. Comp. Laws, 1913.

Section does not authorize establishment of new station within 5 miles of another station established in this state. Aanrahl v. Great Northern R. Co. 41 N. D. 577, 171 N. W. 628.

ARTICLE 9a.—CLEANING OF CATTLE CARS.

§ 4665a1. **Duty of railroad company to clean and disinfect cars.** It shall be the duty of every person, firm, company or corporation operating a railroad within the state of North Dakota to cause every railroad car that has contained live stock destined to any railway terminal or market center to be thoroughly cleaned by removing all litter, manure or refuse from said car, and cause said car to be disinfected in such manner as may be now or hereafter be approved by the bureau of animal industry of the United States department of agriculture before being used for the transportation of live stock into this state. [Laws 1915, ch. 203, § 1.]

Carriers, 10 C. J. p. 88 § 94.

§ 4665a2. **Certificates.** Any car loaded with live stock in accordance with the provisions of Section 1 of this Act shall have a certificate attached to the shipping bill in substantially the following form: "This is to certify that Car No. this day loaded with live stock for transportation from to, by, the owners of said live stock, (or by the agent of said, owner) was disinfected and cleaned before said live stock was loaded therein, as prescribed by law.

Given under my hand this day of, 1919...

.....
Agent for
Railway,N. D."

A duplicate of said certificate shall also be posted in a conspicuous place on said car. The failure to furnish and post said certificates shall be presumptive evidence of a failure to comply with Section 1 of this Act. [Laws 1915, ch. 203, § 2.]

§ 4665a3. **Penalty.** Any railway company violating any of the provisions of this act by failing to disinfect and clean said car in the manner and at the time required herein, shall be guilty of a misdemeanor, and shall be fined in a sum not less than fifty (\$50.00) dollars and not more than five hundred (\$500.00) dollars. [Laws 1915, ch. 203, § 3.]

§ 4665a4. **Emergency.** Whereas, an emergency exists in the fact that there is no adequate provision of law for the disinfection and cleaning of railway cars used for the transportation of live stock into the state of North Dakota, this act shall take effect and be in force from and after its approval and passage. [Laws 1915, ch. 203, § 4.]

ARTICLE 9b.—STOCK YARDS.

§ 4665b1. **Erection and maintenance.** Every railroad company operating in the state of North Dakota shall, when ordered by the railroad commissioners, erect and maintain at all stations, stock yards for the loading of livestock to be shipped over their line, and shall provide said yards with enclosed and suitable sheds, feed racks, watering troughs and scales, and shall provide a supply of water, connected directly with such watering troughs in said yards. [Laws 1925, ch. 183, § 1; Laws 1915, ch. 204, § 1.]

Carriers, 10 C. J. pp. 79-80, §§ 81-82.

Duty of carrier to shipper as to condition of stock pens or yards. 15 A.L.R. 200.

Duty of carrier of live stock to provide stock yards. L.R.A.1918C, 539.

§ 4665b2. **Right to use.** No person shall use the railway company's stock yards for feeding or housing live stock when such live stock is not shipped or moved after receiving shipment within forty-eight hours without permission from the company. [Laws 1915, ch. 204, § 2.]

§ 4665b3. **Misdemeanor.** Any person or railroad company failing to comply with the provisions of section 1 and section 2 of this act shall be deemed guilty

of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00). [Laws 1915, ch. 204, § 3.]

ARTICLE 10a.—SAFETY OF EMPLOYEES AND TRAVELERS.

§ 4667a1. **Freight trains of over forty cars; how manned.** It shall be unlawful for any railroad company doing business in the state of North Dakota that operates more than four (4) trains in twenty-four (24) hours, to operate over any of its lines, or any part thereof outside of the yard limits, any freight or mixed trains consisting of more than forty (40) freight cars or other cars, exclusive of caboose and engine with less than a full train crew consisting of six (6) persons, to-wit: One (1) conductor, one (1) engineer, one (1) fireman, two (2) brakemen and one (1) flagman (such flagman to have at least one year's experience in train service). This section does not apply to any branch or part of road that does not operate more than four (4) trains in any twenty-four (24) consecutive hours. [Laws 1919, ch. 169, § 1.]

Railroads, 33 Cyc. 664.

Injunction against enforcement of full train-crew acts. 14 R. C. L. 435 and Supps.

§ 4667a2. **Freight trains of under forty cars; light engines; how manned.** It shall be unlawful for any railroad company doing business in the state of North Dakota that operates more than four (4) trains in any twenty-four (24) consecutive hours, to operate over any of its lines or any part thereof outside of the yard limits any freight or mixed trains consisting of less than forty (40) freight or other cars, exclusive of caboose and engine with less than full train crew consisting of five (5) persons, to wit: One (1) conductor, one (1) engineer, one (1) fireman, one (1) brakeman, and one (1) flagman (such flagman to have at least one year's experience in train service); provided, however, that a light engine may be manned by a crew consisting of not less than one (1) conductor, one (1) engineer, and one (1) fireman. [Laws 1919, ch. 169, § 2.]

Railroads, 33 Cyc. 664.

§ 4667a3. **Passenger trains of more than four cars; how manned.** It shall be unlawful for any railroad company doing business in the state of North Dakota that operates more than four (4) trains in any twenty-four (24) consecutive hours to operate over any of its lines or any part thereof outside of the yard limits, any passenger train consisting of more than four (4) passenger or other cars with less than a full train crew consisting of five persons, to-wit: One (1) conductor, one (1) engineer, one (1) fireman, one (1) brakeman and one (1) flagman (such flagman to have at least one year's experience in train service); provided that such conductor, flagman or brakeman will not be required to perform any of the duties of train baggage master, express messenger, porter or electrician. [Laws 1919, ch. 169, § 3.]

Railroads, 33 Cyc. 664.

§ 4667a4. **Penalties.** Any railroad company doing business in the state of North Dakota who shall send out on its road or cause or permit to be sent out or operated on its road, any train which is not manned in accordance with sections one, two and three of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, and such company shall be liable in treble damages for any sickness, injury, loss, disability or accident resulting from or caused by the violation of any of the provisions of this act; provided that nothing in this act shall apply to relief or wrecking trains when the required number of men are not available; and provided further that in case of an accident or sickness or other unavoidable happening to any mem-

ber of said crew by said train while en route that it shall not be construed as violation hereof or any of the provisions of this chapter to run said train to railroad division point with less than a full crew. [Laws 1919, ch. 169, § 4.]
Railroads, 33 Cyc. 677-685.

ARTICLE 11a.—SHELTER AND PROTECTION FOR EMPLOYEES.

§ 4669a1. **Duty to provide and maintain.** Every company, corporation, person or receiver engaged in repairing or constructing railway cars, trucks, locomotive engines or other railroad equipment, shall erect and maintain at every station or other point where five or more persons are regularly employed and engaged in such construction or repairing suitable buildings or sheds covering sufficient railroad track to accommodate all of the cars, trucks, locomotive engines or other railroad equipment at any time under construction or repair at that point, and to provide and insure shelter and protection from rain, snow or inclement weather to all of the men and women so employed and engaged in such construction or repair work. Provided, however, that the terms of this Act shall not apply to division terminals or other points where it is necessary to make light repairs only on cars, nor to any repair of cars loaded with time or perishable freight, nor to the repair of cars when trains are being held for the movement of said cars, nor to points where less than five persons are regularly employed in such repair service. [Laws 1919, ch. 172, § 1.]

§ 4669a2. **Time to provide shelter; penalties.** Any company, corporation, person or receiver violating the provisions of this act and failing to provide for the shelter and protection of its employes as required by the provisions of section 1, on or before the first day of October, 1920, shall be guilty of a misdemeanor and shall, on conviction thereof, be punished by a fine of not less than one hundred (\$100) dollars, nor more than five hundred (\$500) dollars for the first offense, and for each subsequent offense by a fine of not less than five hundred (\$500) dollars nor more than ten thousand (\$10,000) dollars, and shall pay in addition to the fine imposed the cost of prosecution. [Laws 1919, Sp. Sess. ch. 48, § 2; Laws 1919, ch. 172, § 2.]

ARTICLE 11b.—ENGINE CURTAINS.

§ 4669b1. **Duty to furnish.** It shall be unlawful for any railroad company to use within the state on its line or lines any locomotive engine not equipped with canvas curtains attached to back of cab and enclosing all opening between cab and tender of said engine. Said curtains to be of sufficient length to extend 18 inches below deck of cab. Side curtains to be fastened securely to back of cab, made to slide back to front end of tender and fastened thereto with hooks or other contrivances that engine men can easily unfasten, so that all openings at step are entirely enclosed.

Back curtains to be fastened to back of cab and sufficient length to reach over front end of tender so as to close any openings between side curtains and back curtains, so arranged as to slide back or roll up and may not be removed from locomotive.

Where open coal gates or boards are used on tender, a curtain shall be hung back of said coal gates or boards of sufficient width to cover openings at front of tender and reach to within 18 inches of floor of tender.

The front windows in cab, each side of cab, shall be equipped with "frost glass" in winter time; provided, however, that nothing in this act shall be so construed as to prohibit the passage of a locomotive engine not so equipped with suitable protecting curtains, moving under its own steam or electricity, either with or without a train, when such movement is from a point without this state through and to a point beyond its borders, or from a point without this state to a point within it, or from a point within this state to without it, if such pas-

sage is for the purpose of moving it to or from a repair shop or shops for the purpose of repairing such locomotive engine, and when it is not intended for service within this state. [Laws 1921, ch. 102, § 1.]

Railroads, 33 Cyc. 660.

Duty of railroads to provide proper equipment. 22 R. C. L. 901.

§ 4669b2. Time for providing. All new locomotive engines placed in service, after this act shall take effect, shall be equipped with protecting curtains or other equally protective devices. As to all locomotive engines not actually in service, nor assigned to or held for such service, within this state, at the time of passage of this act, it shall take effect on and after the first day of January, nineteen hundred and twenty-two. As to any locomotive engine or engines in actual service, or assigned to and held for such service, within this state, when this act shall take effect, the same may be continued in service until it is necessary to withdraw it or them for general heavy repairs; and every locomotive so withdrawn from service for general heavy repairs shall be properly equipped with such protecting curtains or other equally protective devices before it shall be returned to service. [Laws 1921, ch. 102, § 2.]

§ 4669b3. Penalties. Any railroad corporation failing to comply with the provisions of this act, or violating said act, shall upon conviction be fined in the sum of one hundred dollars (\$100.00) for each engine thus operated, without such appliances contrary to the provisions of this act. [Laws 1921, ch. 102, § 3.]

Railroads, 33 Cyc. 667-685.

ARTICLE 12.—SIZE AND CONSTRUCTION OF CABOOSE CARS.

§ 4671. When to take effect; how constructed. From and after the first day of January, 1924, it shall be unlawful, except as otherwise provided in this article for any such common carrier, by railroad, to use on its lines any caboose car or other car used for like purposes unless such caboose or other car shall be at least 24 feet in length, exclusive of platform, and equipped with two, four wheel trucks, the center sill of which car or caboose shall be constructed of steel, and said caboose car or other car shall be of constructive strength equal to that of the 30 ton capacity freight cars, constructed according to M. C. B. standards, and shall be provided with a door in each end thereof and an outside platform across each end of said car; each platform shall not be less than twenty-four inches in width and shall be equipped with proper guard rails, and with grab irons and steps for safety of the persons getting on and off said car. Said steps shall be equipped with a suitable rod, board or other guard at each end at the back thereof, properly designed to prevent slipping from said steps. [Laws 1921, ch. 100, § 1.]

Railroads, 33 Cyc. 660.

ARTICLE 13a.—PROHIBITING CHILDREN FROM TRESPASSING ON RAILROAD PROPERTY.

§ 4682a1. Approaching cars or engines. No person under fifteen years of age, unless accompanied by parent or guardian, not having business with the railroad company requiring him so to do, shall approach closer than ten feet to any engine, car, train or other rolling stock upon the tracks or in the yards, bridges or terminals of any railway company in this state. [Laws 1915, ch. 206, § 1.]

Railroads, 33 Cyc. 754.

Child trespassers on railroad property. 22 R. C. L. 916.

Railroad appliances and premises as attractive nuisances. 20 R. C. L. 90 and Supps.

§ 4682a2. Entering upon premises of railroads. No person under fifteen

years of age, unless accompanied by parent or guardian, shall enter any round house, shops, yards or bridges upon the railway tracks, the right-of-way or other places of danger owned by railway companies within the state unless such minor has business calling him to such places. [Laws 1915, ch. 206, § 2.]

Railroads, 33 Cyc. 754.

Duty to keep lookout for infant trespassers on track. 8 L.R.A.(N.S.) 1079.

Child trespassers on railroad property. 22 R. C. L. 916.

Railroad appliances and premises as attractive nuisance. 20 R. C. L. 90 and Supps.

§ 4682a3. Notices posted. Every railway company in this state shall post in conspicuous places upon its round houses, shops and other dangerous places suitable placards and signs warning trespassers under this act having no immediate business with such railway company to keep off their premises. [Laws 1915, ch. 206, § 3.]

Railroads, 33 Cyc. 761.

Posting signs warning trespassers as affecting liability of railroad company for injury to persons walking on track. 47 L.R.A.(N.S.) 506.

§ 4682a4. Agents; peace officers. The station agents of railway companies, while on duty in this state as such agents, are hereby invested with the authority of peace officers of this state. They may arrest such minors for playing or trespassing on the right-of-way or premises of such railway companies; such arrests, however, shall not be made by such agents unless the railway company has complied with the provisions of this act relating to the posting of notices, warnings, signs and placards. Agents acting as peace officers shall not receive any fee for arrests made according to the terms of this act. If any station agent makes arrests contrary to the provisions of this act, his principal, upon conviction thereof, shall be liable to the person arrested in damages for false imprisonment. [Laws 1915, ch. 206, § 4.]

Railroads, 33 Cyc. 819-822.

§ 4682a5. Proviso. Provided, nothing in this act shall be construed as diminishing in any way the liability of railroad companies in case of accident. [Laws 1915, ch. 206, § 5.]

§ 4682a6. Penalty. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one dollar nor more than five dollars. [Laws 1915, ch. 206, § 6.]

ARTICLE 15.—CROSSINGS.

§ 4686. Comp. Laws, 1913.

Felton v. Midland Continental R. Co. 32 N. D. 223, 155 N. W. 23; Rober v. Northern P. R. Co. 25 N. D. 394, 142 N. W. 22.

§ 4687. Comp. Laws, 1913.

As to failure to extend planking across full length of highway. Rober v. Northern P. R. Co. 25 N. D. 394, 142 N. W. 22.

See also Felton v. Midland Continental R. Co. 32 N. D. 223, 155 N. W. 23.

ARTICLE 15a.—SIGNS FOR RAILROAD CROSSINGS, STREET AND PUBLIC HIGHWAYS.

§ 4688a1. Meaning of terms. When the term "grade crossing" is used in this act it shall mean the intersection of a public highway and of the track or tracks of any railroad, however operated, on the same plane or level, except street railways within city or village limits. When the term "commission" is used in this act it shall mean the board of railway commissioners of the state of North Dakota. [Laws 1925, ch. 181, § 1.]

§ 4688a2. Uniform warning signs. The commission is hereby authorized

and required to adopt and prescribe uniform warning signs for use at grade crossings in this state which will furnish adequate warning of the existence and nature of such grade crossings and to make regulations as to the place of installation. There shall be at least three distinct types of such warning signs, to-wit: a home crossing sign, for use in the immediate vicinity of the crossing, and [an] approach crossing sign, to indicate the approach to a grade crossing, and a stop sign, which shall have the word "stop" plainly appearing thereon, to indicate the necessity to persons on the highway approaching the crossing, whether in vehicles or otherwise, to come to a stop before proceeding over the grade crossing, according to the provisions of this act. [Laws 1925, ch. 181, § 2.]

Railroads, 33 Cyc. 672, 942.

§ 4688a3. **Maintenance of signs; distance from crossings.** At each grade crossing in this state hereafter established and at each grade crossing where and when the existing crossing signs are replaced the railway company operating the railroad thereat shall erect and maintain on the highway on each side of the railroad track or tracks and within a distance of 75 feet from the nearest rail, one or more of such uniform home crossing signs. [Laws 1925, ch. 181, § 3.]

Railroads, 33 Cyc. 672, 942.

§ 4688a4. **Additional signs.** At each grade crossing where, because of the conditions surrounding the same, the reasonable protection to life and property makes it necessary for additional warning signs to be placed on the highway at a greater distance from the crossing than the home signs, such approach warning signs shall be installed. The commission is hereby authorized to designate any such grade crossings requiring such additional signs on either or both sides of said crossing. When any such crossing is designated by the commission as requiring such additional protection it shall notify the railway company operating the railroad thereat and the public authorities having the care of the highway. Such railway company shall, within 30 days after such notification, furnish such uniform signs to such public authorities, and such public authorities shall erect said signs in conspicuous places on said highway on either or both sides of such grade crossing, as the case may be, not less than 200 feet from said crossing and shall thereafter maintain the same. [Laws 1925, ch. 181, § 4.]

Railroads, 33 Cyc. 672, 942.

§ 4688a5. **Stop signs.** At each grade crossing where, because of the dangers attendant upon its use, the reasonable protection to life and property makes it necessary for all persons approaching the same to stop before crossing the railroad tracks thereat, such stop signs shall be installed. The commission is hereby authorized to designate any such crossing requiring such additional protection as a stop crossing, and shall notify the railway company operating the railroad thereat of such designation. Within 30 days after such notification it shall be the duty of such railway company to erect such uniform stop crossing signs in conspicuous places on each side of said crossing. [Laws 1925, ch. 181, § 5.]

Railroads, 33 Cyc. 672, 942.

§ 4688a6. **Duty to stop before crossing, when.** Whenever any vehicle carrying school children, explosives or inflammable liquids, or passengers for hire, or any trucks or any vehicle having in tow any other vehicle or equipment, or any vehicle of the tractor or caterpillar type, approaches any grade crossing, it shall be the duty of the driver thereof to bring the same to a complete stop before reaching the railroad track and before crossing said track to ascertain when such crossing can be made in safety. [Laws 1925, ch. 181, § 6.]

Railroads, 33 Cyc. 922-925.

Validity and construction of railroad stop statute. 2 A.L.R. 156.

Duty to stop before crossing railroad tracks. 22 R. C. L. 1033 and Supps.

§ 4688a7. Reducing speed at crossing. It shall be the duty of any person controlling the movement of any other vehicle than those mentioned in section 6 hereof, upon approaching any grade crossing to reduce the speed of such vehicle to a such a rate that it can be brought to a full stop in case of necessity before reaching the nearest rail of the railroad track and to cautiously proceed over said crossing at a speed not to exceed ten miles per hour. [Laws 1925, ch. 181, § 7.]

Railroads, 33 Cyc. 922-925.

Failure to stop, look, and listen at railroad crossing as negligence per se. 1 A.L.R. 203.

Duty of driver of automobile as to stopping, looking, and listening. 46 L.R.A. (N.S.) 702.

§ 4688a8. Investigation as to danger; notice of; appeal. The commission, upon written application made to it by the state highway commission, the board of county commissioners of any county, the board of supervisors of any township, or upon its own motion, shall investigate and determine whether any railroad grade crossing over any state, county or township highway in the state is dangerous to life and property and needs further protection than above set out, and may order the same protected in any manner it may find reasonable and proper, including requiring the railroad company to separate the grades. In such cases, the board of railway commissioners shall give the railroad company interested such notice of said investigation as it deems reasonable and an opportunity to be heard before any order is made. The railroad company interested may, within thirty days after the service of a copy of such order upon it, appeal to the district court of the county within which such crossing is situated. [Laws 1925, ch. 181, § 8; Laws 1923, ch. 272, §§ 1, 2.]

Board of Railway Commissioners may require abolition of existing grade crossings. North Dakota State Highway Comrs. v. Great Northern R. Co. — N. D. —, 200 N. W. 796.

Railroads, 33 Cyc. 288-299.

Power to compel railroad to establish or maintain overhead or underground crossing, as affected by fact that highway is opened subsequently to construction of railroad. 28 L.R.A.(N.S.) 298.

Power of municipality to require safety gates at crossing. 45 L.R.A.(N.S.) 946.

Delegation of power to make regulations as to safety gates. 32 L.R.A. (N.S.) 646.

Municipal corporation's power to require railroad to eliminate grade crossings. 35 A.L.R. 1322.

Employment of power of eminent domain to protect public by abolition of dangerous grade crossings. 10 R. C. L. 35 and Supps.

Abolition of grade crossing at expense of railroads. 22 R. C. L. 787 and Supps.

Power of municipality to require railroad to abolish grade crossings. 22 R. C. L. 796 and Supps.

§ 4688a9. Devices; uniformity in; approval; changing existing devices. It shall be the duty of the commission, so far as practicable, to secure uniformity in the devices used to protect grade crossings. No such devices shall be hereafter installed until the same have been approved by the commission. All such devices which are now in use or which may be hereafter installed, which, in the opinion of the commission, conflict with the devices approved by the commission, either in their design or method of operation, so as to create a hazardous condition to travel at such crossing, shall be immediately modified by the railway company controlling the same so as to conform to those approved by the commission. [Laws 1925, ch. 181, § 9.]

Railroads, 33 Cyc. 941-949.

Safety devices at grade crossings. 22 R. C. L. 790 and Supps.

§ 4688a10. Vacation or re-location of crossing. Whenever it is desired, either by the public officials having the necessary authority or by the railway company operating the railroad, to vacate or re-locate any crossings of a public

highway and a railroad, or separate grades, and an agreement cannot be reached between such public officials and the railway company, either as to the necessity for such vacation or re-location or separation of grades, as to the place, manner of construction, or a reasonable division of expense in the case of a re-location or separation of grades, either party may file a petition with the commission, setting forth the facts and submitting the matter to it for determination; whereupon the commission, after such notice as it shall deem reasonable, shall conduct a hearing and issue its order determining whether there should be a vacation or re-location of the crossing in question or a separation of grades, and dividing the expense of such vacation, re-location or separation of grades. [Laws 1925, ch. 181, § 10.]

Railroads, 33 Cyc. 288-299.

Changes in crossings. 22 R. C. L. 787 and Supps.

§ 4688a11. Abolition of crossing; apportionment of cost. The commission may require any railroad company to construct overhead and maintain underground crossings and separate grades when, in its opinion, the interests and safety of the public require, and apportion the cost therefor in such manner as the commission may deem proper, and no overhead or underground crossing, nor separation of grades, shall be made except upon petition therefor to the commission, and with the approval of the commission. [Laws 1925, ch. 181, § 11.]

Railroads, 33 Cyc. 288-299.

Power to compel railroad to establish or maintain overhead or underground crossing as affected by fact that highway is opened subsequently to construction of railroad. 28 L.R.A.(N.S.) 298.

Municipal corporation's power to require railroad to eliminate grade crossings. 35 A.L.R. 1322.

Apportionment of costs of abolishing grade crossings. 22 R. C. L. 788 and Supps.

Power of municipality to apportion cost of abolition of grade crossings. 22 R. C. L. 796 and Supps.

§ 4688a12. Advertising sign, etc., between approach sign and crossing prohibited; signs resembling warning signs prohibited. No person, firm or corporation shall place or maintain any advertising sign or other similar obstruction upon, over or adjacent to any highway between any such approach sign and the grade crossing which it marks, nor shall any person, firm or corporation place or maintain, upon, over or adjacent to any public highway in this state any sign or symbol in any manner resembling the signs provided for in this act. [Laws 1925, ch. 181, § 12.]

§ 4688a13. Maliciously injuring, defacing, etc. It shall be unlawful for any person to maliciously injure, remove, displace, deface or destroy any of the signs or signals provided for in this act. [Laws 1925, ch. 181, § 13.]

Malicious Mischief, 38 C. J. pp. 363-365, §§ 10-12.

§ 4688a14. Penalties. The violation of the duties imposed under sections 6 and 7 of this act shall not affect the right of any person to recover damages for an injury; provided such person was exercising due care at the time of such injury, but such person shall be liable to a fine of not to exceed ten dollars (\$10.00) for each such violation. [Laws 1925, ch. 181, § 14.]

Railroads, 33 Cyc. 984, 1116-1118.

ARTICLE 18.—RAILROADS, CLEARANCE OF OBSTRUCTIONS.

§ 4700. Comp. Laws, 1913.

Nonperformance by railroad, of duty imposed by this section, evidence of negligence. Clark v. Payne, 48 N. D. 911, 187 N. W. 817.

§ 4704. Comp. Laws, 1913.

Clark v. Payne, 48 N. D. 911, 187 N. W. 817.

ARTICLE 20.—COOPERAGE OF CARS.

§ 4707. Comp. Laws, 1913.

Common law duty imposed upon carriers to furnish cars reasonably coopered for purposes intended in intrastate shipment. *Williston Coal & Ice Co. v. Davis*, — N. D. —, 190 N. W. 776.

See also *Midway Co-op. Elev. Co. v. Great Northern R. Co.*: 41 N. D. 1, 169 N. W. 494.

ARTICLE 20a.—SHIPMENT OF CASES CONTAINING BOTTLES.

§ 4707a1. **Duty to label or tag.** That whenever unsealed cases containing bottles are received by common carriers to be transported from one place to another, such cases shall be marked with a label or tag, on which shall be distinctly written or printed, the name of the consignor and consignee. [Laws 1917, ch. 190, § 1.]

§ 4707a2. **Requirements of bill of lading and freight receipt.** That the bill of lading and freight receipt issued for such shipment, in addition to the other matter required by law to be stated, specify the number of bottles in such cases, and whether such bottles are full or empty. [Laws 1917, ch. 190, § 2.]

ARTICLE 21.—TO REGULATE COMMON CARRIERS AND DEFINE THE DUTIES OF THE COMMISSIONERS OF RAILROADS.

State ex rel. *Langer v. Northern P. R. Co.* 43 N. D. 556, 172 N. W. 324.

§§ 4713, 4715. Comp. Laws, 1913.

Aandahl v. Great Northern R. Co. 41 N. D. 577, 171 N. W. 628.

§ 4724. Comp. Laws, 1913.

Goldstein v. Northern P. R. Co. 37 N. D. 602, L.R.A.1918A, 612, 164 N. W. 143; *Minneapolis, St. P. & S. Ste. M. R. Co. v. Washburn Lignite Coal Co.* 40 N. D. 69, 12 A.L.R. 744, 168 N. W. 684.

§ 4725. Comp. Laws, 1913.

Goldstein v. Northern P. R. Co. 37 N. D. 602, L.R.A.1918A, 612, 164 N. W. 143; *Minneapolis, St. P. & S. S. M. R. Co. v. Washburn Lignite Coal Co.* 40 N. D. 69, 12 A.L.R. 744, 168 N. W. 684; *State ex rel. Langer v. Northern P. R. Co.* 43 N. D. 556, 172 N. W. 324.

§§ 4726, 4727. Comp. Laws, 1913.

Goldstein v. Northern P. R. Co. 37 N. D. 602, L.R.A.1918A, 612, 164 N. W. 143; *Minneapolis, St. P. & S. S. M. R. Co. v. Washburn Lignite Coal Co.* 40 N. D. 69, 12 A.L.R. 744, 168 N. W. 684.

§ 4731. Comp. Laws, 1913.

Validity of rate order of railroad commissioners in case of lack of proper board action. *State ex rel. Lemke v. Chicago & N. W. R. Co.* 46 N. D. 313, 179 N. W. 378.

§ 4732. Comp. Laws, 1913.

Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 N. D. 221, 152 N. W. 513; *State v. Chicago M. & St. P. R. Co.* 37 N. D. 98, 163 N. W. 730.

§ 4735. Comp. Laws, 1913.

Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

§ 4736. Repealed by § 4609c55, ante.

Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 N. D. 221, 152 N. W. 513.

§ 4741. Comp. Laws, 1913.

Validity of rate order in case of lack of proper board action. *State ex rel. Lemke v. Chicago & N. W. R. Co.* 46 N. D. 313, 179 N. W. 378.

§§ 4744, 4745. Comp. Laws, 1913.

Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 N. D. 221, 152 N. W. 513.

§ 4765a1. Duties of railroad companies as to elevators; how performed.

Whenever one or more elevator companies, having an elevator located at a railroad station in North Dakota, shall order, or ask, of such railroad company on whose line the elevator is located, any car or cars, into which to load and ship grain, over such company's road, such railroad company shall furnish and distribute cars to the several elevator companies, applying for cars proportionately on the basis of daily receipts, in the following manner: The elevator company receiving the greatest number of bushels daily, shall receive the first available car, the elevator company receiving the second largest number of bushels daily, the next available car and so on proportionately, provided, however, that if any elevator company shall receive more than twice the number of bushels daily than any other elevator company receives at such station, than the elevator company receiving the highest number of bushels shall be allotted two times as many cars as are allotted to such other elevator company and if any elevator company shall receive three times as many bushels than any other elevator company receives at such station then such elevator company shall be allotted three times as many cars as such other elevator company and in the distribution of cars to such elevator companies for the shipment of grain the railroad company shall apportion such cars in the manner herein stated according to the daily receipts of grain of each such elevator company.

[Laws 1917, ch. 192, § 1.]

Carriers, 10 C. J. p. 483, § 764.

Duty of carrier to furnish tank cars. 7 A.L.R. 143.

Right of carrier to discriminate in distribution of cars. L.R.A.1918D, 274.

State regulations requiring carriers to furnish cars to shippers as interference with interstate commerce. 42 L.R.A.(N.S.) 984.

General or statutory duty of railroad company to furnish cars to shippers. 44 L.R.A.(N.S.) 643.

Duty of carrier to furnish cars. 4 R. C. L. 673 and Supps.

Duty of carrier to furnish suitable cars. 4 R. C. L. 682, 683 and Supps.

Sufficiency of application for cars. 4 R. C. L. 679.

Obligation of carrier to furnish cars as effected by contract. 4 R. C. L. 677, 678 and Supps.

§ 4765a2. Request for cars by elevator company; penalty for refusal.

Any elevator company or agent of any elevator company that orders, or asks, a railroad company to furnish cars in which to ship grain shall if requested by the railroad company or the agent of the railroad company make a written statement showing the number of bushels the elevator company has received daily for the preceding ten days before such request is made and such elevator company or agent shall promptly sign and file such request with the railroad company in their local office at the station where such car or cars are required or at the place where such orders are usually received by the railroad company or agent thereof. Any elevator company or agent thereof, or other parties that make a false report so as to obtain more cars than such elevator company is entitled to under the provisions of this Act shall upon conviction thereof, be fined ten dollars for the first offense and for each other such offense twenty-five dollars and costs. Any railroad company or agent thereof when applications are made for cars in which to ship grain failing to furnish such cars to the several elevator companies according to the terms and provisions of this Act shall upon conviction thereof be fined five dollars for the first offense and twenty-five dollars for each subsequent offense thereafter, together with costs. Provided further that individuals when ordering cars in which to loan [load] and ship grain shall be entitled to the same privileges as the grain elevator companies in the distribution of cars, and individual shippers shall not be obliged to certify to the daily receipts but shall certify that the car or cars are ordered to ship his own grain in only. [Laws 1917, ch. 192, § 2.]

Carriers, 10 C. J. pp. 574-576. §§ 962-969.

Effect of interstate commerce act on damages for carrier's failure to furnish cars. 44 L.R.A.(N.S.) 649.

Liability for delay in furnishing cars during Federal control. 10 A.L.R. 974.

Shortage of cars as affecting liability of carrier for failure to furnish cars. 10 A.L.R. 342.

Excuse for failure of carrier to furnish cars. 4 R. C. L. 674, 918 and Supps.

Damages for refusal of carrier to furnish cars. 4 R. C. L. 933 and Supps.

Statutory liability of carrier for failure to furnish cars. 4 R. C. L. 675 and Supps.

§ 4767. Side tracks adjacent to coal mines. Whenever any person, owning or operating any coal mine within the state, from which not less than fifty cars of coal have been shipped from any one station over any portion of any railroad within the limits of the state shall petition any such railroad company to build a side track or spur at least three hundred feet in length adjacent to such mine, or for an extension of such side track or spur which is now in use, it shall then be the duty of such railroad company to build, equip and operate such side track or spur; provided, that such spur is not nearer than two miles from any station already in operation; provided, further, that any person opening a coal mine within two miles of any station may petition for a side track or spur, or for an extension of such side track or spur which is now in use, and by executing an indemnity bond in favor of such railroad company in the sum of two thousand dollars, conditioned on the agreement that such person will ship within one year after the completion of such spur or side track not less than one hundred car loads of coal and when such bond is duly executed with two sureties, approved by the county judge of the county wherein such side track is situated, such railroad company shall within sixty days build, equip, and operate such side track or spur as provided for in this section. And the commissioners of railroads shall have power to locate such side track or spur, or extension of such side track or spur which is now in use, and order it properly provided with platforms and other conveniences for loading coal and other commodities thereat. [Laws 1917, ch. 191, § 1.]

Railroads, 33 Cyc. 656.

Power to compel railroad to build, maintain, or connect with, side tracks for accommodation of shippers. L.R.A.1915E. 682; L.R.A.1918B, 795.

Right to recover damages because of abandonment or relocation of sidetrack. 23 A.L.R. 555.

Duty of railroad to operate spur track, sidings. 18 A.L.R. 722.

Obligation of carriers to furnish sidings or spurs. 4 R. C. L. 680 and Supps.

Duty of railroad companies to construct spur tracks. 22 R. C. L. 792 and Supps.

§ 4777. Construct "Y's." In all cases where any line of railroad shall parallel or terminate within one-half mile of any common point, cross or intersect any other line of railroad at grade in this state, it shall be the duty of each of the railroad companies owning or operating such parallel or intersecting railroad lines to provide at such parallel or crossing or intersection, suitable and sufficient transfer facilities, such as waiting rooms, and "Y's" or other tracks and connections for transferring cars and traffic of all kinds and classes or cars from one such line of railroad to another, and to maintain the same and afford equal and reasonable facilities for the exchange of cars and traffic between the respective lines. The expense of constructing and maintaining such transfer facilities to be borne equally by each of such railroad companies, or in such proportions as they may agree upon, or as may be determined by the board of railroad commissioners, on joint hearing. [Laws 1917, ch. 185, § 1.]

Railroads, 33 Cyc. 658.

Duty of railroad companies to make track connections with other railroads. 22 R. C. L. 793 and Supps.

§ 4781. Comp. Laws, 1913.

Maximum rates fixed by § 4781 held to be confiscatory and in violation of the

due process clause. *Northern P. R. Co. v. North Dakota ex rel. McCue*, 236 U. S. 585, 59 L. ed. 735, L.R.A.1917F, 1148, 35 Sup. Ct. Rep. 429.

See also *Minneapolis, St. P. & S. Ste. M. R. Co. v. Washburn Lignite Coal Co.* 40 N. D. 69, 12 A.L.R. 744, 168 N. W. 684; *State ex rel. McCue v. Northern P. R. Co.* 19 N. D. 45, 25 L.R.A.(N.S.) 1001, 120 N. W. 869; *Merrick Co. v. Minneapolis, St. P. & S. Ste. M. R. Co.* 35 N. D. 331, 160 N. W. 140.

ARTICLE 22.—RAILROADS TO MAINTAIN TELEPHONE CONNECTIONS.

§ 4784. Comp. Laws, 1913.

Great Northern R. Co. v. Shyenenne Teleph. Co. 27 N. D. 256, 145 N. W. 1062.

ARTICLE 24.—DAILY TRAINS; RECIPROCAL DEMURRAGE.

§§ 4789-4795. Comp. Laws, 1913.

As to right of appeal from decision of board of commissioners. *Re Minneapolis, St. P. & S. Ste. M. R. Co.* 30 N. D. 221, 152 N. W. 513.

ARTICLE 24a.—RAILROAD FREIGHT RATES GENERALLY.

§ 4795a1. **Unjust discrimination in railroad freight rates prohibited.** If any corporation shall charge, collect or receive for the transportation of freight of any description upon its railroad for any distance within this state, a greater amount of freight, toll or compensation than is at the same time charged, collected or received for the transportation of like quantity of freight of the same class over a greater distance of the same railway; or if it shall charge, collect or receive at any point upon its road a higher rate of freight, toll or compensation for receiving, handling or delivering freight of the same class and quantity than it shall at the same time charge, collect or receive at any point upon the same line of railway; or if it shall charge, collect or receive for the transportation of any freight of any description over its railway a greater amount as freight, toll or compensation than shall at the same time be charged, collected or received by it for the transportation of a like quantity of freight of the same class being transported over any portion of the same railway of equal distance; or if it shall charge, collect or receive from any person a higher or greater amount of freight, toll or compensation than it shall at the same time charge, collect or receive from any person for receiving, handling or delivering freight, of the same class and like quantity at the same point upon its railway; or if it shall charge, collect, or receive from any person for the transportation of any freight upon its railway a higher or greater rate of freight, toll or compensation, than it shall at the same time charge, collect or receive from any other person or persons for the transportation of the like quantity of freight of the same class being transported from the same point over equal distance of the same railway; or if it shall charge, collect or receive from any person for the use and transportation of any railway car or cars upon its railroad for any distance, a greater amount of freight, toll or compensation than [than] is at the same time charged, collected or received from any other person for the use and transportation of any railway car of the same class or number, for a like purpose, being transported over a greater distance of the same railroad; or if it shall charge, collect or receive from any person for the use and transportation of any railroad car or cars upon its railway a higher or greater compensation in the aggregate than it shall, at the same time, charge, collect or receive from any other person for the use and transportation of any railway car or cars of the same class for a like purpose, being transported from the same original point, over an equal distance of the same railway, such railway corporation shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful, and all such are hereby declared to be discriminating, unjust and unreasonable rates, charges, collections and receipts and all such discriminating rates, charges, collections or receipts, whether made directly

or by means of any rebate, draw-back or other shift or evasion, shall be received as prima facie evidence of the violation of the provisions of this act, and it shall not be sufficient excuse or justification thereof on the part of said railway corporation that the station or point at which it shall charge, collect or receive less compensation in the aggregate for the transportation of such freight or for the use and transportation of such railway car the greater distance than for the shorter distance, is a station or point at which there exists competition with another railway or other transportation lines provided, however, where two or more railroads run into a city or village, one having a shorter mileage than the other from a given point, the railroad commissioners may permit the railroad or railroads having a longer mileage to meet the rate made by the shortest line at such city or village. [Laws 1917, ch. 188, § 1.]

Carriers, 10 C. J. pp. 472-473, §§ 747-749, pp. 489-497, §§ 775-793, p. 503, § 812.
Effect of provisions of interstate commerce act against rebates upon contracts prescribing rates less than those established in accordance with act. 14 L.R.A. (N.S.) 400.

Right of carrier to grant rebate or allowance to shipper for use of latter's tracks. 26 L.R.A. (N.S.) 551.

Right to discriminate as to rates on material to be used for a purpose that is expected to increase carrier's business. L.R.A.1918A, 774.

Conspiracy to violate Interstate Commerce Act by giving and receiving rebates. 11 A.L.R. 199.

Right of railroad to discriminate in respect of switching charges. 2 A.L.R. 585.
Special services or facilities afforded by shipper as a factor in carrier's rates. 25 A.L.R. 191.

Discrimination as evidence of unreasonable rate. 4 R. C. L. 568.

Discrimination between carriers as to through rates. 4 R. C. L. 591.

Validity of discriminatory contracts inconsistent with published rates. 4 R. C. L. 603 and Supps.

§ 4795a2. Provisions of act not to exclude evidence and to apply to all railroads within the state. The provisions of this act shall not be construed so as to exclude other evidence than as herein provided, tending to show any unjust discrimination in freight rates and the provisions thereof shall apply to any railway, the branches thereof, and any road or roads which any railway corporation has a right, license or permission to use, operate or control within the state. [Laws 1917, ch. 188, § 2.]

Carriers, 10 C. J. p. 503, § 812.

§ 4795a3. Rates per 100 pounds, per ton, per car, etc., in like class, to be the same in proportion. No such railway company shall charge, collect, demand or receive more for transporting a car of freight than it at the same time charges, collects, demands or receives per car for several cars of a like class of freight over the same railway, for the same distance; nor charge, collect, demand or receive more for transporting a ton of freight than it charges, collects, demands or receives per ton for several tons of freight under a car-load of a like class over the same railway for the same distance; nor charge, collect, or demand or receive more for transporting a hundred pounds of freight than it charges, collects, demands or receives per hundred for several hundred pounds of freight, under a ton, of a like class, over the same railway, for the same distance; and all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, draw-back, or other shift or evasion shall be received as prima facie evidence of the violation of the provisions of this act. [Laws 1917, ch. 188, § 3.]

Carriers, 10 C. J. p. 492, § 778, p. 503, § 812.

§ 4795a4. Provisions to apply to transportation wholly within the state. The provisions of this act shall apply to the transportation of property wholly within this state and shall apply to all railroad corporations and common carriers engaged in this state in the transportation of property by railroad therein and

to the shipment of property made from any point within the state to any other point within the state over or upon any railroad therein. The term railroad and railway, as used in this chapter (§§ 4795a1-4795a11), shall include all bridges and ferries used or operated in connection with any railroad and also all the roads in use by any corporation, receiver, trustee, or other person operating a railroad owned or operated under contract, agreement, lease or otherwise; and the term transportation shall include all instrumentalities of shipment or carriages, and the term railway corporation shall mean all corporations, companies or individuals, owning or operating any railroad in whole or in part in this state; and the provisions of this chapter shall apply to all persons, firms and companies and to all associations of persons, whether incorporated or otherwise that shall do business as common carriers upon any line of railway in this state, street railways excepted, the same as to railroad corporations herein mentioned. Provided, that nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States, for this state, for municipal governments therein, or for charitable purposes or to and from fairs and expositions held under the authority of county or state or municipality therein for exhibition thereat. [Laws 1917, ch. 188, § 4.]
 Carriers, 10 C. J. p. 52, § 38, p. 58, § 43.

§ 4795a5. Powers of railroad commissioners not abridged. Nothing in this act (§§ 4795a1-4795a11) contained shall be construed as limiting or abridging the powers now vested by law in the board of railroad commissioners of the state of North Dakota, except that the said board of commissioners shall not have power to promulgate any rule or establish any rate or rates in conflict with or in violation of the provisions of this act, and nothing in this act shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions thereof are in addition to such remedies. [Laws 1917, ch. 188, § 5.]
 Carriers, 10 C. J. pp. 52-54, §§ 39-41, p. 473, § 748, pp. 501-508, §§ 806-822, p. 569, § 949.

§ 4795a6. Commission empowered to make a schedule of reasonable maximum rates for each railroad. The board of railroad commissioners of this state is hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads and said power to make schedules shall include the classification of such rates and it shall be the duty of said commission to make such classification and said schedules so made by said commission shall, in all suits brought against any such railroad corporation wherein is in any way involved the charges of any such railroad corporation for the transportation of any freight or cars or unjust discrimination in relation thereto, be deemed and taken in all courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates of charges. [Laws 1917, ch. 188, § 6.]
 Carriers, 10 C. J. pp. 406-409, §§ 627-630, p. 426, § 666.
 Rate regulation by railroad commission. 4 R. C. L. 620 et seq. and Supps.

§ 4795a7. Classification of railroads as to gross earnings. The board of railroad commissioners shall have and are hereby given and vested with power and it shall be their duty to classify all railroads in this state according to the gross amount of their several annual earnings, within this state, per mile for the preceding year as follows:
 "Class A shall include those whose annual earnings per mile shall be four thousand dollars (\$4,000.00) or more."
 "Class B shall include those whose gross annual earnings per mile shall be three thousand dollars (\$3,000.00) or any sum in excess thereof less than four thousand dollars (\$4,000.00)."
 "Class C shall include those whose gross annual earnings per mile shall be

less than three thousand dollars (\$3,000.00) and shall have power to and may fix a higher maximum charge by the railroad corporations included in class C than those included in class B and a higher maximum charge by the railroad corporations included in class B, than those included in class A." [Laws 1917, ch. 188, § 7.]

Carriers, 10 C. J. p. 418, § 642.

Power to classify railroads for rate regulation. 4 R. C. L. 611.

§ 4795a8. Shipments of freight over two or more lines to be made under reasonable rates. When shipments of freight to be transported between different points within the state are required by two or more railway companies operating connecting lines, such railway company shall transport the same at reasonable through rates not greater than the maximum rates allowed by law and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road. [Laws 1917, ch. 188, § 8.]

Carriers, 10 C. J. p. 422, § 652, p. 428, § 688, p. 472, § 747, p. 480, § 762, p. 493, § 783.

§ 4795a9. Entry of judgment for fines and costs. Judgment for fines and costs shall be entered in the same manner as in civil cases, and shall be enforced in like manner. [Laws 1917, ch. 188, § 9.]

Fines, Forfeitures and Penalties, 25 C. J. p. 1175, § 63; Carriers, 10 C. J. p. 567, § 946, p. 595, § 1015.

§ 4795a10. Penalty for violation; attorney fees. Any person or corporation guilty of violating the provisions of this act shall upon conviction thereof be punished by a fine of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00) for the first offense and for each subsequent offense not less than five thousand dollars (\$5,000.00) nor more than ten thousand dollars (\$10,000.00) and shall pay in addition to said fine so imposed the costs of prosecution. In addition to the penalties and cost provided for in this chapter, the court shall allow in any action brought under the provisions of this chapter, a reasonable attorney's fee, to be assessed as part of the costs of said action, which attorney's fee, so assessed, shall go to the attorney general or state's attorney who conducted the prosecution, and shall be retained by such attorney general or state's attorney as additional compensation to that otherwise allowed by the laws of this state as such attorney general's or states attorney's salary. [Laws 1917, ch. 188, § 10.]

Fines, Forfeitures and Penalties, 25 C. J. p. 1175, § 64; Carriers, 10 C. J. pp. 566-567, §§ 945-946.

§ 4795a11. Prosecution may be made by the attorney general and by states attorney in any county where violation occurred. Prosecution shall be made by the attorney general and states attorney in the county where violation occurred, under any provision of this act, in any county of the state through or into which the line of any railway so offending against the provisions of this act may extend, it shall be and hereby is made the duty of the attorney general of the state and also of the states attorney of any such county to appear therein and conduct the prosecution, the attorney general shall conduct the prosecution, and shall be assisted by the states attorney, if so requested by the attorney general. If in any case the attorney general refuses to prosecute, upon request to do so by the states attorney then the states attorney may proceed without the consent of the attorney general. [Laws 1917, ch. 188, § 11.]

Fines, Forfeitures and Penalties, 25 C. J. p. 1174, § 59; Carriers, 10 C. J. pp. 566-567, §§ 945-946.

Is shipper's common-law right of action for discrimination by carrier taken away by statute on the subject. 45 L.R.A.(N.S.) 612.

Right of attorney general or other representative of state to maintain action to enforce or prevent violation of statutory regulations affecting rates. 18 L.R.A.(N.S.) 664.

§ 4795b1. Applicability. The provisions of this act (§§ 4795b1-4795b13, shall apply to every railroad operated as a common carrier of freight in the state of North Dakota and to the transportation of property over lines wholly within this state from any point therein to any other point therein over any railroad. The term railway and railroad as used in this act shall include all bridges and ferries used or operated in connection with any railroad within the state and also the railroads within the state used by any corporation, receiver, trustee, director, administrator or other person or association operating a railroad in the state under contract agreement, license, lease or otherwise; and the term railway corporation shall mean all corporations, companies, associations or individuals owning or operating any railroads in whole or in part in this state; and the term transportation shall include all acts and instrumentalities of shipment of carriage. The provisions of this act shall also apply to all persons, firms, companies and associations whether incorporated or otherwise that shall do business as common carrier of freight upon any line or lines of railway in this state. Provided, that nothing in this act shall be held or construed to prohibit the transportation, storage or handling of property within the state for nothing or at reduced rates for the United States or for North Dakota or any of the municipal corporations therein or to the transportation to and from any fair or exposition held under the authority of the state of North Dakota, or by any county or municipality therein for exhibition purposes. And, provided further, that the maximum rates fixed by the provisions of this Act shall not apply to any railroad in this state classified by order of the board of railroad commissioners of North Dakota as a class "C" railroad, under the terms of chapter 188 of the Laws of North Dakota for the year 1917 (§ 4795a1-4795a11, ante), except, and to the extent that said rates are applied to such railroad by order of said board of railroad commissioners. [Laws 1919, ch. 194, § 1.]

Carriers, 10 C. J. pp. 52-58, §§ 38-43, p. 406, § 627, p. 413, §§ 635-636.

§ 4795b2. Application of rates to different classes and commodities. In the application of the maximum rates and charges, for the transportation of freight within this state as fixed by the provisions of this act (§§ 4795b1-4795b13), to the different classes and commodities defined, or named in this act, western classification No. 55, with amendments thereto, now on file in the office of the board of railroad commissioners of the state of North Dakota, shall govern, except as to those commodities that are specifically named in section 4 of this act and classified as constituting for the purposes of this legislation, eleventh (11th) class, twelfth (12th) class, thirteenth (13th) class, fourteenth (14th) class, fifteenth (15th) class, sixteenth (16th) class, seventeenth (17th) class, eighteenth (18th) class, nineteenth (19th) class, twentieth (20th) class, and all merchandise and commodities, not specifically named in section 4 of this act and otherwise classified therein, shall for all purposes of this act when transported or offered or received for transportation, on any and all railroads in this state, from one point to another over lines wholly within the state, be classified and transported as first class (1), second class (2), third class (3), fourth class (4), fifth class (5), class A, class B, class C, class D, or class E freight, according to the listings, descriptions, regulations, rules, rating, maximum weights and classification of and in the so-called western classification with amendments now in force in the state of North Dakota, and known as western classification No. 55 (I. C. C. No. 13), and shall be subject to the reasonable maximum rates and charges for such transportation as are established under section 3 of this act for the carriage intra-state of such classes of freight by common carriers. [Laws 1919, ch. 194, § 2.]

Carriers, 10 C. J. p. 421, § 650.

§ 4795b3. Maximum rates for intrastate transportation. The following are hereby established and declared to be the reasonable maximum rates to be charged by railroad companies as common carriers of property in the state of

North Dakota for the transportation over lines wholly within the State of the merchandise and commodities (excepting only those commodities that are specifically named and otherwise classified in section four (4) of this act), listed in and belonging to the classes named in western classification No. 55 on file in the office of the board of railroad commissioners of North Dakota, between stations in the state of North Dakota for the distance named in the following schedule of

CLASS RATES IN CENTS PER 100 POUNDS

Distance	1st Class	2nd Class	3rd Class	4th Class	5th Class	Class A	Class B	Class C	Class D	Class E
5 Miles....	12	10	8	6	4.8	5.4	4.2	3.6	3	2.4
10 Miles....	13	10.8	8.6	6.5	5.2	5.8	4.5	3.9	3.2	2.6
15 Miles....	14	11.6	9.3	7	5.6	6.3	4.9	4.2	3.5	2.8
20 Miles....	14.9	12.4	10	7.5	6	6.7	5.2	4.5	3.7	3
25 Miles....	15.9	13.3	10.6	8	6.4	7.2	5.6	4.8	4	3.2
30 Miles....	16.9	14.1	11.3	8.4	6.8	7.6	5.9	5.1	4.2	3.4
35 Miles....	17.9	14.9	11.9	8.9	7.1	8	6.3	5.3	4.5	3.6
40 Miles....	18.9	15.7	12.6	9.4	7.5	8.5	6.7	5.7	4.7	3.8
45 Miles....	19.8	16.5	13.2	9.9	7.9	8.9	6.9	5.9	5	4
50 Miles....	20.8	17.3	13.9	10.4	8.3	9.4	7.3	6.2	5.2	4.2
55 Miles....	21.8	18.2	14.5	10.9	8.7	9.8	7.6	6.5	5.4	4.4
60 Miles....	22.8	19	15.2	11.4	9.1	10.2	8	6.8	5.7	4.6
65 Miles....	23.8	19.8	15.8	11.9	9.5	10.7	8.3	7.1	5.9	4.7
70 Miles....	24.7	20.6	16.5	12.4	9.9	11.1	8.7	7.4	6.2	4.9
75 Miles....	25.7	21.4	17.1	12.9	10.3	11.6	9	7.7	6.4	5.1
80 Miles....	26.7	22.2	18.4	13.3	10.7	12	9.3	8	6.7	5.3
85 Miles....	27.7	23.1	18.8	13.8	11.1	12.5	9.7	8.3	6.9	5.5
90 Miles....	28.7	23.9	19.1	14.3	11.5	12.9	10	8.6	7.2	5.7
95 Miles....	29.6	24.7	19.8	14.8	11.9	13.3	10.4	8.9	7.4	5.9
100 Miles....	30.6	25.5	20.4	15.3	12.2	13.8	10.7	9.2	7.7	6.1
105 Miles....	31.6	26.3	21.1	15.8	12.6	14.2	11.1	9.5	7.9	6.3
110 Miles....	32.6	27.2	21.7	16.3	13	14.7	11.4	9.8	8.1	6.5
115 Miles....	33.6	28	22.4	16.8	13.4	15.1	11.7	10.1	8.4	6.7
120 Miles....	34.5	28.8	23	17.3	13.8	15.5	12.1	10.4	8.6	6.9
125 Miles....	35.5	29.6	23.7	17.8	14.2	16	12.4	10.7	8.9	7.1
130 Miles....	36.5	30.4	24.3	18.2	14.6	16.4	12.8	10.9	9.1	7.3
135 Miles....	37.5	31.2	25	18.7	15	16.9	13.1	11.2	9.4	7.5
140 Miles....	38.5	32	25.6	19.2	15.4	17.3	13.5	11.5	9.6	7.7
145 Miles....	39.4	32.9	26.3	19.7	15.8	17.7	13.8	11.8	9.9	7.9
150 Miles....	40.4	33.7	26.9	20.2	16.2	18.2	14.1	12.1	10.1	8.1
155 Miles....	41.4	34.5	27.6	20.7	16.6	18.6	14.5	12.4	10.3	8.3
160 Miles....	42.4	35.3	28.2	21.2	16.9	19.1	14.8	12.7	10.6	8.5
165 Miles....	43.4	36.1	28.9	21.7	17.3	19.5	15.2	13	10.8	8.7
170 Miles....	44.3	36.9	29.6	22.2	17.7	19.9	15.5	13.3	11.1	8.9
175 Miles....	45.3	37.8	30.2	22.7	18.1	20.4	15.9	13.6	11.3	9.1
180 Miles....	46.3	38.6	30.9	23.1	18.5	20.8	16.2	13.9	11.6	9.3
185 Miles....	47.3	39.4	31.5	23.6	18.9	21.3	16.5	14.2	11.8	9.5
190 Miles....	48.3	40.2	32.2	24.1	19.3	21.7	16.9	14.5	12.1	9.6
195 Miles....	49.2	41	32.8	24.6	19.7	22.2	17.2	14.8	12.3	9.8
200 Miles....	50.2	41.8	33.5	25.1	20.1	22.6	17.6	15.1	12.6	10
210 Miles....	51.2	42.7	34.1	25.6	20.5	23	17.9	15.4	12.8	10.2
220 Miles....	52.2	43.5	34.8	26.1	20.9	23.5	18.3	15.6	13	10.4
230 Miles....	53.2	44.3	35.4	26.6	21.3	23.9	18.6	15.9	13.3	10.6
240 Miles....	54.1	45.1	36.1	27.1	21.7	24.4	18.9	16.2	13.5	10.8
250 Miles....	55.1	45.9	36.7	27.6	22	24.8	19.3	16.5	13.8	11
260 Miles....	56.1	46.7	37.4	28	22.4	25.2	19.6	16.8	14	11.2
270 Miles....	57.1	47.6	38	28.5	22.8	25.7	20	17.1	14.3	11.4
280 Miles....	58.1	48.4	38.7	29	23.2	26.1	20.3	17.4	14.5	11.6
290 Miles....	59	49.2	39.4	29.5	23.6	26.6	20.7	17.7	14.8	11.8
300 Miles....	60	50	40	30	24	27	21	18	15	12
310 Miles....	61	50.8	40.7	30.5	24.4	27.4	21.3	18.3	15.2	12.2
320 Miles....	62	51.6	41.3	31	24.8	27.9	21.7	18.6	15.5	12.4
330 Miles....	63	52.5	42	31.5	25.2	28.3	22	18.9	15.7	12.6
340 Miles....	63.9	53.3	42.6	32	25.6	28.8	22.4	19.2	16	12.8

Distance	1st Class	2nd Class	3rd Class	4th Class	5th Class	Class A	Class B	Class C	Class D	Class E
350 Miles....	64.9	54.1	43.3	32.5	26	29.2	22.7	19.5	16.2	13
360 Miles....	65.9	54.9	43.9	32.9	26.4	29.7	23.1	19.8	16.5	13.2
370 Miles....	66.9	55.7	44.6	33.4	26.7	30.1	23.4	20.1	16.7	13.4
380 Miles....	67.9	56.5	45.2	33.9	27.1	30.5	23.7	20.4	17	13.6
390 Miles....	68.8	57.4	45.9	34.4	27.5	31	24.2	20.6	17.2	13.8
400 Miles....	69.8	58.2	46.5	34.9	27.9	31.3	24.4	20.9	17.5	14

[Laws 1919, ch. 194, § 3.]

Carriers, 10 C. J. p. 421, § 650.

§ 4795b4. Classification of commodities. For the purpose of this act the commodities hereunder named are classified as follows: Flax seed, broom corn seed, hemp seed, millet seed, pop corn, castor beans, and hungarian seed shall constitute the eleventh (11th) class; wheat, corn, rye, oats, barley, alfalfa feed, alfalfa meal, wheat flour, corn flour, corn meal, gluten meal, bran, grain screenings, hominy feed, Kaffir corn, linseed cake, linseed meal, middlings, shorts, sorghum seed, speltz, wild mustard seed, oat groats, rolled oats, oat dust, oat hulls, oat meal, rolled rye, rye flour, malt, pearl barley, and all uncooked grain or cereal products shall constitute the twelfth (12th) class; potatoes and sugar, cane or beet, shall constitute the thirteenth (13th) class; lumber, lath, shingles, lime, cement, plaster, stucco, sash doors, baseboards, blinds, blocks, lath, poles, shavings, shingles, ties, fence posts, vats, boxes, barrels and crates, shall constitute the fourteenth (14th) class; sheep, hogs and goats, (when carried in double deck cars) and cattle and calves, shall constitute the fifteenth (15th) class; horses, hogs, sheep and goats when carried in single deck cars and mixed carloads of cattle or calves with sheep or hogs or both shall constitute the sixteenth (16th) class; sugar beets, wet beet pulp and lime refuse shall constitute the seventeenth (17th) class; hard coal, coke, coke and coal dust shall constitute the eighteenth (18th) class; soft coal, sand, gravel and common brick shall constitute the nineteenth (19th) class; lignite coal and lignite briquettes shall constitute the twentieth (20th) class. [Laws 1919, ch. 194, § 4.]

Carriers, 10 C. J. p. 421, § 650.

§ 4795b5. Maximum rates for intrastate transportation. The following are hereby established and declared to be the reasonable maximum rates to be charged by railway companies as common carriers of property in the state of North Dakota for the transportation over lines wholly within the State in carload lots of the commodities listed in and belonging to the classes named in section 4 of this act, between stations in the state of North Dakota for the distance named in the following schedule:

Distance in Miles	11th Class rate in cents per 100 pounds	12th Class rate in cents per 100 pounds	13th Class rate in cents per 100 pounds	14th Class rate in cents per 100 pounds	15th Class rate in cents per 100 pounds	16th Class rate in cents per 100 pounds	17th Class rate in cents per 100 pounds	18th Class rate in dollars and cents per ton, 2000 pounds	19th Class rate in dollars and cents per ton, 2000 pounds	20th Class rate in dollars and cents per ton, 2000 pounds
5	4.6	4.2	4.1	4	5.5	6.0	2.3	.54	.48	.48
10	4.9	4.3	4.2	4.1	6.0	6.5	2.4	.62	.50	.50
15	5.0	4.4	4.3	4.2	6.5	7.0	2.5	.63	.51	.50
20	5.1	4.5	4.4	4.3	7.1	7.5	2.6	.65	.52	.50
25	5.2	4.6	4.5	4.4	7.5	8.0	2.7	.69	.54	.50
30	5.3	4.7	4.6	4.6	7.9	8.5	2.8	.70	.57	.50
35	5.4	4.8	4.8	4.8	8.3	9.0	2.9	.72	.58	.55
40	5.6	4.9	5.0	5.0	8.7	9.5	3.0	.74	.59	.57
45	5.7	5.0	5.3	5.2	9.1	10.0	3.2	.75	.61	.57
50	5.8	5.1	5.6	5.3	9.4	10.5	3.3	.77	.62	.59

Distance in Miles	11th Class rate in cents per 100 pounds	12th Class rate in cents per 100 pounds	13th Class rate in cents per 100 pounds	14th Class rate in cents per 100 pounds	15th Class rate in cents per 100 pounds	16th Class rate in cents per 100 pounds	17th Class rate in cents per 100 pounds	18th Class rate in dollars and cents per ton, 2000 pounds	19th Class rate in dollars and cents per ton, 2000 pounds	20th Class rate in dollars and cents per ton, 2000 pounds
55	5.9	5.2	5.9	5.5	9.7	10.7	3.5	.81	.64	.59
60	6.1	5.4	6.3	5.6	9.9	10.9	3.6	.83	.65	.60
65	6.3	5.5	6.7	5.7	10.1	11.1	3.7	.85	.69	.60
70	6.5	5.8	7.1	5.8	10.3	11.3	3.9	.87	.70	.62
75	6.7	6.0	7.5	6.0	10.5	11.5	4.0	.89	.72	.63
80	7.0	6.2	7.9	6.1	10.7	11.8	4.1	.93	.74	.65
85	7.2	6.3	8.3	6.3	10.9	12.1	4.3	.95	.75	.67
90	7.4	6.5	8.7	6.4	11.1	12.3	4.4	.97	.77	.70
95	7.6	6.7	9.1	6.5	11.3	12.5	4.5	.99	.80	.73
100	7.8	7.0	9.5	6.6	11.5	12.7	4.6	1.01	.82	.75
105	7.9	7.0	9.8	6.8	11.7	13.0	4.8	1.04	.83	.76
110	8.1	7.0	10.0	6.9	11.9	13.2	4.9	1.06	.84	.77
115	8.2	7.2	10.2	7.0	12.1	13.4	5.0	1.07	.85	.78
120	8.2	7.2	10.5	7.1	12.3	13.6	5.1	1.08	.86	.79
125	8.3	7.3	10.7	7.2	12.5	13.8	5.2	1.10	.87	.80
130	8.4	7.4	10.9	7.3	12.7	14.0	5.3	1.11	.88	.82
135	8.5	7.4	11.1	7.4	12.9	14.2	5.4	1.12	.92	.83
140	8.5	7.5	11.3	7.5	13.1	14.4	5.5	1.16	.93	.85
145	8.6	7.6	11.5	7.6	13.3	14.6	5.6	1.17	.94	.86
150	8.7	7.6	11.7	7.7	13.5	14.8	5.7	1.19	.95	.88
155	8.8	7.7	11.9	7.8	13.7	15.0	5.8	1.20	.96	.89
160	8.8	7.8	12.1	8.0	13.8	15.2	6.0	1.22	.98	.91
165	9.0	7.9	12.3	8.1	14.0	15.4	6.1	1.24	1.00	.92
170	9.0	7.9	12.4	8.2	14.2	15.6	6.2	1.29	1.01	.94
175	9.1	8.1	12.5	8.3	14.3	15.8	6.3	1.31	1.05	.95
180	9.1	8.1	12.6	8.4	14.5	16.0	6.4	1.33	1.07	.96
185	9.3	8.2	12.7	8.5	14.7	16.2	6.5	1.35	1.09	.97
190	9.4	8.3	12.8	8.6	14.8	16.3	6.6	1.37	1.10	.98
195	9.5	8.3	12.9	8.7	14.9	16.4	6.7	1.42	1.12	.99
200	9.6	8.4	13.0	8.8	15.0	16.5	6.8	1.44	1.16	1.00
210	9.7	8.5	13.2	9.0	15.2	16.8	7.1	1.48	1.19	1.02
220	9.8	8.6	13.4	9.2	15.4	17.0	7.2	1.54	1.22	1.04
230	9.9	8.7	13.6	9.3	15.6	17.2	7.3	1.58	1.28	1.06
240	10.0	8.8	13.8	9.5	15.8	17.4	7.5	1.63	1.31	1.08
250	10.2	8.9	14.0	9.7	16.0	17.6	7.7	1.68	1.34	1.10
260	10.3	9.1	14.1	9.8	16.2	17.9	7.8	1.72	1.37	1.12
270	10.5	9.3	14.3	10.0	16.4	18.2	8.0	1.78	1.42	1.14
280	10.6	9.4	14.4	10.2	16.6	18.5	8.2	1.82	1.46	1.16
290	10.8	9.5	14.6	10.3	16.8	18.8	8.3	1.87	1.49	1.18
300	10.9	9.6	14.7	10.5	17.0	19.0	8.5	1.92	1.54	1.20
310	11.0	9.7	14.8	10.6	17.2	19.2	8.7	1.94	1.56	1.22
320	11.1	9.8	15.0	10.8	17.4	19.4	8.8	1.96	1.57	1.24
330	11.2	9.9	15.3	11.0	17.6	19.6	9.0	1.99	1.59	1.26
340	11.3	9.9	15.6	11.1	17.8	19.8	9.2	2.02	1.60	1.28
350	11.4	10.0	15.8	11.3	18.0	20.0	9.3	2.04	1.63	1.30
360	11.5	10.1	16.1	11.5	18.2	20.2	9.4	2.06	1.66	1.32
370	11.7	10.2	16.4	11.6	18.4	20.4	9.5	2.08	1.67	1.34
380	11.8	10.3	16.7	11.8	18.6	20.6	9.7	2.11	1.69	1.36
390	11.9	10.5	17.0	12.0	18.8	20.8	9.8	2.13	1.70	1.38
400	12.0	10.6	17.2	12.1	19.0	21.0	10.1	2.16	1.72	1.40

Provided, however, that the reasonable maximum rate to be charged for the transportation intra-state of stock or feeding cattle in carload lots from either Fargo, North Dakota, or Grand Forks, North Dakota, to any other station in North Dakota will be seventy-five per cent of the rate on cattle provided for in the foregoing schedule. [Laws 1919, ch. 194, § 5.]

Carriers, 10 C. J. p. 420, § 647, p. 492, § 778.

§ 4795b6. **Computing distance carried.** When the exact distance which freight is transported is not shown by the foregoing schedules, the carrier shall charge the rate specified in the schedule for the next nearest distance shown. [Laws 1919, ch. 194, § 6.]

§ 4795b7. **Carload lots; what constitute within act.** In order to constitute a carload within the meaning of this Act (§§ 4795b1-4795b13) and for the application of the rates specified in section 5 thereof (§ 4795b5, ante), the minimum weight of the commodity constituting such carload shall be twenty-four thousand pounds for the commodities listed in the eleventh (11th) and twelfth (12th) classes; thirty thousand pounds for the commodities listed in the thirteenth (13th) class; twenty thousand pounds for all of the commodities listed in the fourteenth (14th) class, except lime, cement, plaster and stucco on which the minimum weight to be applied shall be forty thousand pounds; twenty-two thousand pounds for commodities listed in the fifteenth (15th) class; seventeen thousand pounds for hogs; twelve thousand pounds for sheep and goats; twenty-two thousand pounds for horses and mixed carloads of commodities listed in the sixteenth (16th) class; thirty-six thousand pounds on commodities listed in the seventeenth (17th) class; and forty thousand pounds for the commodities listed in the eighteenth (18th), nineteenth (19th) and twentieth (20th) classes. [Laws 1919, ch. 194, § 7.]

§ 4795b8. **Connecting lines; joint rates.** When it is necessary or possible for the transportation of freight by railroad over the shortest railroad route, from one point in North Dakota to another point in North Dakota over lines wholly within the state, for the shipment to move over lines of two or more connecting railroads, reasonable through joint rates which shall not exceed eighty-five per cent of the sum of the local rates for shipments in less than carload lots, nor seventy-eight per cent of the sum of the local rates for shipments in carload lots, shall be made, published and collected by the railroads participating in the haul, and the maximum rate that may be lawfully asked, received or collected by any such connecting railroad for the part or portion of the haul made and the service rendered by it as a common carrier in such transportation shall not, when the shipment is in less than carload lots, exceed eighty-five per cent of the maximum rate fixed by this act for the transportation for an equal distance of the same class of freight in less than carload lots, and shall not, when the shipment is by carload, exceed seventy-eight per cent of the maximum rate fixed by this act for the transportation for an equal distance of the same class of freight in carload lots: Provided, however, that it shall be lawful for such connecting carriers to add to such joint rates for shipments in less than carload lots the actual drayage charge paid at transfer points when such drayage charges are published in their regular tariff sheets and filed with the approval of the board of railroad commissioners of North Dakota, and, provided, further, that the joint rates required to be published and observed under this section shall not apply to traffic passing over two lines, one of which handles the shipment on a switching rate approved by the board of railroad commissioners, and, provided, further, that the minimum charge under this section shall in no case be less than twenty-five (25) cents for the entire movement. And, provided further, that this Act shall not affect the duty of any railroad company, nor the powers of the board of railroad commissioners as set forth in sections 4777, 4778, 4779 and 4780 of the Compiled Laws of North Dakota, 1913. [Laws 1919, ch. 194, § 8.]

Carriers, 10 C. J. p. 428, § 668, p. 443, § 697.

§ 4795b9. **Overcharge prohibited.** No railroad company which is a common carrier of property within the state of North Dakota shall charge, take or receive any greater sum for carrying over its lines wholly within this state between stations therein any merchandise or property, or any of the commodities classified or named in this act, than the respective amounts set forth

and provided in sections 3 and 5 of this act (§§ 4795b1-4795b13) for the respective distances named in said sections 3 and 5 respectively, and no railroad companies shall take or receive for carrying over their lines wholly within the state from one point to another within the state in making a joint haul over lines of more than one railroad, of any merchandise or commodity, more than the maximum joint rates provided for in section 8 of this act. [Laws 1919, ch. 194, § 9.]

Carriers, 10 C. J. p. 433, §§ 676-677, pp. 449-456, §§ 708-720.

Who may maintain action to recover back excessive freight charges. 13 A.L.R. 289.

Right of state to recover excess rates or charges exacted of individuals by carriers. L.R.A.1916C, 336.

Recovery back of excessive freight paid. 18 L.R.A.(N.S.) 124.

§ 4795b10. Power of commissioners to increase rates. This act (§§ 4795b1-4795b13), shall not in any manner affect the power or authority of the board of railroad commissioners of North Dakota, except that the said board of railroad commissioners shall not have the power by rule, order or regulation to fix or authorize any railroad company to charge or receive higher rates for the transportation of merchandise or commodities herein mentioned over any railroad in this state, than the maximum rates herein prescribed until and unless the railroad company asking to have such rate or rates over its line or lines fixed higher than the maximum rate or rates herein declared to be reasonable, produces the evidence and shows in a proceeding brought for that purpose and pending before said board, first, the original cost and date of acquisition of the right of way and all terminals of said railroad in North Dakota, second, the cost of construction of all the lines of said railroads and all the railroad terminals and improvements thereon in North Dakota; third, the complete schedule of all of the property of said railroad on which it pays taxes in the state of North Dakota, and the cost and value thereof; fourth, that the rates which it petitions to have raised higher than the maximum rate herein prescribed are unreasonable and confiscatory; fifth, the original general books of account of said railroad company giving the details of its profit and loss account, its legal departments' expenditures and disbursements, all of its general officers' salary and expense accounts and the details thereof, and any other book paper, voucher or account which the said board of railroad commissioners shall ask to have produced as evidence at such hearing. And until such railroad company produces before said board in such proceeding the proof above specified and required to be shown and establishes by competent testimony that the rates herein prescribed and sought to be modified and raised by such proceedings are unreasonable or confiscatory, and until an order is made on such showing and proof that the rates attacked in such hearing are unreasonable or confiscatory, and are modified by said board fixing higher rates, such rates as herein fixed shall be the exclusive legal maximum rates for the transportation of the merchandise or commodities between the points to which such rates apply. [Laws 1919, ch. 194, § 10.]

Member of board of commissioners must read evidence to yield assent to order increasing rates, although he attended hearing. State ex rel. Lemke v. Chicago & N. W. R. Co. 46 N. D. 313, 179 N. W. 378.

Carriers, 10 C. J. p. 41, § 54, pp. 406-409, §§ 626-630, pp. 434-438, §§ 678-687, p. 440, § 690.

Power of legislature to delegate to commissions the right to fix rates. 18 L.R.A.(N.S.) 713.

Rate regulation by railroad commission. 4 R. C. L. 62 et seq. and Supps.

§ 4795b11. Adoption of rates. Every railroad company transacting the business of a common carrier within this state shall adopt and publish and put into effect rates not exceeding the charges specified herein for the transportation by it between stations upon its line of road in this state of the com-

modities named in this act; and every officer, director, traffic manager or agent or employee of such railroad company, exercising any authority or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by such railroad company of rates not exceeding those specified in this act. [Laws 1919, ch. 194, § 11.]

Carriers, 10 C. J. p. 432, § 673.

§ 4795b12. Penalties. Any person or corporation guilty of violating the provisions of this act shall upon conviction thereof be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense and for each subsequent offense not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) and shall pay in addition to said fine so imposed the costs of prosecution. [Laws 1919, ch. 194, § 12.]

Carriers, 10 C. J. pp. 569-572, §§ 948-954, p. 593, §§ 1008-1009, p. 595, § 1013.

§ 4795b13. Balance of act not affected by holding any part unconstitutional. Should the courts declare any section, clause or item of this act invalid or unconstitutional, such decision shall affect only the section, clause or item so declared to be invalid or unconstitutional, and shall not affect any other section, clause or item of this act. [Laws 1919, ch. 194, § 13.]

Partial unconstitutionality of statutes. 6 R. C. L. 121 et seq. and Supps.

ARTICLE 24b.—SPECIAL FREIGHT RATES.

§ 4795c1. Authority for special rates given. The board of railroad commissioners shall have the power to order, authorize and permit any railroad, railroad corporation or common carrier to publish, apply and charge in connection with the transportation of commodities from or to certain points within the state, different rates, classifications, rules and regulations than are published, applied and charged in connection with the same commodities from or to other points within the state. This chapter shall apply to rates, classifications, rules and regulations in connection with one or more common carriers either singly or jointly. [Laws 1925, ch. 182, § 1.]

Carriers, 10 C. J. pp. 472-473, §§ 747-748, pp. 406-409, §§ 627-630.

Contract for transportation in violation of particular statutes. 12 L.R.A.(N.S.) 609.

Contracts fixing rates other than those established in accordance with interstate commerce act. 38 L.R.A.(N.S.) 351.

Contract to maintain special rate to a particular locality. 38 L.R.A.(N.S.) 157.

Rate regulation by railroad commission. 4 R. C. L. 620 et seq. and Supps.

§ 4795c2. Notice of proposed change. Provided, however, before any existing rate as contemplated by this act is changed, or new rate established, reasonable notice shall be given by the board of railroad commissioners to the carrier or carriers affected, to the public and any industries liable to be affected, and to the people of the communities in which such industries are located and reasonable time and opportunity shall be given all such interests to appear and present facts bearing upon the propriety of making any proposed change or establishing any new rate. [Laws 1925, ch. 182, § 2.]

Carriers, 10 C. J. p. 440, § 690.

ARTICLE 25.—MAXIMUM TRANSPORTATION RATES.

§§ 4796-4798. Comp. Laws, 1913.

Requirement that railroad issue mileage books, invalid as violation of due process clause of Federal Constitution. State ex rel. McCue v. Great Northern R. Co. 17 N. D. 370, 116 N. W. 89.

ARTICLE 25a.—MAXIMUM LIGNITE RATES.

§ 4798a1. Maximum rates. All railroad companies doing business as com-

mon carriers within the state of North Dakota shall charge for the transportation in carload lots with the state of North Dakota of lignite not more per ton of two thousand pounds than the following rates, to-wit: [Laws 1925, ch. 180, § 1.]

Carriers, 10 C. J. p. 421, § 650.

§ 4798a2. **Confined to transportation of lignite.** The rates herein fixed and established shall apply only to the transportation of lignite, and shall in no manner be construed as applying to rates to be charged for the transportation of coal within the state of North Dakota.

Distances	Rates in cents per Ton of 2,000 lbs.	
	For Application on single line hauls.	For Application on hauls over two or more lines
30 miles and under	\$.61	.73
40 miles and over 30	.61	.85
50 miles and over 40	.73	.97
60 miles and over 50	.73	.97
70 miles and over 60	.73	.97
80 miles and over 70	.85	1.09
90 miles and over 80	.97	1.09
100 miles and over 90	.97	1.22
110 miles and over 100	.97	1.22
120 miles and over 110	1.09	1.22
130 miles and over 120	1.09	1.22
140 miles and over 130	1.09	1.34
150 miles and over 140	1.22	1.34
160 miles and over 150	1.22	1.34
170 miles and over 160	1.22	1.46
180 miles and over 170	1.34	1.58
190 miles and over 180	1.34	1.58
200 miles and over 190	1.34	1.70
210 miles and over 200	1.46	1.70
220 miles and over 210	1.46	1.70
230 miles and over 220	1.58	1.82
240 miles and over 230	1.58	1.82
250 miles and over 240	1.70	1.82
260 miles and over 250	1.70	1.94
270 miles and over 260	1.70	1.94
280 miles and over 270	1.82	1.94
290 miles and over 280	1.82	2.07
300 miles and over 290	1.82	2.07
310 miles and over 300	1.94	2.07
320 miles and over 310	1.94	2.07
330 miles and over 320	1.94	2.19
340 miles and over 330	2.07	2.19
350 miles and over 340	2.07	2.19
360 miles and over 350	2.07	2.19
370 miles and over 360	2.19	2.31
380 miles and over 370	2.19	2.31
390 miles and over 380	2.19	2.31
400 miles and over 390	2.19	2.31

[Laws 1925, ch. 180, § 2.]

Carriers, 10 C. J. p. 421, § 650.

§ 4798a3. **Joint rates.** Joint rates shall be based on continuous mileage via shortest available routes where there are track connections. [Laws 1925, ch. 180, § 3.]

Carriers, 10 C. J. p. 428, § 668.

§ 4798a4. **Penalty for failure to comply with act.** Any railroad company violating any of the provisions of this act shall be subject to a fine of not less than twenty-five dollars per day for each and every day during which such violation shall continue, to be recovered by any person prejudiced or suffering loss or damage by such violation. [Laws 1925, ch. 180, § 4.]

Carriers, 10 C. J. pp. 569-572, §§ 948-954; Fines, Forfeitures and Penalties, 25 C. J. pp. 1118-1189, §§ 97-99.

§ 4798a5. Duty of attorney general. It shall be the duty of the attorney general or of the state's attorney of any county in which an action arises against any railroad company for a violation of any of the provisions of this act, upon demand of the board of railroad commissioners, to commence and prosecute all actions necessary for the enforcement of the provisions of this act. [Laws 1925, ch. 180, § 5.]

Carriers, 10 C. J. p. 571, § 953; Fines, Forfeitures and Penalties, 25 C. J. p. 1188, § 97.

ARTICLE 26a.—CARRIAGE OF SICK.

§ 4800a1. Equipping train for. Every person, company, corporation or receiver thereof, operating any railroad within this state for the carriage of persons, shall when required by order of the board of railroad commissioners to equip, maintain and use upon one train each day, in each direction, a suitable compartment made by curtains or otherwise, for the carriage of sick and injured persons. Such compartment shall be entirely enclosed by curtains or otherwise from the rest of the car in which the same is located. Such railroad companies shall provide and carry on trains, one good heavy mattress, at least 8 inches thick, of proper width to fit inside of seats. That arrangements be made to remove the back of one seat thereby making room for one mattress. That these seats arranged to receive such mattress be enclosed with curtains for carriage of sick. Provided, however, that this act shall not apply to roads upon which a train equipped with a compartment or sleeping car is operated each way, each day.

Provided further, that with the approval of the board of railroad commissioners, a charge in addition to the regular passenger rate may be made for the use of such room. [Laws 1921, ch. 101, § 1.]

Carriers, 10 C. J. p. 59, § 44, p. 644, § 1064, p. 649, § 1069.

Insanity of passenger. 12 A.L.R. 242.

Right of carrier to reject persons having contagious disease. 4 L.R.A.(N.S.) 103.

Duty of carrier to accept as passenger one physically or mentally disabled. L.R.A.1915E, 788.

Liability of carrier for contraction of contagious disease by passenger. 36 L.R.A.(N.S.) 337.

Liability of carrier for forcing sick passenger out of car and onto platform. 16 A.L.R. 197.

Duty to assist infirm or sick passenger. 48 L.R.A.(N.S.) 821.

Duty of carrier to blind passenger. 38 L.R.A.(N.S.) 564.

Duty of carrier to passenger taken ill during journey. 31 L.R.A.(N.S.) 813.

Ejection of sick passenger. L.R.A.1915C, 134.

Duty of carriers to furnish proper accommodations. 4 R. C. L. 1074 et seq. and Supps.

§ 4800a2. Penalty. Any person or corporation violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) for each offense. [Laws 1921, ch. 101, § 2.]

Carriers, 10 C. J. p. 649, § 1069.

ARTICLE 26b.—PROTECTION OF PERSONS ACCOMPANYING LIVESTOCK SHIPMENTS.

§ 4800b1. Sleeper for caretaker. It shall be the duty of every person, firm, company or corporation operating a railroad within this state, and every assignee, lessee or receiver of such railroad company, to attach to every stock freight train, carrying twenty-five or more cars of livestock, and generally known as a stock freight train, and to keep attached thereto, while operating within this state, a good and sufficient sleeping car for the accommodation and protec-

tion of the person or persons accompanying such live stock. [Laws 1917, ch. 187, § 1.]

Carriers, 10 C. J. p. 59, § 44.

Duty of carrier to caretaker accompanying shipment of live stock. 31 L.R.A. (N.S.) 632.

Right of conductor to waive conditions in stock drover's pass. 27 L.R.A.(N.S.) 646.

Drover or stockman using car after reaching destination as passenger. 30 L.R.A.(N.S.) 571.

Liability for injury to caretaker resulting from condition of stock pens or yards. 15 A.L.R. 211.

Duty of carriers to furnish proper accommodations. 4 R. C. L. 1074 et seq. and Supps.

§ 4800b2. Penalty. Any person, firm, corporation, violating the provisions of this act shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars. [Laws 1917, ch. 187, § 2.]

Carriers, 10 C. J. p. 593, § 1008, p. 574, § 962.

ARTICLE 27a.—SEMI-MONTHLY PAY.

§ 4802a1. Semi-monthly payments. All railroad corporations doing business within this state are required to pay their employees at least semi-monthly, the wages earned by them within fifteen (15) days of the date of such payment, unless prevented by inevitable casualty. Provided, however, that whenever an employee shall be discharged, his wages shall be paid to him at the time of his discharge or whenever he shall demand the same thereafter. [Laws 1917, ch. 189, § 1.]

Master and Servant, 26 Cyc. 1027; Constitutional Law, 12 C. J. p. 967, § 531.

Constitutionality of statute regulating time of payment of wages. 51 L.R.A. (N.S.) 1097; 12 A.L.R. 612; 26 A.L.R. 1396.

State statutes, relating to time of payment of wages as interference with interstate commerce. 52 L.R.A.(N.S.) 268.

§ 4802a2. Penalty for failure to make payment. Whenever any railroad corporation shall for seven days neglect or refuse to pay its employees as prescribed by section 1 of this act, the wages due them may be recovered by action without further demand, and there shall be allowed to the plaintiff and included in his judgment, in addition to his costs and disbursements allowed by law five dollars if the judgment be recovered in a justice court, and a like sum if the judgment be recovered in a municipal court where no statutory costs are now allowed in such municipal court in such action and double costs in all other courts on appeal. [Laws 1917, ch. 189, § 2.]

Master and Servant, 26 Cyc. 1027.

ARTICLE 28a.—EMPLOYERS' LIABILITY.

§ 4803a1. Liability for injury or death. Every common carrier by steam railroad, while engaged in commerce to which the regulative powers of the state extends under the Constitution of the United States, and of the state of North Dakota, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or in case of the death of such employee, to his or her personal representative for the benefit of the surviving widow, or husband, or children of such employee, and if none, then to the next of kin dependent upon such employee, if such injury or death resulting in the whole or in part from the negligence of any officers, agents, or employees of such carrier, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, road-bed, works, boats, wharves, or other equipment. [Laws 1915, ch. 207, § 1.]

Application of state or Federal act, immaterial, where evidence is conflicting

as to whether plaintiff was engaged in interstate commerce. *Bailey v. Davis*, — N. D. —, 193 N. W. 658.

One struck by car, while cleaning ice and snow from railroad crossing used in transportation of interstate and intrastate commerce, engaged in interstate commerce. *Kennelly v. Northern P. R. Co.* 48 N. D. 685, 186 N. W. 548.

Master failing to provide skids for piling ties, guilty of negligence. *Karas v. McAdoo*, 46 N. D. 344, 179 N. W. 710.

Injury must result in whole or in part from negligence of employer, or by reason of defect or insufficiency in machinery. *Froelich v. Northern P. R. Co.* 42 N. D. 550, 173 N. W. 822.

Negligence, basis of liability. *Wingen v. Minneapolis, St. P. & S. Ste. M. R. Co.* 42 N. D. 517, 173 N. W. 832.

See also *Vanevery v. Minneapolis, St. P. & S. Ste. M. R. Co.* 41 N. D. 599, 171 N. W. 610.

Master and Servant, 26 Cyc. 1076-1079, 1121-1133, 1360-1361, 1369-1378; Death, 17 C. J. p. 1201, § 51, p. 1210, § 58, pp. 1240-1242, §§ 89-92.

What constitutes a defect in the ways of a railroad company within employers' liability acts. 19 L.R.A.(N.S.) 738.

Effect of employers' liability acts on master's duty to furnish safe appliances when prepared by fellow servants. 4 L.R.A.(N.S.) 229.

Effect of employers' liability acts on common law action. 12 L.R.A.(N.S.) 1038.

Scaffolding, ladders, etc., as ways, works, etc., within the meaning of employers' liability acts. L.R.A.1915F, 1036.

Duty under employers' liability acts of owner to servants of contractor or of principal contractor to servants of sub-contractor as to conditions of place or appliance. L.R.A.1917D, 991.

Injured employee's right to reach fund under employers' liability acts. 7 L.R.A.(N.S.) 958.

Who may raise question that employers' liability act involves unconstitutional discrimination. 32 L.R.A.(N.S.) 958.

Retroactive effect of statutes relating to employers' liability for injuries to servants. 44 L.R.A.(N.S.) 841.

Railroad employees contemplated by state employers' liability statutes. 18 R. C. L. 848.

§ 4803a2. Contributory negligence; effect. In all actions hereafter brought against any such common carrier by a steam railroad under or by virtue of any of the provisions of this act to recover damages for personal injuries to any employee, or where such injuries have resulted in his death, the fact that the employee had been guilty of contributory negligence, shall not bar a recovery; but the damages shall be diminished by the jury in proportion to the amount of negligence attributed to such employee. Provided, that no such employee who may be injured or killed, shall be held to have been guilty of contributory negligence in any case where the violation of such common carrier of any state or Federal statute enacted for the safety of employees, contributed to the injury or death of such employee. [Laws 1915, ch. 207, § 2.]

Master and Servant, 26 Cyc. 1229-1231, 1246, 1458; Damages, 17 C. J. p. 930, § 230; Death, 17 C. J. pp. 1240-1242, §§ 89-92.

Burden of proving contributory negligence under employers' liability acts. 33 L.R.A.(N.S.) 1218.

Diminution of damages by proof of contributory negligence. 18 R. C. L. 828 and Supps.

Abolition of defense of contributory negligence in Employers' Liability Acts. 18 R. C. L. 638 and Supps.

§ 4803a3. Assumption of risk. In any action brought against any common carrier under or by virtue of any of the provisions of this act to recover damages for injuries to, or death of any of its employees, such employee shall not be held to have assumed the risk of his employment, in any case where the violation by such common carrier of any state or Federal statute enacted for

the safety of employees, contributed to the injury or death of such employees. [Laws 1915, ch. 207, § 3.]

Master and Servant, 26 Cyc. 1180.

Abolition of assumptions of risk in Employers' Liability Acts. 18 R. C. L. 682.

Assumption of risk. 18 R. C. L. 830 and Supps.

§ 4803a4. Contract exempting from liability void. Any contract, rule, regulation, or device whatsoever the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act, shall, to that extent, be void. Provided, that in any action brought against such common carrier, under or by virtue of any of the provisions of this act, such common carrier may set off therein, any sum it has contributed or paid to any insurance relief benefit or indemnity that may have been paid to the injured employee or to the person entitled thereto on account of the injury or death, for which said action was brought. [Laws 1915, ch. 207, § 4.]

Master and Servant, 26 Cyc. 1094; Damages, 17 C. J. p. 928, § 227.

Contracts for exemption from liability. 18 R. C. L. 831 and Supps.

§ 4803a5. Limitation of actions. No action shall be maintained under this act, unless commenced within two years from the date the cause of action accrued. [Laws 1915, ch. 207, § 5.]

Limitations of Actions, 37 C. J. p. 774, § 112.

Limitation of actions under Employers' Liability Acts. 18 R. C. L. 859 and Supps.

§ 4803a6. Receivers included as carriers. The term common carrier as used in this act, shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier. [Laws 1915, ch. 207, § 6.]

Receivers, 34 Cyc. 410.

§ 4803a7. Survival of right of action. Any right of action given by this act to a person suffering injury shall survive to his or her person represented for the benefit of the surviving widow or husband and children of such employee, and if none, then to such employee's parents, and if none, then to the next of kin dependent upon such employee; but in such case, there shall be only one recovery for the same injury. [Laws 1915, ch. 207, § 7.]

Abatement and Revival, 1 C. J. p. 200, § 373.

Survival of employee's right of action. 18 R. C. L. 840 and Supps.

ARTICLE 29.—FELLOW SERVANT AND CONTRIBUTORY NEGLIGENCE ACT.

§ 4804. Comp. Laws, 1913.

Section is constitutional when applied to railroad employee, injured through negligence of fellow servant, while unloading freight from a car, which is to be sent out immediately in same or different train. *Gunn v. Minneapolis, St. P. & S. Ste. M. R. Co.* 34 N. D. 418, 158 N. W. 1004.

Constitutionality of section, upheld. *Peterson v. Fargo-Moorhead Street R. Co.* 37 N. D. 440, 164 N. W. 42.

See also *Kanable v. Great Northern R. Co.* 45 N. D. 619, 178 N. W. 999.

§ 4805. Comp. Laws, 1913.

Negligence of street railway company, in maintaining switch in loose and imperfect condition question for jury. Contributory negligence of servant in operating car, question for jury. *Peterson v. Fargo-Moorhead Street R. Co.* 37 N. D. 440, 164 N. W. 42.

See also *Bauer v. Great Northern R. Co.* 40 N. D. 542, 169 N. W. 84; *York v. General Utilities Corp.* 41 N. D. 137, 170 N. W. 312; *Kanable v. Great Northern R. Co.* 45 N. D. 619, 178 N. W. 999.

§§ 4806, 4807. Comp. Laws, 1913.

Kanable v. Great Northern R. Co. 45 N. D. 619, 178 N. W. 999.

ARTICLE 30.—MISCELLANEOUS.

§§ 4810, 4811. Comp. Laws, 1913.

McLane v. Scofield, — N. D. —, 191 N. W. 842.

CHAPTER 14A.

EXTENSION OF STREET CAR LINE.

Explanatory note. This article (§§ 4811a1-4811a3) was repealed by Laws 1919, ch. 207 (§ 4811a4, post).

§ 4811a1. **Extension of state street car line.** In connection with the erection and construction of public buildings at the capitol and for the purpose of transferring locomotive engines, freight cars and other cars, fuel, building material and workmen and employees of the state of North Dakota. The state board of control is hereby empowered and authorized to extend the present state street car line from its present terminus near the McKenzie hotel to the center of Tenth street, hence north to the boulevard, thence west to the center of Ninth street, and again north on the grade to the capitol. [Laws 1919, ch. 207, § 1.]

Explanatory note. The above section was repealed by § 4811a4, post.

§ 4811a2. **Utilizing convict labor.** The state board of control shall utilize the labor of the convicts in the state penitentiary not otherwise employed according to law, and it is hereby made the duty of the warden of said penitentiary, whenever requested by said board, to place any and all available convicts of proper character and condition that he may have in his charge, with proper guards and attendants therefor, at the disposal of said board to be used in performing the labor required in extending said street car line. They shall also make necessary arrangements with the city officials of Bismarek, and officials of the Soo Railway Company by which said street car line may be extended and connected with the Soo Railroad for the purpose of transferring locomotive engines, freight and other cars thereon. [Laws 1919, ch. 207, § 2.]

Explanatory note. The above section was repealed by § 4811a4, post.

Constitutional objections to convict labor contracts. L.R.A.1916D, 660.

Ordinance against convict labor in streets. 39 L.R.A. 680.

Power to compel prisoner to labor. 27 L.R.A. 593.

Compelling prisoner to labor as cruel and unusual punishment. L.R.A.1915C, 562.

Right to compel prisoners to labor. 21 R. C. L. 1176.

§ 4811a3. **Appropriation.** For the purpose of carrying out the provisions of this act, the sum of \$40,000 or so much thereof as may be necessary is hereby appropriated from the interests and income of the Capitol building fund not otherwise appropriated. [Laws 1919, ch. 207, § 3.]

Explanatory note. The above section was repealed by § 4811a4, post.

§ 4811a4. Chapter 207 of the Session Laws of North Dakota for the year 1919 (§§ 4811a1-4811a3, ante) is hereby repealed. [Laws 1919, Sp. Sess. ch. 57, § 1.]

CHAPTER 15A.

TELEPHONE COMPANIES, PLACING UNDER CONTROL OF RAILROAD COMMISSIONERS.

§ 4812a1. **Telephone company defined.** The words, "telephone company," as used in this act, shall embrace all persons, firms, corporations or other or-

ganizations engaged in the business of furnishing means of communication by telephone, within the state of North Dakota. [Laws 1915, ch. 209, § 1.]

Telegraphs and Telephones, 37 Cyc. 1607.

§ 4812a2. Telephone companies declared to be common carriers. All persons, firms, corporations and other organizations engaged in the business of furnishing means of communication by telephone, within this state, are hereby declared to be common carriers, and the board of railroad commissioners of this state is hereby given general supervision of such common carriers. [Laws 1915, ch. 209, § 2.]

Telegraphs and Telephones, 37 Cyc. 1611.

Business of telephone company as affected with public interest subjecting them to regulation and control as to rates. 6 L.R.A.(N.S.) 835.

Right of telephone company to require patron to pay for installing or transferring instruments. 30 L.R.A.(N.S.) 1088.

Telephone companies as common carriers. 26 R. C. L. 487 and Supps.

§ 4812a3. Schedules of rates to be filed with the commission. The commission shall have power to require every such telephone company, within such times as it shall fix and in such form and detail as it may require, to file with said commission schedules showing all rates and charges which are established and in effect at the time, for any service rendered to the public by such telephone company within this state, and also to file with and as a part of every such schedule all rules and regulations that in any manner affect the rates charged or to be charged for such service, and such telephone company shall not thereafter make any changes in said schedules, rates or charges other than those named in said schedule, without first securing the consent of the commission. [Laws 1915, ch. 209, § 3.]

Telegraphs and Telephones, 37 Cyc. 1630.

Power of municipality apart from contract to regulate rates to be charged by telephone company. 43 L.R.A.(N.S.) 994.

Return to which telephone company is entitled. 31 A.L.R. 825.

Incorporation of territory into municipality as affecting existing contract as to telephone rates in that territory. L.R.A.1916A, 1071.

Construction of franchise or statute as respects rates and service of telephone company. 14 A.L.R.1385.

§ 4812a4. Schedule of rates to be on file for public inspection. The commission may require any telephone company to keep on file and accessible to the public, at any city, village or town in which the telephone company has an office, a schedule of such rates and charges as the commission may deem necessary. [Laws 1915, ch. 209, § 4.]

§ 4812a5. Hearing for change in schedule of rates or inadequacy of service. Whenever any telephone company, municipality, or twenty-five (25) patrons of a telephone company within any municipality or territory contiguous thereto, shall make complaint to the commission of the unreasonableness or inadequacy of any rate or charge, or inadequacy of service rendered by such telephone company, the commission shall fix a date for a hearing and give reasonable notice thereof to the parties interested and after such hearing had, shall fix a reasonable rate or schedule of rates, or order such telephone company to furnish and maintain such service as its patronage may warrant. [Laws 1915, ch. 209, § 5.]

Telegraphs and Telephones, 37 Cyc. 1629-1630, 1655.

Change in rates of telephone companies. 26 R. C. L. 541 and Supps.

§ 4812a6. Discrimination unlawful. It shall be unlawful for any telephone company to make or give any undue or unreasonable preference or advantage to any person, firm or corporation, or to subject any person, firm or corporation to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public, or charge or receive for any such service rendered, more or

less than the rates, tolls and charges provided for in the schedules then on file with the board of railroad commissioners, provided, that nothing in this act shall be construed to prevent any telephone company from furnishing free telephone service, or service at reduced rates to its officers, agents, servants or employees. [Laws 1915, ch. 209, § 6.]

Telegraphs and Telephones, 37 Cyc. 1652-1655.

Discrimination by requiring payment of rental in advance. 30 L.R.A.(N.S.) 315.

Right of telephone company to discriminate as to rates. 36 L.R.A.(N.S.) 561.
Giving of free service or reduced rates to governmental agencies, cities, schools, charities, etc., as an unlawful discrimination. L.R.A.1918D. 904.

Franchise provisions for free or reduced rates as within constitutional or statutory provisions prohibiting discrimination. 10 A.L.R. 504, 15 A.L.R. 1200.

Discrimination as to rates by telephone companies. 26 R. C. L. 545 and Supps.

§ 4812a7. The board of railroad commissioners may require accounts to be filed and prescribed forms of books to be used. The commission may require telephone companies to keep and render to said commission in the manner and form prescribed by it, uniform and true accounts of all business transacted, said commission may also prescribe the forms of all books, accounts and records required to be kept by telephone companies, and each telephone company shall keep and render its books, accounts and records accurately and faithfully in the manner and form prescribed by the commission, and shall comply with all directions of the commission relating to such books, accounts and records. All such books, accounts and records required to be kept and rendered to the commission, and all books, accounts and records which the commission shall require to be kept by such telephone company, shall conform as nearly as possible to similar forms prescribed by the Interstate Commerce Commission. Whenever the commission shall have prescribed forms of any books, accounts and records, no telephone company shall keep any other books, accounts and records of its business than those prescribed or approved by the commission or prescribed by the laws of the United States, except auxiliary and explanatory accounts and records. The commission shall cause to be prepared suitable blanks for all reports required to be rendered to it, and shall furnish such blanks to each of said telephone companies. [Laws 1915, ch. 209, § 7.]

Telegraphs and Telephones, 37 Cyc. 1629.

§ 4812a8. Value of properties may be determined. The commission shall have power to investigate and determine the value of all the property used or useful by such telephone company, whenever it deems the determination of such value necessary in order to properly carry into effect any of the provisions of this act. Before the final determination of the value of the property of any such carrier, the commission shall give reasonable notice to parties interested, hold a public hearing as to such valuation at which hearing any party interested may appear and be heard. The commission may at any time, upon its motion make a re-valuation of said property. [Laws 1915, ch. 209, § 8.]

Allowance for depreciation in telephone plant in fixing rates. 38 L.R.A.(N.S.) 1209.

Valuation for rate-making purposes as affected by advance in price conditions due to World War. 20 A.L.R. 555.

§ 4812a9. Permit to be obtained for construction of plants. No telephone company shall exercise any rights or privileges for the purpose of constructing in any town, village or city of this state any new plant, duplicating any existing plant or any part thereof, or the removal or discontinuance of any plant or any part thereof, without first having obtained the permission and approval of the board of railroad commissioners. [Laws 1915, ch. 209, § 9.]

Explanatory note. The above section was repealed by § 4609c55, ante.

Regulation of telephone companies. 26 R. C. L. 514 and Supps.

§ 4812a10. Unnecessary duplication of exchanges prohibited. Whenever any telephone company furnishes adequate service and supplies the reasonable wants of the people of the city or community in which it is operating, and complies with the orders of the commission, said commission shall not grant to any other telephone company the right to compete with such carrier until after a public hearing of all parties interested, and finding by the commissioners that the public convenience and necessity may require such competing plant, provided, that nothing in this act shall be held to prevent any telephone company from extending its lines within the limits of any city or village in which it is at the time lawfully operating a local telephone exchange. [Laws 1915, ch. 209, § 10.]

Telegraphs and Telephones, 37 Cyc. 1626.

§ 4812a11. Physical connection; joint rates; cost of physical connection, and physical connection defined. Every telephone company shall permit a physical connection or connections to be made and furnish telephone service between its telephone system or toll lines and the telephone system or toll lines operated by another such company at any common point, providing that the construction and equipment of each company affected is such as to permit of an efficient joint service whenever public convenience and necessity requires such physical connection or connections, and such physical connection or connections will not result in the substantial injury to the owner or to the users of such telephone companies nor in any substantial detriment to the service to be rendered by such companies. The commission shall have the power on reasonable notice and hearing as in this act provided, to order physical connections and prescribe joint rates or charges for service by or over such connected lines, and in case such through lines and joint rates be not established by telephone companies named in any such order, within the time specified, the commission shall have the power, by order to establish the same and fix the just and reasonable rates and charges to be charged for such through service and to declare the portion thereof to which each of said companies affected thereby shall be entitled and the manner in which the same shall be secured and paid. The cost of making such physical connection or connections shall be shared by the companies making such connection or connections in such portion as they shall agree upon or in case of disagreement the commission shall enter an order directing one of the companies which is to be joined by physical connection with another to perform the actual work of connecting up the two lines, or telephone companies, as the case may be, and file with the commission a statement of the cost of performing the work ordered, as soon as the work ordered shall have been completed, and after such statement has been filed the commission shall order such company joined to pay such share of the expenses of making such connection as the commission may deem just and reasonable. The term, "physical connection," as used in this section shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such different telephone companies, or different telephone systems. [Laws 1915, ch. 209, § 11.]

Telegraphs and Telephones, 37 Cyc. 1656.

Requiring connection or joint use of properties of telephone companies as a taking for which compensation must be made. 50 L.R.A.(N.S.) 652; L.R.A.1916E, 759; L.R.A.1917E, 1083.

Right and duty of telephone companies to make connection of exchanges or lines. 11 A.L.R. 1204.

Regulations or provisions upon requiring physical connection of telephone lines. 16 A.L.R. 352.

Connection of telephone lines. 26 R. C. L. 519 and Supps.

§ 4812a12. Procedure of hearing before the commission. Upon the filing with the commission of any complaint under this act, the commission shall fix a date for the hearing of such complaint and shall mail to the telephone com-

pany, municipality or persons against whom such complaint is made, or other persons interested in said complaint, a copy thereof and give reasonable notice of the date set for hearing said complaint prior to such hearing, to the telephone company of which complaint is made, or any municipality or other persons who may be interested in the subject matter of said complaint, such telephone company, municipality or other persons interested may appear and make written answer thereto, and shall be entitled to be heard and introduce evidence thereon. The commission shall have the power and upon the demand of any party appearing in said proceeding shall appoint a shorthand reporter who shall take the evidence offered or introduced at said hearing. The commission shall have the power to require any party to said hearing, to produce any books, records, papers or other documents material to said inquiry, and shall have the power to subpoena and compel the attendance of any witnesses. At the conclusion of any hearing, the commission shall make a finding of fact, and issue their order in accordance therewith, and such facts shall be prima facie evidence in any proceeding to enforce the order made on such hearing. [Laws 1915, ch. 209, § 12.]

Telegraphs and Telephones, 37 Cyc. 1629.

§ 4812a13. Other sections which may apply. Except as otherwise provided in this act, or except where the same may in any way conflict with any of the provisions herein contained the following sections of the Compiled Laws of North Dakota for the year 1913, and all amendments thereof shall apply also to telephone companies, to-wit: Sections 4719, 4726, 4727, 4729, 4730, 4731, 4732, 4733, 4736, 4738, 4741, 4742, 4743, 4744, 4745, 4746, 4747, 4759, 4761 and 4763. [Laws 1915, ch. 209, § 13.]

§ 4812a14. Penalty. Whenever the commission shall enter an order in compliance with the provisions of this act, it shall be compulsory for such person or company upon whom such order is served to comply with said order and failing to do so, such person or company in default shall forfeit to the state of North Dakota, on suit by the state's attorney of the county wherein such default occurred, the sum of ten dollars (\$10.00) for each and every day they so neglect to comply with such order of the commission. [Laws 1915, ch. 209, § 14.]

Telegraphs and Telephones, 37 Cyc. 1629, 1702-1709.

Construction of statutes imposing penalties on telephone companies. 26 R. C. L. 617.

§ 4812a15. The word "commission" defined. The word "commission" wherever used in this act shall mean, "the state board of railroad commissioners." [Laws 1915, ch. 209, § 15.]

§ 4812a16. Repeal. All acts or parts of acts conflicting with the provisions of this act are hereby repealed in so far as they are inconsistent herewith; provided, however, that the provisions of this act shall not abrogate or repeal any existing powers now possessed by any city, town or village in this state. [Laws 1915, ch. 209, § 16.]

§ 4812a17. Emergency. Whereas, an emergency is declared to exist in this that there is now no adequate law for the control of telephone companies, this act shall take effect and be in force immediately from and after its passage and approval. [Laws 1915, ch. 209, § 17.]

CHAPTER 15B.

MUTUAL TELEPHONE COMPANIES.

§ 4812b1. Mutual telephone companies defined. The words "mutual telephone company" as used in this act shall mean any number of persons, number-

ing fifteen or more, associated in a company or corporation engaged in the business of furnishing communication by telephone within the state of North Dakota, primarily for their own convenience and not for profit, the expenses of such company or corporation being met by assessments on the individual members except as herein provided. [Laws 1919, ch. 234, § 1.]

§ 4812b2. Mutual telephone companies declared to be common carrier. Mutual telephone companies when their line or lines are of standard construction with either grounded circuit or metallic circuit, and equipped with standard instruments are hereby declared to be common carriers and as such shall come under chapter 209 of the Compiled Laws of 1915 (§§ 4812a1-4812a17, ante) except as herein provided. [Laws 1919, ch. 234, § 2.]
Telegraphs and Telephones, 37 Cyc. 1611.

§ 4812b3. Assessments. It shall be the duty of any Mutual Telephone Company to make assessments sufficient to meet the expenses of the system and to provide a sinking fund sufficient to cover depreciation. [Laws 1919, ch. 234, § 3.]

§ 4812b4. Extension of line and system. Mutual Telephone Companies shall be deemed established for the community in which the system is built, and the by-laws of such companies shall make provisions for toll stations for taking on new members and for taking on transient persons as renters; provided, however, the number of such renters' telephones shall not exceed one-fourth the entire number of telephones in the system. [Laws 1919, ch. 234, § 4.]
Telegraphs and Telephones, 37 Cyc. 1613.

§ 4812b5. Unnecessary duplication, etc. Section 10 of the Compiled Laws of 1915 (§ 4812a10, ante) shall not be construed as prohibiting mutual telephone companies or corporations, with lines in rural sections from making physical connections with the telephone systems of two or more towns, villages, or cities, through such lines, as the benefits to its members may merit. [Laws 1919, ch. 234, § 5.]
Telegraphs and Telephones, 37 Cyc. 1629.

§ 4812b6. Physical connections. Any telephone company operating within a town, village or city shall not deny physical connection to any mutual telephone company operating in the community adjoining said town, village or city, nor shall any contract between any such companies abridge in any way the rights of either company to extend its lines or to make physical connection with any other telephone company. [Laws 1919, ch. 234, § 6.]
Telegraphs and Telephones, 37 Cyc. 1656.
Connection of telephone lines. 26 R. C. L. 519 and Supps.

§ 4812b7. Repeal. All acts or parts of acts conflicting with the provisions of this act, are hereby repealed, as far as they are inconsistent herewith; provided, however, that the provisions of this act shall not abrogate any existing powers now in the possession of any town, village or city in this state. [Laws 1919, ch. 234, § 7.]

CHAPTER 18.

INSURANCE CORPORATIONS.

- ARTICLE 2. PROVISIONS COMMON TO ALL DOMESTIC INSURANCE COMPANIES, §§ 4835-4844.**
- 3. DOMESTIC LIFE INSURANCE COMPANIES TO DEPOSIT SECURITIES WITH INSURANCE COMMISSIONER, § 4848a.**
- 4a. LIFE AND ACCIDENT INSURANCE, LICENSE, REBATES, MISREPRESENTATIONS, §§ 4854a1 4854a10.**

- 5a. MUTUAL INSURANCE, CLASSIFICATION, §§ 4856a1, 4856a2.
- 8. SALARIES OF OFFICERS AND AGENTS OF LIFE INSURANCE COMPANIES, §§ 4859, 4860.
- 10. PROVISIONS PECULIAR TO DOMESTIC STOCK INSURANCE COMPANIES, §§ 4863-4867.
- 11. PROVISIONS PECULIAR TO DOMESTIC MUTUAL INSURANCE COMPANIES, §§ 4871, 4874.
- 11a. INCORPORATED MUTUAL INSURANCE COMPANIES, §§ 4881a1-4881a21.
- 12. SURPLUS OF LIFE INSURANCE COMPANY, § 4884.
- 14. PROVISIONS PECULIAR TO MUTUAL HAIL INSURANCE COMPANIES, §§ 4894-4901.
- 15. TIME WHEN HAIL INSURANCE POLICIES TAKE EFFECT, § 4902.
- 16. PROVISIONS PECULIAR TO FIDELITY INSURANCE COMPANIES, §§ 4904, 4905.
- 17. PROVISIONS PECULIAR TO FOREIGN INSURANCE COMPANIES, § 4913.
- 18. PROVISIONS COMMON TO ALL INSURANCE COMPANIES, §§ 4915-4929.
- 18a. DISSOLUTION OF INSOLVENT DOMESTIC INSURANCE COMPANIES, §§ 4930a1-4930a9.
- 20. COUNTY MUTUAL COMPANIES, §§ 4932-4950a21.
- 23. LICENSING INSURANCE AGENTS, § 4959.
- 25. PROTECTION OF INSURANCE AGENTS, §§ 4964a1, 4964a2.

ARTICLE 2.—PROVISIONS COMMON TO ALL DOMESTIC INSURANCE COMPANIES.

§ 4835. Comp. Laws, 1913.

Porter v. Northern F. & M. Ins. Co. 36 N. D. 199, 161 N. W. 1012.

§ 4836. **How, and for what purpose, formed.** Any number of persons, not less than seven, may form a corporation to carry on the business of insurance, either upon the stock or mutual plan, against loss or damage by fire, lightning, cyclone, tornado, hail or theft, or the risks of inland navigation and transportation, or to make insurance upon the lives of persons and every insurance pertaining thereto, and against accidental injuries including the granting, purchasing and paying of annuities and indemnities and to transact fidelity insurance and corporate suretyship; also including insurance upon automobiles, covering in one policy or in separate policies fire, theft, property damaged, liability and collision insurance. An insurance company incorporated under the provisions of this chapter shall have power to make insurance of any of the kinds hereinbefore mentioned, which shall have been expressed in its articles of incorporation. [Laws 1917, ch. 140, § 1.]

Insurance, 32 C. J. pp. 1004-1006, §§ 44-48, p. 1013, § 57, pp. 1018-1020, §§ 67-68, p. 1027, § 79.

Formation of insurance companies. 14 R. C. L. 844.

§ 4844. **Dividends only from surplus profits; profits, how estimated.** No domestic fire insurance company shall make any dividends except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount of premiums on all unexpired risks and policies, which amount so reserved, is hereby declared to be unearned premiums; and there shall also be reserved all sums due the company on bonds, mortgages, stocks and book accounts of which no part of the principal or interest thereon has been paid during the year preceding such estimate of the profits, and upon which suit for foreclosure or collection has been commenced, or which after judgment has been obtained thereon shall have remained more than one year unsatisfied and on which interest shall not have been paid. [Laws 1917, ch. 141, § 1.]

Insurance, 32 C. J. p. 1018, § 66, p. 1030, § 84.

Declaration of dividends by insurance companies. 14 R. C. L. 844.

ARTICLE 3.—DOMESTIC LIFE INSURANCE COMPANIES TO DEPOSIT SECURITIES
WITH INSURANCE COMMISSIONER.

§ 4843a. **Valuation of securities.** All bonds or other evidences of debt having a fixed term and rate held by any life insurance company, assessment life association or fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made; provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and, provided further, that the commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule. [Laws 1921, ch. 80, § 1.]

Insurance, 32 C. J. pp. 988-989, §§ 18-19.

ARTICLE 4a.—LIFE AND ACCIDENT INSURANCE, LICENSE, REBATES, MISREPRESENTATIONS.

§ 4854a1. **Agents must not act without certificate.** No agent shall act for any life or accident insurance company directly or indirectly in taking risks or transacting the business of insurance without procuring from the commissioner of insurance a certificate of authority, stating that such corporation or company has complied with all requirements of law and is authorized for transaction of business in this state. The commissioner of insurance may submit to any person, making application for license as insurance agent, any interrogatories on forms and supplements such as he shall prepare, to which the applicant shall first make answer, in writing and under oath, to the end that the commissioner of insurance may satisfy himself that said applicant is worthy of a license. [Laws 1923, ch. 236, § 1.]

Insurance, 32 C. J. p. 999, §§ 32-34.

Effect of agent's failure to procure license. 1 L.R.A.(N.S.) 1159.

Regulation of insurance agents and brokers. 14 R. C. L. 858 and Supps.

Prohibiting insurance agent from acting without certificate of authority. 14 R. C. L. 866 and Supps.

§ 4854a2. **Rebates and inducements prohibited.** No insurance agent or solicitor, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy or on any policy or agent's commission thereon, or earnings, profit, dividends, or other benefit founded, arising, accruing or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue, or any paid employment or contract for services of any kind, or any other valuable consideration or inducement, to or for insurance on any risk in this state, now or hereafter to be written, which is not specified in the policy contract of insurance; nor shall any such agent or solicitor, personally or otherwise, offer, promise, give option, sell or purchase any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever, as inducement to insurance or in connection therewith. Nothing in this section shall be construed to prevent the taking of a bona fide obligation, with legal interest, in payment of any premium. [Laws 1923, ch. 236, § 2.]

Insurance, 32 C. J. p. 986, § 15, pp. 1001-1002, §§ 39-40, p. 1003, § 42, p. 1193, § 326.

Power of agent to accept cancelation of his own indebtedness in payment of premium. L.R.A.1915A, 686.

Applicability of statute against rebates and discrimination to allowance by agent to insured of part of former's commissions. 23 L.R.A.(N.S.) 722.

Rebates. 14 R. C. L. 961 and Supps.

§ 4854a3. Insured persons and applicants for insurance prohibited from accepting rebates. No insured person or party or applicant for insurance shall, directly or indirectly, receive or accept, or agree to receive or accept, any rebate of premium, or of any part thereof, or all or any part of any agent's or solicitor's commission thereon or any favor or advantage, or share in any benefit to accrue under any policy of insurance, or any valuable consideration or inducement, other than such as are specified in the policy. [Laws 1923, ch. 236, § 3.]

Insurance, 33 C. J. pp. 1001-1002, §§ 39-40, p. 1004, § 43, p. 1193, § 326.

Rebates. 14 R. C. L. 961 and Supps.

§ 4854a4. Misrepresentation of terms of policy and future dividends by agents or solicitors. No agent or solicitor of any life or accident insurance company or association, shall issue, circulate, or use, or cause or permit to be issued, circulated or used, any written or oral statement or circular misrepresenting the terms of any policy issued or to be issued by such company or association, or make an estimate, with intent to deceive, of the future dividends payable under such policy. [Laws 1923, ch. 236, § 4.]

False Pretenses, 25 C. J. p. 595, § 18, p. 596, § 22, p. 659, § 101.

§ 4854a5. Misrepresentations, et cetera, for purpose of inducing policyholders to drop present policies and insure with other companies, et cetera. No agent or solicitor of any life or accident insurance company or association, shall make any misrepresentation or incomplete comparison of policies, oral, written, or otherwise, to any person insured in any company or association, for the purpose of inducing or tending to induce a policyholder in any company or association to lapse, forfeit, or surrender his insurance therein, and to take out a policy of insurance in the same or another company or association insuring against similar risks. [Laws 1923, ch. 236, § 5.]

False Pretenses, 25 C. J. p. 595, § 18, p. 596, § 22, p. 659, § 101.

§ 4854a6. Revocation, et cetera, of license. Upon satisfactory evidence of the violation of any of the provisions of this act by any agent or solicitor of any life or accident insurance company or association, the commissioner of insurance shall suspend or revoke the license of such offending solicitor or agent; and he shall have the right, in his discretion, to refuse, for a period of not to exceed one year thereafter, to issue a new license to such offending agent or solicitor. When a certificate shall be refused or suspended or revoked, the party aggrieved may appeal to the district court of Burleigh county. [Laws 1923, ch. 236, § 6.]

Insurance, 32 C. J. p. 1000, § 35.

§ 4854a7. Penalty. Any agent or solicitor of any life or accident insurance company or association, or any other person violating the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each and every violation, or, at the discretion of the court to imprisonment in the county jail for a period of not more than six months, or both. [Laws 1923, ch. 236, § 7.]

Insurance, 32 C. J. p. 986, § 15, p. 1003, § 42; False Pretenses, 25 C. J. p. 656, § 97.

§ 4854a8. Production of evidence. No person shall be excused from testifying, or from producing any books, papers, contracts, agreement, or documents, at the trial or hearing of any person charged with violating any of the provisions of this act on the ground that such testimony or evidence may tend to incriminate himself; but no person shall be prosecuted for any act concerning

which he shall be compelled so to testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying. [Laws 1923, ch. 236, § 8.]

Witnesses, 40 Cyc. 2543.

Compulsory production of books and papers as violation of privilege of witness against self-incrimination. 28 R. C. L. 437.

Immunity of witness. 28 R. C. L. 440.

§ 4854a9. State's attorney to prosecute. Upon evidence satisfactory to the commissioner of insurance that any of the provisions of this act have been violated by an agent, solicitor or any other person, he shall certify to the state's attorney of the county in which the violation occurred, all evidence thereof in his possession; and it shall be the duty of such state's attorney to prosecute the case. [Laws 1923, ch. 236, § 9.]

§ 4854a10. Fraternal benefit societies not within provisions. Provided nothing in this act shall be construed as applying to fraternal benefit societies. [Laws 1923, ch. 236, § 10.]

Beneficial Associations, 7 C. J. p. 1055, § 2.

ARTICLE 5a.—MUTUAL INSURANCE, CLASSIFICATION.

§ 4856a1. Paying dividends according to classification based on trade, occupation or profession. Any Mutual Insurance Company, writing fire, accident or other forms of insurance protection, now doing business in, or in the future admitted to do business in the state of North Dakota, may on their own motion, or at the request of policyholders, pay dividends to the different classes of policyholders based upon the losses sustained as compared with the income received from those engaged in a particular trade, occupation or profession. [Laws 1923, ch. 235, § 1.]

Insurance, 32 C. J. p. 1030, § 84.

§ 4856a2. Determination of rate of dividends for different classes. In determining the rate of dividend due a given trade, occupation or profession, the income received and losses sustained shall be tabulated for a period of not less than five years immediately preceding the determination of such dividend rate, and the return dividend to policyholders based upon the experience of such period, after deduction for expenses and allowances for reserves as required by law. [Laws 1923, ch. 235, § 2.]

Insurance, 32 C. J. p. 1030, § 84.

ARTICLE 8.—SALARIES OF OFFICERS AND AGENTS OF LIFE INSURANCE COMPANIES.

§ 4859. Expenses of officers, how regulated. No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any one year to more than five thousand dollars to any one person, firm or corporation unless such payment be first authorized by a vote of the board of directors of such life insurance company. No such life insurance company shall make any agreement with any of its officers, trustees or salaried employees whereby it agrees that for services rendered or to be rendered he shall receive any salary, compensation or emolument that will extend beyond a period of twelve months from the date of such agreement; and no officer, director or trustee, who is paid a salary for his services of more than one hundred and fifty dollars per month, shall receive any other compensation or emolument; provided, that the limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No such

company shall grant any pension to any officer, director or trustee thereof or to any member of his family after his death. [Laws 1915, ch. 175, § 1.]
Insurance, 32 C. J. p. 986, § 15, p. 1025, § 76.

§ 4860. Repealed by Laws 1915, ch. 175, § 2.

ARTICLE 10.—PROVISIONS PECULIAR TO DOMESTIC STOCK INSURANCE COMPANIES.

§ 4863. **Capital stock required.** No stock company shall be incorporated under this chapter unless it has a capital stock of at least \$250,000, twenty-five per cent of which must be paid in previous to the issuance of any policy and the residue within twelve months from the time of filing the articles of incorporation; provided, that the commissioner of insurance may for good cause shown extend the time of payment of such residue for the further period of not to exceed one year. No fire, cyclone, tornado, hail, marine, life or accident insurance company of any other state, territory or nation shall hereafter be admitted to do business in this state unless it has a paid-up capital stock of at least two hundred and fifty thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes and reinsurance of all outstanding risks. [Laws 1919, ch. 163, § 1.]

Porter v. Northern F. & M. Ins. Co. 36 N. D. 199, 161 N. W. 1012.

Insurance, 32 C. J. p. 1006, § 49.

Capital stock required on organization of insurance company. 14 R. C. L. 844.

§§ 4865, 4866. Comp. Laws 1913.

Section is not mandatory. Authority to levy assessment, proper subject of contract between insurance company, and stockholders, and assessments cannot be levied and collected when the company has contracted that the stock shall be non-assessable. Porter v. Northern F. & M. Ins. Co. 36 N. D. 199, 161 N. W. 1012.

§ 4867. Comp. Laws, 1913.

Porter v. Northern F. & M. Ins. Co. 36 N. D. 199, 161 N. W. 1012.

ARTICLE 11.—PROVISIONS PECULIAR TO DOMESTIC MUTUAL INSURANCE COMPANIES.

§ 4871. **Insured a member, notice of meetings, articles of incorporation, renewal of term of corporate existence, by-laws.** Every person insured by a domestic mutual insurance company, other than life, shall be a member while his policy or policies are in force, entitled to one vote only, and shall be notified of the time and place of holding its meetings by a written notice or by an imprint on the back of each policy, receipt or certificate of renewal as follows, to wit:

“The assured is hereby notified that by virtue of this policy he is a member of the mutual insurance company, and that the annual meetings of such company are held at its home office on the day of in each year at o'clock.”

The blanks shall be duly filed and the same shall be deemed a sufficient notice.

Articles of incorporation may be amended, the term of corporate existence extended and by-laws adopted, amended or repealed at any annual meeting or at a special meeting called for that purpose, by a two-thirds vote of the members voting. The provisions of this section shall also apply to county mutual insurance companies. [Laws 1917, ch. 139, § 1.]

Insurance, 32 C. J. p. 1022-1024, §§ 70-74.

Members of mutual insurance companies. 14 R. C. L. 847 and Supps.

Explanatory note. Mutual membership companies of limited area to insure against loss by fire, lightning or cyclone, see §§ 4950a1-4950a21, post. The sections of this

article although not expressly repealed by this article (§§ 4881a1-4881a21), should be read in connection therewith in view of the provisions of § 4881a21, post.

§ 4874. Comp. Laws, 1913.

Ennis v. Retail Merchants Asso. Mut. F. Ins. Co. 33 N. D. 20, 156 N. W. 234.

ARTICLE 11a.—INCORPORATED MUTUAL INSURANCE COMPANIES.

§ 4881a1. **Organization; minimum number of members.** Any number of persons, not less than twenty, a majority of whom shall be bona fide residents of this state, by complying with the provisions of this act, may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided. [Laws 1919, ch. 164, § 1.]

Insurance, 32 C. J. p. 1020 § 68.

Formation of mutual insurance companies. 14 R. C. L. 846.

§ 4881a2. **Articles of incorporation; contents.** Any persons proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

(a) The name, the purpose for which formed, and the location of its principal or home office, which shall be within this state;

(b) The names and addresses of those composing the board of directors in which the management shall be vested until the first meeting of the members;

(c) The names and places of residence of the incorporators. [Laws 1919, ch. 164, § 2.]

Insurance, 32 C. J. p. 1022 § 70.

Form and contents of articles of incorporation. 7 R. C. L. 54.

§ 4881a3. **Corporate name; "Mutual" as necessary part.** No name shall be adopted by such company which does not contain the word "mutual" or which is so similar to any name already in use by any such existing corporation, company or association, organized or doing business in the United States, as to be confusing or misleading. [Laws 1919, ch. 164, § 3.]

Insurance, 32 C. J. p. 1020 § 68.

§ 4881a4. **Articles of incorporation; filing; certified copy; certificate of compliance with act.** Such articles of incorporation shall be submitted to the commissioner of insurance, herein called "commissioner" and if found to comply with this act, he shall approve and file the same in his office. The commissioner shall thereupon deliver to the company a certified copy of such articles with his certificate that such company has complied with this act. Such certified copy and certificate shall be filed in the office of the register of deeds of the county in which the principal office of the company is located. [Laws 1919, ch. 165, § 4.]

Insurance, 32 C. J. p. 1022 § 70.

Filing or recording articles of incorporation. 7 R. C. L. 56 and Supps.

§ 4881a5. **Legal existence; adoption of by-laws; transaction of business.** The company shall have legal existence from and after the date of filing of such articles in the office of the register of deeds. The board of directors named in such articles may thereupon adopt by-laws, accept applications for insurance and proceed to transact the business of such company; provided that no insurance shall be put into force until the company has been licensed to transact insurance as provided by this act. [Laws 1919, ch. 165, § 5.]

Insurance, 32 C. J. p. 1020 § 68, p. 1022 § 70, p. 1025 § 76.

By-laws of mutual insurance corporations. 14 R. C. L. 848 and Supps.

§ 4881a6. **Authority to insure or reinsure; kinds of insurance.** Any company organized under the provisions of this act is empowered and authorized to make contracts of insurance or to re-insure or accept re-insurance on any

portion thereof, to the extent specified in its articles, for the kinds of insurance following:

1. Fire insurance. Against loss or damage to property and loss of use and occupancy by fire, lightning, hail, tempest, flood, earthquake, frost or snow, explosion, fire ensuing, and explosion, no fire ensuing, except explosion by steam boilers or fly-wheels; against loss or damage by water caused by the breakage or leakage of sprinklers, pumps or other apparatus, water pipes, plumbing, or their fixtures, erected for extinguishing fires, and against accidental injury to such sprinklers, pumps or other apparatus, water pipes, plumbing or fixtures; against the risks of inland transportation and navigation; upon automobiles, whether stationary or operated under their own power; against loss or damage by any of the causes or risks specified in this subsection, including also transportation, collision, liability for damage to property resulting from owning, maintaining or using automobiles, and including burglary and theft, but not including loss or damage by reason of bodily injury to the person.

2. Liability insurance. Against loss, expense or liability by reason of bodily injury or death by accident, disability, sickness or disease suffered by others for which the insured may be liable or have assumed liability, including workmen's compensation.

3. Disability insurance. Against bodily injury or death by accident and disability by sickness.

4. Automobile insurance. Against any or all loss, expense and liability resulting from the ownership, maintenance or use of any automobile or other vehicle, provided no policies shall be issued under this sub-section against the hazard of fire alone.

5. Steam boiler insurance. Against loss or liability to persons or property resulting from explosions or accidents to boilers, containers, pipes, engines, fly-wheels, elevators and machinery in connection therewith and against loss of use and occupancy caused thereby and to make inspections and issue certificates of inspection thereon.

6. Use and occupancy insurance. Against loss from interruption of trade or business which may be the result of any accident or casualty.

7. Miscellaneous insurance. Against loss or damage by any hazard upon any risk not provided for in this section, which is not prohibited by statute or at common law from being the subject of insurance, except life insurance. [Laws 1919, ch. 164, § 6.]

Insurance, 32 C. J. p. 1027 § 79, 33 C. J. p. 44 § 716.

§ 4881a7. License necessary; prerequisites to granting. No such company shall issue policies or transact any business of insurance unless it shall hold a license from the Commissioner authorizing the transaction of such business, which license shall not be issued until and unless the company shall comply with the following conditions:

(a) It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein.

(b) The "maximum single risk" shall not exceed twenty per cent of the admitted assets or three times the average risk or one per cent of the insurance in force, whichever is the greater, any re-insurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

(c) It shall have collected a premium upon each application which premiums shall be held in cash or securities in which insurance companies are authorized to invest and shall be equal in case of fire insurance to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars and in any other kind of insurance to not less than five times

the maximum single risk assumed, and in case of workmen's compensation insurance to not less than fifty thousand dollars.

(d) For the purpose of transacting employer's liability and workmen's compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk. [Laws 1919, ch. 164, § 7.]

Insurance, 32 C. J. p. 987 § 16.

§ 4881a8. Corporations, etc., as members. Any public or private corporation, board or association in this state or elsewhere may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred. [Laws 1919, ch. 164, § 8.]

Insurance, 32 C. J. p. 1024 § 72.

§ 4881a9. Votes of members. Every member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as may be provided in the by-laws. [Laws 1919, ch. 164, § 9.]

Insurance, 32 C. J. p. 1024 § 24.

§ 4881a10. Maximum premium. The maximum premium payable by any member shall be expressed in the policy or in the application for insurance. Such maximum premium may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required of domestic stock insurance companies transacting the same kinds of insurance. [Laws 1919, ch. 164, § 10.]

Insurance, 32 C. J. p. 1029 § 80, p. 1095 § 180.

§ 4881a11. Investments; in what. No such company shall invest any of its assets except in accordance with the laws of the state relating to the investment of the assets of domestic stock companies transacting the same kinds of insurance. [Laws 1919, ch. 164, § 11.]

Insurance, 32 C. J. p. 1027 § 78.

§ 4881a12. Separate unearned premium and other reserves. Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance; provided, that any reserve for losses or claims based upon the premium income shall be computed upon the net premium income after deducting any so-called dividend or premium returned or credited to the member. [Laws 1919, ch. 164, § 12.]

Insurance, 32 C. J. p. 1027 § 78, pp. 1029-1030 §§ 82-83.

Reserves. 14 R. C. L. 850 and Supps.

§ 4881a13. Deficiency in assets; assessments. Such company not possessed of assets at least equal to the unearned premium reserve and other liabilities shall make an assessment upon its members liable to assessment to provide for such deficiency, such assessment to be against each such member in proportion to such liability as expressed in his policy; provided, the commissioner may, by written order, relieve the company from any assessment or other proceedings

to restore such assets during the time fixed in such order; and provided that any domestic company which shall be deficient in providing the unearned premium reserve required hereby, may, notwithstanding such deficiency, come under this act on the condition that it shall each year thereafter reduce such deficiency at least fifteen per centum of the original amount thereof, and in such case it may increase its assessments accordingly. [Laws 1919, ch. 164, § 13.]

Insurance, 32 C. J. p. 1216 § 365.

Liability of members of mutual insurance company. 32 L.R.A. 481.

Jurisdiction of equity to enforce liability of member of mutual insurance company. 40 L.R.A.(N.S.) 781.

Levy and enforcement of assessments. 14 R. C. L. 969 et seq.

§ 4881a14. Advances to company; interest; commissions. Any director, officer or member of any such company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business or to enable it to comply with any of the requirements of the law, and such moneys and such interest thereon as may have been agreed upon, not exceeding ten per cent per annum, shall not be a liability or claim against the company or any of its assets, except as herein provided, and shall be repaid only out of the surplus earnings of such company. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company and the amount of such advance shall be reported in each annual statement. [Laws 1919, ch. 164, § 14.]

Insurance, 32 C. J. p. 1025 § 76.

4881a15. Compliance with regular requirements; provisions or conditions in policy. Such mutual company shall comply with the provisions of any law applicable to any stock insurance companies effecting the same kind of insurance requiring that policies be countersigned and delivered through a resident agent; provided, that this requirement shall not apply to any policy of such mutual company on which no commission shall be paid to any local agent. Such mutual company may insert in any form of policy prescribed by law of this state any provisions or conditions required by its plan of insurance which are not inconsistent or in conflict with any law of this state. Such policy, in lieu of conforming to the language and form prescribed by such law, may conform thereto in substance, if such policy include a provision or endorsement reciting that the policy shall be construed as if in the language and form prescribed by such law, and a copy of such policy and endorsement, if any, shall have been first filed with and shall not have been disapproved by the commissioner. [Laws 1919, ch. 164, § 15.]

Insurance, 32 C. J. p. 1122 § 224, p. 1126 § 229.

§ 4881a16. Licensing outside company; prerequisites. Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any state, district or territory, shall be admitted and licensed to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this act when it shall be solvent under this act, and shall have complied with the following requirements:

(a) Filed with the commissioner a certified copy of its charter or articles of association;

(b) Filed with the commissioner a copy of its by-laws certified to by its secretary;

(c) Appointed the commissioner its agent for the service of process, in any action, suit or proceeding in any court of this state, which authority shall continue as long as any liability shall remain outstanding in this state;

(d) Filed a financial statement under oath, in such form as the commissioner may require, and have complied with other provisions of law applicable to the

filing of papers and furnishing information by stock companies on application for authority to transact the same kind of insurance;

(e) If organized without the United States, make and maintain the deposit required of stock insurance companies formed without the United States transacting the same kinds of insurance;

(f) Its name shall not be so similar to any name already in use by any such existing corporation, company or association organized or licensed in this state as to be confusing or misleading.

Upon compliance by any such foreign company with the provisions in this section, such company shall be licensed and authorized to transact business in this state, subject to all the provisions of law relating to information to and examinations by the commissioner, annual reports, taxes and the renewal of licenses applicable to stock insurance companies transacting the same kinds of insurance, except as otherwise provided in this act. [Laws 1919, ch. 164, § 16.]

Insurance, 32 C. J. pp. 989-998 §§ 21-31.

Licensing of foreign insurance companies. 14 R. C. L. 861 and Supps.

§ 4881a17. Annual reports; examinations. Every such mutual insurance company shall make its annual report in such form and submit to such examinations and furnish such information as may be required by the commissioner. As far as practicable, such examinations of foreign mutual insurance companies shall be made in co-operation with the insurance departments of other states and the forms of annual report shall be such as are in general use throughout the United States. [Laws 1919, ch. 164, § 17.]

Insurance, 32 C. J. p. 986 § 15.

Annual reports of insurance companies. 14 R. C. L. 865.

§ 4881a18. Applicability of general laws. In all other respects companies organized under the provisions of this act shall be subject to the provisions of the general laws of the state of North Dakota relating to such insurance companies. [Laws 1919, ch. 164, § 18.]

Insurance, 32 C. J. p. 992 § 23.

§ 4881a19. Taxable premiums. The taxable premiums of premium receipts of any mutual insurance company organized in or admitted to this state, for the purpose of taxation under any law of this state, shall be the gross premiums received for direct insurance upon property or risks in this state, deducting amounts paid for reinsurance upon which a tax has been or is to be paid to this state, and deducting premiums upon policies not taken, premiums returned on cancelled policies, and any refund or return made to the policy holder other than for losses. [Laws 1919, ch. 164, § 19.]

Insurance, 32 C. J. p. 987 § 17, p. 994 § 27.

§ 4881a20. Reinsurance. Any such mutual insurance company organized or admitted to transact insurance in this state may reinsure any part or all of any risk or risks in any insurance company or insurer licensed in any state of the United States or in the District of Columbia; provided that no such re-insurance shall be effected with any company or insurer disapproved therefor by written order of the commissioner filed in his office. [Laws 1919, ch. 164, § 20.]

Insurance, 33 C. J. p. 716 § 44.

Reinsurance. 14 R. C. L. 1446 et seq. and Supps.

§ 4881a21. Repeals; effect on existing companies. All laws or parts of laws in conflict with the provisions of this act are hereby repealed; provided that such repeals and the provisions of this act shall not apply to or effect any company or association of this state now doing business. Any such company or association may, however, by resolution of its board of directors, duly approved by the majority of its members at a meeting specially called for that purpose, and duly certified to by the president and secretary, and filed with and approved by the commissioner, elect to adopt and become subject to the pro-

visions of this act, in lieu of any act or acts theretofore governing such company or association. Any company or association, so electing and fully complying with this act, may thereafter effect such kinds of insurance as authorized by this act, and specified in its articles of association then in force, or as then or thereafter amended, together with such additional kinds of insurance as are specified in such resolution and authorized by this act. [Laws 1919, ch. 164, § 21.]

Corporations, 14 C. J. pp. 194-195 §§ 201-203; Insurance, 32 C. J. pp. 1021-1022 §§ 69-70.

ARTICLE 12.—SURPLUS OF LIFE INSURANCE COMPANY.

§ 4884. **Contingency reserve.** Any life insurance company doing business in this state may accumulate and maintain in addition to the capital and surplus contributed by its stockholders and in addition to an amount equal to the net values of its policies, computed according to the laws of the jurisdiction under which it is organized, a contingency reserve not exceeding the following respective percentages of said net values, to wit: when said net values are less than one hundred thousand dollars, twenty per centum thereof or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; and if said net values equal or exceed the last mentioned amount, the contingency reserve shall not exceed ten per centum thereof; provided, that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases, such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage; provided, further, that for cause shown the commissioner of insurance may at any time from time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned for a prescribed period, not exceeding one year under any one permission, by filing in his office a decision stating his reasons thereof and causing the same to be published in his next annual report. This section shall not apply to any company doing exclusively a nonparticipating business. [Laws 1925, ch. 148, § 1.]

Insurance, 32 C. J. p. 1017, § 65, pp. 1029-1030, §§ 82-83.

ARTICLE 14.—PROVISIONS PECULIAR TO MUTUAL HAIL INSURANCE COMPANIES.

§ 4894. **Comp. Laws, 1913.**

State ex rel. State Farmers Mut. Hail Ins. Co. v. Cooper, 18 N. D. 583, 120 N. W. 878.

§ 4895. **Comp. Laws, 1913.**

More v. Western Grain Co. 31 N. D. 369, 153 N. W. 976; State ex rel. State Farmers Mut. Hail Ins. Co. v. Cooper, 18 N. D. 583, 120 N. W. 878.

§ 4896. **Mutual insurance companies engaged in hail business, when.** No mutual insurance company hereafter organized under the laws of this state shall engage in the business of hail insurance in this state without first filing a bond in the office of the commissioner of insurance in the sum of twenty-five thousand dollars (\$25,000.00), said bond to be satisfactory in form and surety to the commissioner of insurance, and no mutual hail insurance company now or hereafter organized under the laws of any other state or county shall be admitted to engage in the business of hail insurance in this state without having net cash assets in the sum of one hundred thousand dollars (\$100,000.00)

above its liabilities and without first depositing and thereafter keeping on deposit with the treasurer of this state the sum of twenty-five thousand dollars (\$25,000.00) in money, or first mortgage loans on real estate in the state of North Dakota or certificates of deposit issued by banks in North Dakota, both mortgage and certificate to be approved by the commissioner of insurance, said mortgages or deposits to be of the face value of twenty-five thousand dollars (\$25,000.00), the said bond and said deposit conditioned for the carrying [out] of its contracts and obligations incurred by its policies. [Laws 1915, ch. 174, § 1.]

Interest earned on moneys deposited with state treasurer by insurance companies, becomes part of the fund. *Des Moines Mut. Hail & Cyclone Ins. Asso. v. Steen*, 43 N. D. 298, 175 N. W. 195.

Moneys deposited by foreign mutual hail insurance company, belong to company making deposit, together with all interest earned thereon while on deposit with state treasurer. *Des Moines Mut. Hail & Cyclone Ins. Asso. v. Steen*, 43 N. D. 298, 175 N. W. 195.

See also *State ex rel. State Farmers Mut. Hail Ins. Co. v. Cooper*, 18 N. D. 583, 120 N. W. 878.

Insurance, 32 C. J. p. 988, § 18, p. 1027, § 79.

§ 4897. Comp. Laws, 1913.

Moneys deposited by foreign mutual hail insurance company, belong to company making deposit, together with all interest earned thereon while on deposit with state treasurer. *Des Moines Mut. Hail & Cyclone Ins. Asso. v. Steen*, 43 N. D. 298, 175 N. W. 195.

§§ 4899, 4900. Comp. Laws, 1913.

Moneys deposited by foreign mutual hail insurance company, belong to company making deposit, together with all interest earned thereon while on deposit with state treasurer. *Des Moines Mut. Hail & Cyclone Ins. Asso. v. Steen*, 43 N. D. 298, 175 N. W. 195.

§ 4901. Comp. Laws, 1913.

Moneys deposited by foreign mutual hail insurance company, belong to company making deposit, together with all interest earned thereon while on deposit with state treasurer. *Des Moines Mut. Hail & Cyclone Ins. Asso. v. Steen*, 43 N. D. 298, 175 N. W. 195.

See also *State ex rel. Farmers Mut. Hail Ins. Co. v. Cooper*, 18 N. D. 583, 120 N. W. 878.

ARTICLE 15.—TIME WHEN HAIL INSURANCE POLICIES TAKE EFFECT.

§ 4902. Comp. Laws, 1913.

Provision as to taking effect 24 hours after application is not in violation of due process or equal protection clause, and a consent in violation of such provision against taking effect until insurer has opportunity to pass on application is void. *National Union F. Ins. Co. v. Wanberg*, 260 U. S. 71, 67 L. ed. 136, 43 Sup. Ct. Rep. 32.

Hail insurance held not to take effect within 24 hours where applicant sent application by mail to local agent, who had no notice of amount thereof, or land or crops to be covered. *Anderson v. Westchester F. Ins. Co.* 45 N. D. 456, 178 N. W. 434.

Section applies where insurer takes additional risks. Benefit of section not waived by unauthorized conflicting provision contained in application. *Wanberg v. National U. F. Ins. Co.* 46 N. D. 369, 179 N. W. 666.

ARTICLE 16.—PROVISIONS PECULIAR TO FIDELITY INSURANCE COMPANIES.

§§ 4904, 4905. Comp. Laws, 1913.

State ex rel. Dakota Trust Co. v. Stutsman, 24 N. D. 68, 139 N. W. 83.

ARTICLE 17.—PROVISIONS PECULIAR TO FOREIGN INSURANCE COMPANIES.

§ 4913. Amount of capital stock required, see § 4863, ante. Revocation of certificate of authority, see § 4925, post. Deposit required from foreign accident and health insurance companies, see § 4980a, post.

ARTICLE 18.—PROVISIONS COMMON TO ALL INSURANCE COMPANIES.

§ 4915. **Annual statement, publication thereof.** Every insurance company doing business in this state must transmit to the commissioner of insurance a statement of its condition and business for the year ending on the preceding thirty-first day of December, which shall be rendered not later than the first day of March in each year. Foreign insurance companies shall have until the following first day of December to transmit their statements of business, other than that taken in the United States. It shall be the duty of the insurance commissioner upon the date of the receipt of any such statement to stamp thereon the date of the receipt of such statement in his office, and the insurance commissioner is hereby prohibited from receiving such statement from any company after the day which is herein designated for the filing of such statement, unless the same be accompanied by the penalty by law provided for each day's delinquency in filing such statement. Such statements must be published at least three times in a newspaper of general circulation printed and published in each judicial district of the state in which such insurance company shall have an agency, provided, however, that the statements of state, county and town mutual insurance companies need only be published once in a newspaper selected at their annual meeting in the county wherein such company does business. Statements for publication shall be made out on blanks furnished by the commissioner of insurance and the certificate of authority of the commissioner of insurance for the company to do business in this state shall be published in connection with such statement. Proof of publication shall be filed with the commissioner of insurance in all cases within four months from the time of such filing of the annual statement. Such publication shall be made at the authorized rate for publishing legal notices. The commissioner of insurance shall select three newspapers of general circulation published in each of the judicial districts from which such companies shall select one in which such statements shall be published. [Laws 1911, ch. 159; Laws 1899, ch. 102; R. C. 1905, § 4466; R. C. 1899, § 3119.]

§ 4922. **Authority revoked, when revocation set aside.** If the commissioner of insurance has or shall have, at any time after examination, reason to believe that any annual statement or other report required or authorized by this article, made or to be made out by an officer or agent of any insurance company, or bonding, surety or indemnity company, is false, or if the commissioner of insurance has or shall have, at any time after examination, reason to believe that any insurance company or bonding, surety or indemnity company, is practicing discrimination against individual risks in the issue or cancellation of policies, bonds or other contracts of insurance or corporate suretyship, it shall be the duty of said commissioner of insurance immediately to revoke the certificate of authority of such company, and mail a copy of such revocation to such company or the agents thereof in this state, and such company and its agents, after such notice, shall discontinue the issuance of any new policies, bonds or surety contracts or the renewal of any policies, bonds or contracts or the renewal of any policies, bonds or contracts previously issued; and such revocation shall not be set aside nor any new certificates of authority be given until satisfactory evidence shall have been furnished to said commissioner of insurance that such company is in substance and in fact in the condition set forth in such statement or order (or that such discrimination has not been practiced or that such practice of discrimination will immediately cease), and that the requirements of this article have been fully complied with. No action on the grounds of discrimination shall be taken by said commissioner unless upon a written complaint under oath or information and belief of the person or persons interested, showing in substantial detail the ground for complaint with such data as will reasonably enable the commissioner to determine whether there is probable cause therefor, and no such action shall be taken,

nor shall there be any examination thereon until a copy of said complaint and data shall have been sent by registered mail to the company concerned and such company shall have had at least ten (10) days' notice of the date when such examination is to be held. [Laws 1925, ch. 149, § 1; Laws 1919, ch. 165, § 1.]

Insurance, 32 C. J. p. 987, § 16, p. 1002, § 40, p. 1193, § 326.

Power of state to regulate insurance companies. 14 R. C. L. 857 and Supps.

§ 4924. Tax; how levied. Every insurance company doing business in this state, except stock and mutual companies organized under the laws of this state, shall at the time of making annual statement of business done as required by law, pay to the commissioner of insurance two and one-half per cent of the gross amount of premiums received in this state during the preceding year. Upon payment of such sum the commissioner of insurance shall issue the annual certificates provided by law. [Laws 1921, ch. 79, § 1.]

Insurance, 32 C. J. p. 987, § 17.

Power to impose insurance privilege taxes for benefit of private individual or corporation. 13 A.L.R. 833.

Taxation of insurance companies. 14 R. C. L. 858 and Supps.

§ 4925. Authority of foreign or domestic company revoked, how. If the commissioner of insurance is of the opinion upon examination or other evidence that a foreign insurance company is in an unsound condition, or if it has failed to comply with the law, or if it, its officers or agents refuse to submit to examination, or to perform any legal obligation in relation thereto or if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities he shall revoke or suspend all certificates of authority granted to it or to its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the commissioner; provided, further, that if any insurance corporation organized under the laws of any other state or country and having been authorized to transact business in this state, shall remove or make application to remove into any court of the United States any action or proceeding begun in any court of this state upon a claim or cause of action arising out of any business or transaction done in this state, or upon any contract made, executed or to be performed herein, the commissioner of insurance shall revoke all certificates of authority granted to such insurance corporation, or to its agents, and shall cause notification thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government and no new business shall thereafter be done by it or its agents in this state until after the expiration of three years from the date of such last publication. Provided, however, that the commissioner of insurance may after a hearing and for good and sufficient cause, cancel or revoke such suspension and reinstate any such company. If upon examination he is of the opinion that any domestic insurance company is insolvent or has exceeded its powers or has failed to comply with any provisions of law, or that its condition is such as to render its further proceedings hazardous to the public or its policyholders, he shall apply to the district court of the county in which the principal office of the company is located to issue an injunction restraining it in whole or in part from further proceeding with its business. The court or judge may, in its discretion, issue an injunction forthwith or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify such injunction or make it perpetual and make all orders and decrees needful in the premises and may appoint agents or receivers to take possession of the property and effects of the

company, and to settle its affairs according to the course of proceedings in equity. [Laws 1919, Sp. Sess. ch. 40, § 1.]

Insurance, 32 C. J. p. 994, § 26; Corporations, 14a C. J. p. 1266, § 3969; Federal Courts, 25 C. J. p. 755, § 67; Removal of Causes, 34 Cyc. 1217-1218.

Revocation of license of foreign insurance company. 14 R. C. L. 862 and Supps.

§ 4926. Comp. Laws, 1913.

Anderson v. Northwestern F. & M. Ins. Co. — N. D. —, 201 N. W. 514.

§ 4929. **Fees.** There shall be paid by every insurance company doing business in this state, except county mutual insurance companies, the following fees:

Upon filing articles of incorporation or copies thereof, twenty-five dollars.

Upon filing the annual statement, ten dollars.

For each certificate of authority and certified copy thereof, two dollars, provided, that domestic insurance companies shall pay fifty cents for each agent's license or certificate or copy thereof.

For every copy of any paper filed in the insurance department, the sum of twenty cents per folio; and for affixing the official seal on such copy and certifying the same, the sum of one dollar.

For official examination of companies under this article, the actual expense and per diem charge incurred, such per diem charge not to exceed twenty dollars. [Laws 1923, ch. 234; Laws 1921, ch. 76.]

Insurance, 32 C. J. p. 987, § 17.

ARTICLE 18a.—DISSOLUTION OF INSOLVENT DOMESTIC INSURANCE COMPANIES.

§ 4930a1. **To what companies, etc., applicable.** This chapter shall apply to all domestic corporations, associations, societies and orders transacting an insurance business under authority of any law of this state, including all corporations, associations, fraternal beneficiary societies and orders which are subject to examination by the commissioner of insurance, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in process of organization intending to do such business therein, or to become incorporated under any law of this state for the transaction of an insurance business. [Laws 1925, ch. 150, § 1.]

§ 4930a2. **Application; when made.** Whenever any such corporation,

(a) Is insolvent; or

(b) Has refused to submit its books, papers, accounts or affairs to the reasonable inspection of the commissioner of insurance, or his deputy or examiner; or

(c) Has neglected or refused to observe an order of the commissioner of insurance to make good any deficiency within the time prescribed by the commissioner, whenever its capital shall become impaired exceeding fifteen per centum thereof, if it be a stock corporation, or its reserve, if it be a mutual corporation, shall have become impaired; or

(d) Has by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of another corporation, association, society or order, without first having obtained the written approval of the commissioner; or

(e) Is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policy holders, or to its creditors, or to the public; or

(f) Has wilfully violated its charter or any law of the state;

(g) Whenever any officer thereof has refused to be examined under oath touching its affairs; or

(h) If such corporation be found, after examination, to be in such condition that it could not meet the requirements for incorporation and authorization;

The commissioner of insurance may, the attorney general representing him, apply to the district court in the judicial district in which the principal office of such corporation is located, for an order directing such corporation to show cause why the commissioner should not take possession of its property and conduct its business, or for such other relief as the nature of the case and the interests of its policy-holders, creditors, stockholders, or the public may require. [Laws 1925, ch. 150, § 2.]

Insurance, 32 C. J. p. 1031, §§ 86-87, pp. 1037-1038, §§ 96-98; Beneficial Associations, 7 C. J. p. 1066, § 22.

What constitutes insolvency of insurance company. 14 R. C. L. 852.

Institution of proceeding against insolvent insurance company. 14 R. C. L. 853.

Dissolution of insurance company. 14 R. C. L. 856.

§ 4930a3. Injunction. On such application, or at any time thereafter, such court may in its discretion, issue an injunction restraining such corporation from the transaction of its business or the disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the commissioner forthwith to take possession of the property and conduct the business of such corporation and retain such possession and conduct such business until, on the application either of the commissioner, the attorney general representing him, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the commissioner to take possession has been removed and that the corporation can properly resume possession of its property and the conduct of its business. [Laws 1925, ch. 150, § 3.]

Insurance, 32 C. J. pp. 1037-1038, §§ 95-98, pp. 1046-1047, §§ 113-115.

Injunction restraining insolvent insurance companies from further transaction of business. 14 R. C. L. 853.

§ 4930a4. Liquidation. If, on like application an [and] order to show cause, and after a full hearing the court shall order a liquidation of the business of such corporation, such liquidation shall be made by and under the direction of the commissioner of insurance who may deal with the property and business of such corporation in his own name as commissioner or in the name of the corporation, as the court may direct, and shall be vested by operation of law with title to all the property, contracts and rights of actions of such corporation as of the date of the order so directing him to liquidate. The filing or recording of such order in any record office of the state, shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted. The order of liquidation shall, unless otherwise directed by the court, provide that the dissolution of the corporation shall take effect upon the entry of such order in the office of the clerk of the county wherein such corporation had its principal office for the transaction of business. [Laws 1925, ch. 150, § 4.]

Insurance, 32 C. J. pp. 1046-1047, §§ 114-115; Beneficial Associations, 7 C. J. p. 1066, §§ 21-22.

Distribution of assets of insolvent insurance company. 38 L.R.A. 97.

Distribution of surplus upon dissolution of mutual insurance company. 3 L.R.A. (N.S.) 653.

Losses occurring after insolvency of insurer. L.R.A.1917E, 1141.

Liability of funds held by mutual benefit societies to claims of their creditors. 6 L.R.A.(N.S.) 235.

Right to return of premiums on adjudication of insolvency of insurance company. 19 L.R.A.(N.S.) 639.

Priority of policyholder having matured claim over other policyholders in distribution of assets of insolvent insurance company. 1 A.L.R. 598.

Rights of policyholders on dissolution of insurance company. 14 R. C. L. 853 and Supps.

§ 4930a5. Deputy commissioners, counsel, clerks and assistants; compensation; powers. For the purposes of this chapter the commissioner shall have power to appoint, under his hand and official seal, one or more special deputy commissioners of insurance as his agent or agents, and to employ such counsel, clerks and assistants as may by him be deemed necessary, and give each of such persons such power to assist him as he may consider wise. The compensation of such special deputy commissioner, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any such corporation shall be fixed by the commissioner, subject to the approval of the court, and shall, on certificate of the commissioner, be paid out of the funds or assets of such corporation. In any proceedings under this chapter the commissioner, his deputy or any examiner or special deputy shall have all of the powers given to the commissioner, by any law of this state authorizing the commissioner to make or cause to be made examinations of insurance corporations, including the power to examine under oath the officers and employes of such corporation, and to compel the production of books and papers as herein provided. [Laws 1925, ch. 150, § 5.]

Insurance, 32 C. J. p. 984, §§ 12-13.

§ 4930a6. Report. The commissioner shall publish, in his annual report, the names of the corporations so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders, and the public with his proceedings under this chapter; and to that end the official in charge of any such corporation shall file annually with the commissioner a report of the affairs of such corporation. [Laws 1925, ch. 150, § 6.]

Insurance, 32 C. J. p. 984, §§ 12-13.

§ 4930a7. Liquidation proceedings; assessments; actions. The commissioner of insurance or his deputy or special deputy, acting under the provisions of this chapter in any liquidation proceedings, shall have all the powers of a receiver in insolvency proceedings, and may do and perform any act for the protection of the assets or the recovery of the same, and for the settlement or discharge of the obligations of the insurance company, that may be necessary or that may be directed by the court. He shall have the same authority to make assessments upon stockholders or members of the company as the officers thereof are authorized to make under the provisions of this act, and it shall be his duty to make such assessments, ratably in any case where authorized, to any extent that may be necessary to discharge the whole obligations, existing at any time during such receivership or insolvency proceedings. He may bring suit to recover and enforce such assessments in any court of competent jurisdiction against the members or stockholders, as the case may be, or by direction of the court having jurisdiction of the liquidation, may bring such suit or suits in the district court without regard to the amount involved. Such receiver shall be held accountable to the district court of the county having jurisdiction for his actions in the premises. [Laws 1925, ch. 150, § 7.]

Insurance, 32 C. J. pp. 1039-1052, §§ 99-124; Beneficial Associations, 7 C. J. pp. 1062-1063, §§ 13-15.

Dissolution of insurance companies. 14 R. C. L. 856.

§ 4930a8. Petition for liquidation or receivership; procedure; bond; powers of receiver. In any case arising under this chapter the commissioner of insurance may file his petition for liquidation or receivership in the district court for the county of Burleigh, and the preliminary steps towards the appointment of a receiver shall be taken and heard in such district, and the district court of Burleigh county may at any time thereafter transfer such case to the dis-

trict court of the county in which such company may have its principal place of business, for such further steps and action as may be necessary in the premises, as in cases of change of venue. In all other respects proceedings under this chapter shall be conducted according to the procedure prescribed in the judicature act of this state. The district court in the first instance may require the commissioner of insurance or the person acting as his deputy in the liquidation proceedings, to file a bond as in other receiverships. Such receiver shall in no case be permitted to increase the liabilities of any company undergoing liquidation excepting for the purpose of preserving its assets. [Laws 1925, ch. 150, § 8.]

Insurance, 32 C. J. p. 1038, § 98, p. 1047, § 115; Beneficial Associations, 7 C. J. p. 1063, § 15.

Right of receiver of insurance company to funds deposited with state official to secure performance of contracts. 46 L.R.A.(N.S.) 187.

§ 4930a9. Appointing insurance commissioner as receiver. In any insolvency proceeding brought against any such insurance corporation, either by itself or by some one other than the insurance commissioner, in any court of this state, said court shall upon application of said insurance commissioner after initiation, or at any time, during the pendency of such proceeding appoint said insurance commissioner as receiver of such corporation. [Laws 1925, ch. 150, § 9.]

Beneficial Associations, 7 C. J. pp. 1062-1063, §§ 13-15; Insurance, 32 C. J. pp. 1046-1047, §§ 114-115.

ARTICLE 20.—COUNTY MUTUAL COMPANIES.

§§ 4932-4950. These sections which constitute article 20 in the Compiled Laws of 1913 must be considered as affected to some extent if not replaced by Laws 1915, ch. 172 (§§ 4950a1-4950a21 post), although they are not referred to therein.

§ 4950a1. Organization; minimum number of members; principal office; corporate name. Any number of persons, not less than fifty, residing in not more than ten counties in this state, who collectively own property of not less than one hundred thousand dollars in value, which they desire to insure, or any number of persons not less than twenty-five, residing in any one county, owning property of not less than twenty-five thousand dollars in value, which they desire to insure, may form a corporation for mutual insurance against loss or damage by fire, lightning or cyclone, or all of the above, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as hereinafter provided:

The principal office of the corporation must be located within the limits of the county or counties in which the incorporators reside. The name of the county, together with the word "county" shall be embraced in the corporate name of the company when organized by the residents of a single county. Provided, that any corporation, organized under the provisions of this act for mutual protection against loss or damage by tornadoes, wind storms, and cyclones only, may operate and issue policies in all the counties of the state, but shall in all other matters be regulated and limited by the provisions of this act. [Laws 1915, ch. 172, § 1.]

Insurance, 32 C. J. p. 1020 § 68.

Organization of mutual insurance companies. 14 R. C. L. 846.

§ 4950a2. Declaration of intention; articles of incorporation; certified copy; certificate of compliance with law. Such persons shall file with the commissioner of insurance a declaration of their intention to form a company for the purpose expressed in the preceding section, which declaration shall be signed by not less than three of the incorporators, and shall be accompanied by sufficient evidence of the execution of bona fide application for such insurance to the number and amount stated in the preceding section, and which said decla-

ration shall contain a copy of the articles of incorporation proposed to be adopted by said incorporations. Such articles of incorporation shall set forth the name of the corporation, the name of the city, town or village in which the business office of such company is to be located, and the intended duration of the company, and if it is found conformable to this act and not inconsistent with the laws and constitution of this state, the commissioner of insurance shall thereupon deliver to such persons a certified copy of its articles of incorporation, and a certificate to the effect that said corporation has complied with all the requirements of law, which, on being filed in the office of the register of deeds of the county where the principal office of the corporation is located shall be its authority to commence business and issue policies, and such certified copy of the articles of incorporation and of such certificate may be used for or against such company, with the same effect as the original, and shall be conclusive evidence of the fact of the organization of such corporation. [Laws 1915, ch. 172, § 2.]

Insurance, 32 C. J. p. 1020 § 68.

§ 4950a3. Directors; number; quorum; election; annual meeting; quorum at. The number of directors shall be not less than five (5) and not more than fifteen (15), a majority of whom shall constitute a quorum to do business, to be elected by the members of said company in the manner provided by the by-laws of said company, and, if not otherwise provided, by ballot, of whom one-third shall be elected for one year, one-third for two years and one-third for three years, and until their successors are elected and qualified; in all subsequent elections, except to fill vacancies, one-third of said board of directors shall be elected for three years; said election shall be held at the annual meeting of the company which shall be held on the second Thursday of January of each year, unless otherwise provided by their by-laws. In the election of the first board of directors each incorporator shall be entitled to one vote. At every subsequent election each person insured shall be entitled to one vote for each director to be elected. Twenty members shall constitute a quorum at such annual meeting for the transaction of business. [Laws 1915, ch. 172, § 3.]

Insurance, 32 C. J. pp. 1024-1025 §§ 74-75.

What constitutes quorum of directors of corporations. 7 R. C. L. 446.

§ 4950a4. Officers. The directors shall elect from their number, a president, and a vice-president, and shall also select a secretary and treasurer, who may or may not be members of the company, all of whom shall hold their office for one year, and until their successors are elected and qualified, provided that the office of secretary and treasurer may both be held by one person. [Laws 1915, ch. 172, § 4.]

Insurance, 32 C. J. p. 1025 §§ 75-76.

§ 4950a5. Bond of secretary and treasurer. The treasurer and secretary shall each give bonds to the company for the faithful performance of their duties in such amounts as shall be prescribed by the board of directors. [Laws 1915, ch. 172, § 5.]

§ 4950a6. Powers and duties. Such corporation and its directors shall possess the usual powers and be subject to the usual duties of corporations and directors thereof and may make by-laws, not inconsistent with the constitution or laws of this state, as may be deemed necessary for the management of its affairs in accordance with the provisions of this act; also to prescribe the duties of its officers and fix their compensation, and to alter and amend its by-laws when necessary. [Laws 1915, ch. 172, § 6.]

Insurance, 32 C. J. p. 1025 § 76, p. 1027 § 78.

Powers of directors of corporations. 4 R. C. L. 437 and Supps.

Power to enact corporate by-laws. 7 R. C. L. 144.

By-laws of mutual insurance companies. 14 R. C. L. 848 and Supps.

§ 4950a7. Members; who may be; who may not be director. Any person owning property within the limits of the territory in which such company is authorized to transact business may become a member of such company by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto; but no person not residing within said territory shall become a director of said company. [Laws 1915, ch. 172, § 7.]

Insurance, 32 C. J. p. 1024 § 72, p. 1025 § 75.

Members of mutual insurance companies. 14 R. C. L. 847 and Supps.

§ 4950a8. Limits of operation; term of policy. No company formed under the provisions of this act shall insure any property beyond the limits of the territory comprised in the formation of such company, nor shall it insure any property other than detached dwellings, their contents; farm buildings, their contents; country school houses, furniture, books and fixtures; country churches, furniture and other contents; automobiles, only while in the buildings on premises; live stock on the premises or anywhere within the limits of said territory; farm machinery and vehicles in the buildings or on the premises including threshing machines while not in service, only, and hay or grain in stack on said premises; said policies may cover loss or damage to live stock, harness and vehicles temporarily taken from the territory of the company; provided, said live stock, harness and vehicles be not removed to exceed twenty-five miles from the territory of the company. Said policies shall be issued for not to exceed five years, and not to extend beyond the limited duration of said company. Nor shall any policy be issued covering property located within the platted limits of any incorporated city, town or village in this state. [Laws 1915, ch. 172, § 8.]

Insurance, 32 C. J. p. 1027 § 79.

§ 4950a9. Classification of property. Any such company may classify the property insured therein at the time of issuing policies thereon under different rates corresponding as nearly as may be to the greater or less risk from fire or lightning and loss which may attach to each several buildings insured. [Laws 1915, ch. 172, § 9.]

Insurance, 32 C. J. p. 1027 § 78, p. 1230 § 399.

§ 4950a10. Undertaking to pay pro rata share of losses; cash payment. Every person insured under the provisions of this act shall give his undertaking, bearing even date with the policy so issued to him, binding himself, his heirs and assigns, to pay his pro rata share to the company of all losses or damages by fire, lightning or cyclone, which may be sustained by any member thereof, which said undertaking shall be filed with the secretary in the office of said company before the issuance of such policy, and shall remain on file in the office except when required to be produced in court as evidence. He shall also at the time of receiving such insurance pay such percentage in cash, or such reasonable sum named in the policy as may be required by the rules and by-laws of the company. [Laws 1915, ch. 172, § 10.]

Insurance, 32 C. J. p. 1029 § 80, p. 1024 § 74, p. 1228 § 397.

Liability of members of mutual insurance companies for losses. 14 R. C. L. 847 and Supps.

§ 4950a11. Notice of loss; adjustment; arbitration; examination of witnesses. Every member of such company who may sustain loss or damage by fire, lightning or cyclone, shall immediately notify the secretary of such company, or in case of his absence, the president thereof, which officer shall forthwith ascertain and cause to be adjusted in manner provided for in the by-laws of said company, or forthwith convene the directors of said company, whose duty it shall be to appoint a committee of not more than three members of such company to ascertain the amount of such loss, and in case of the inability of the parties to agree upon the amount of damage the claimant shall choose

a disinterested party, and the company shall choose a disinterested party, who shall constitute a board of arbitration to settle such loss, and in case these parties cannot agree, they shall choose a third party to act with them and such board of arbitration shall have power to examine witnesses and to determine all matters in dispute and the decision of such board shall be final. Any officer or member of such company acting as an adjuster, and the members of any board of arbitration which may be appointed in accordance with the provisions of this section shall have full power to subpoena witnesses, administer oath, examine witnesses and take acknowledgments while acting in the capacity of such adjuster or member of board of arbitration. [Laws 1915, ch. 172, § 11.]

Insurance, 33 C. J. pp. 6-11 §§ 648-657, pp. 36-39 §§ 695-702.

Notice of loss. 14 R. C. L. 1335 et seq. and Supps.

Adjustment or arbitration of loss. 14 R. C. L. 1353.

§ 4950a12. Assessments. Whenever the amount of any loss shall have been ascertained if it exceed the amount of cash funds of the company applicable to the payment of such loss, the president shall convene the directors of the company, who shall make an assessment sufficient at least to pay such loss from all members of the company in proportion to the amount of insurance carried. Provided, that, if there be no quorum present, the secretary shall enter the fact on his journal and the names of the directors present, whereupon the president, secretary and treasurer shall proceed to estimate the rate per cent necessary to cover the loss and expense thereby incurred, and assess the same upon all the insured members of the said company, which said assessment shall be valid and shall be collected in the same way as though it had been made by the board of directors, in the regular manner. The board of directors may levy and collect an assessment for the purpose of providing funds for the payment of current expenses of the company or for the purpose of establishing a permanent loss fund, which permanent loss fund shall at no time exceed one per cent of the insurance in force, and such assessments so levied shall be collectable in the same manner as assessment made for the payment of current losses. In case an assessment made shall not be collected at the time same is due and the amount actually collected is insufficient to pay the losses or expenses of the company, then a second assessment shall be made in the manner above provided upon the policy holders who have paid their assessment for an amount that shall be sufficient to pay all losses and expenses in full. Such assessments shall be made from time to time until a sufficient amount is collected to pay all losses and expenses in full. In case any such delinquent assessment is collected after other assessments have been made and collected, then such assessment so collected shall be added to the permanent loss fund. [Laws 1915, ch. 172, § 12.]

Insurance, 32 C. J. pp. 1214-1222 §§ 362-377.

Levy and enforcement of assessments. 14 R. C. L. 969 et seq.

§ 4950a13. Notice of assessment; power to borrow money. It shall be the duty of the secretary whenever such assessments shall have been completed to notify every member of such company by letter sent to his last known post office address, postage prepaid, of the amount of such assessment, the purpose for which made, and if for the payment of certain losses, the amounts of such losses, the sum due from such member as his share of such assessment, the time when and to whom payment shall be paid which time shall not be less than thirty nor more than sixty days from the date of such notice. The board of directors shall have authority, in their discretion to borrow money for the payment of any unpaid losses, said borrowed money to be repaid from moneys collected from the next ensuing assessment levied in accordance with the provisions of this act. [Laws 1915, ch. 172, § 13.]

Insurance, 32 C. J. pp. 1218-1219, §§ 371-372, p. 1025 § 76.

Notice of assessment. 14 R. C. L. 980.

§ 4950a14. Actions; against nonpaying members; against company. Suits at law may be brought against any member of said company who shall neglect or refuse to pay any assessment made upon him under the provisions of this act; and the directors of any company so formed who shall wilfully refuse to neglect to perform the duties imposed upon him by the provisions of this act, shall be liable in their individual capacity to any person sustaining such loss. Suits at law may also, be brought and maintained against such company, by members thereof, for losses sustained, if payment is withheld after such losses have become due. [Laws 1915, ch. 172, § 14.]

Insurance, 33 C. J. p. 64 §§ 757-759, pp. 73-74 §§ 777-778, 32 C. J. p. 1026 § 77.

Enforcement of assessments. 14 R. C. L. 974, 975 and Supps.

§ 4950a15. Withdrawals; cancelation of policy. Any members of such company may withdraw therefrom by surrendering his policy for cancellation at any time while the company continues to transact the business for which it was organized, by giving notice in writing to the secretary thereof, and paying his share of all claims then existing against said company; provided, that by the withdrawal of such member, the number of members remaining in such company shall not be reduced below the original number of incorporators, or that the assets will not be reduced below the amount at the time of incorporation; provided, further, that the company shall have power at any time to terminate or cancel any policy, by giving the insured written notice to that effect and returning to such insured any unearned premium which he may have paid, pro rata. [Laws 1915, ch. 172, § 15.]

Insurance, 32 C. J. p. 1024 § 73, pp. 1245-1253 §§ 431-442, p. 1256 § 448, p. 1259 § 454.

Cancelation of mutual insurance policy. 14 R. C. L. 971 and Supps.

§ 4950a16. Non-residents as members. Non-residents of any county in this state, owning property therein, may become members of any company incorporated under this act, and shall be entitled to all the rights and privileges pertaining thereto, except that they cannot become directors of such company. [Laws 1915, ch. 172, § 16.]

Insurance, 32 C. J. p. 1024 § 72, p. 1025 § 75.

Non-residents as members of mutual insurance companies. 14 R. C. L. 847 and Supps.

§ 4950a17. Perpetual existence. All county mutual insurance companies now organized or hereafter organized shall be perpetual, provided that any county mutual insurance company now organized, may amend its articles of incorporation as provided for by law, so as to extend the term of its incorporation perpetually. [Laws 1918, Sp. Sess. ch. 9, § 1; Laws 1915, ch. 172, § 17.]

Insurance, 32 C. J. p. 1020 § 68, p. 1022 § 70.

§ 4950a18. Emergency. Whereas an emergency exists, in that there are several county mutual insurance companies whose articles of incorporation will expire before July 1st, 1918; and whereas it is necessary for the immediate preservation of public peace, health and safety, that immediate relief be given, therefore, this act shall take effect and be in force from and after its passage and approval. [Laws 1918, Sp. Sess. ch. 9, § 2.]

§ 4950a19. Annual statement. The secretary of the company shall prepare and submit to the members thereof, at each annual meeting, a copy of the annual statement required to be filed with the commissioner of insurance, as provided in section 4949 of the Compiled Laws of 1913, of the state of North Dakota. [Laws 1915, ch. 172, § 18.]

Insurance, 32 C. J. p. 986 § 15.

§ 4950a20. Applicability of general laws. In all other respects companies organized under the provisions of this act shall be subject to the provisions of

the general laws of the state of North Dakota relating to such insurance companies. [Laws 1915, ch. 172, § 19.]

Insurance, 32 C. J. p. 986 § 15.

§ 4950a21. Amendments to remove conflicts with provisions of act. Any such companies now organized and transacting business in this state whose articles of incorporation or by-laws or any part of them conflict with the provisions of this act, shall within a reasonable time after the passage and approval of this act, amend such articles or by-laws to conform to the provisions hereof and file such amendments with the commissioner of insurance. [Laws 1915, ch. 172, § 20.]

Insurance, 32 C. J. p. 1022 § 70.

ARTICLE 23.—LICENSING INSURANCE AGENTS.

§ 4959. Comp. Laws, 1913.

Agent, may orally renew fire insurance policy, on same conditions even though original policy had expired several days before renewal agreement. *Anderson v. Northwestern F. & M. Ins. Co.*, — N. D. —, 201 N. W. 514.

ARTICLE 25.—PROTECTION OF INSURANCE AGENTS.

§ 4964a1. Discrimination against agents forbidden. It shall be unlawful for any domestic, stock, or mutual fire insurance company, or for any foreign stock, or mutual fire insurance company authorized to do business within this state, to discriminate in any manner whatsoever against any insurance agent authorized and licensed to do business within this state, or to withdraw, cancel or limit its agency with such agent solely upon the ground or for the reason that such agent is also acting as agent for another insurance company authorized to do business within this state. [Laws 1925, ch. 153, § 1.]

§ 4964a2. Violation of provisions; citation for. If the commissioner of insurance shall become aware of any alleged violation of this act, or if written complaint is made to him of any alleged violation thereof, he shall forthwith by registered mail cite the insurance company complained against to appear before him at a day to be designated by him not less than ten, nor more than thirty days from the date of such citation to answer said alleged violation hereof. If upon such hearing, it shall appear that there has been a willful and intentional violation of this act, it shall be the duty of said commissioner of insurance forthwith to cancel the certificate authorizing said company to do business within this state; and thereafter it shall be unlawful for said company to transact any insurance business within this state until said order of cancellation shall be revoked. [Laws 1925, ch. 153, § 2.]

Insurance, 32 C. J. p. 987 § 16.

CHAPTER 19.

ACCIDENT AND SICKNESS INSURANCE CORPORATIONS, ASSOCIATIONS AND SOCIETIES.

§ 4978. Comp. Laws, 1913.

Dinnie v. United Commercial Travelers, 41 N. D. 42, 169 N. W. 811.

CHAPTER 19A.

FOREIGN ASSESSMENT ACCIDENT AND HEALTH COMPANIES.

§ 4980a. Deposit. Each foreign assessment, accident and health insurance company, or association doing business in this state on the assessment plan shall

keep at all times deposited with the commissioner of insurance of this state, one regular assessment sufficient to pay the average loss or losses occurring among its members in this state during the time allowed by it for the collection of assessments and payment of losses. And no such company, or association, shall be licensed by the commissioner of insurance unless it shall keep and maintain with him for the protection of its obligations at least ten thousand dollars (\$10,000.00) in United States or North Dakota bonds, or in the bonds of some county, city or town in North Dakota, or mortgages on improved unincumbered real estate within this state, worth double the sum loaned thereon, and approved by the commissioner of insurance. [Laws 1917, ch. 137.]

Insurance, 32 C. J. p. 995 § 28.

Deposit by foreign insurance company. 14 R. C. L. 865.

CHAPTER 19B.

CO-OPERATIVE AND ASSESSMENT LIFE ASSOCIATIONS.

§ 4980b1. **Permission to transact business.** All co-operative or assessment life associations licensed to transact business within this state, and such associations duly licensed and transacting business in other states, shall be admitted to transact business in this state upon compliance with the general laws relating to the licensing and admission of life insurance companies without being required to value their policies in conformity with section 4923 of the Compiled Laws of the state of North Dakota for the year 1913. [Laws 1917, ch. 138, § 1.]

Insurance, 32 C. J. p. 992 § 23; Life Insurance, 37 C. J. p. 368 § 18.

§ 4980b2. **Assets; accumulation of.** All such associations shall accumulate and maintain assets in excess of actual liabilities for death losses sustained and expenses incurred equal to two per cent of all insurance such association has in force, and such assets shall consist of cash, money on deposit in banks and such securities as are prescribed by the laws of this state. [Laws 1917, ch. 138, § 2.]

Insurance, 32 C. J. pp. 1029-1030 §§ 82-83; Life Insurance, 37 C. J. p. 368 §§ 18-20.

§ 4980b3. **Valuation of policies.** All such associations shall value their policies in the same manner as yearly renewable term policies are valued, according to the standard of valuation of life insurance policies prescribed by the laws of this state. [Laws 1917, ch. 138, § 3.]

Life Insurance, 37 C. J. p. 368 §§ 18-19.

Right of assessment company to increase rates. L. R. A. 1916A, 762.

Right of assessment company to decrease benefits. L.R.A.1917C, 626.

Right of assessment company to change plan or class of policies. 1 L.R.A. (N.S.) 623.

§ 4980b4. **Words "Issued upon the Assessment Plan" to be on front page of policy.** Each and every co-operative or assessment life association transacting business in this state shall print in bold type and in red ink, near the top of the front page of each policy or certificate issued upon the life or lives of any resident or residents of the state of North Dakota, the words "Issued upon the Assessment Plan." [Laws 1917, ch. 138, § 4.]

Insurance, 32 C. J. p. 1118 § 216.

CHAPTER 21.

STATEMENTS BY MINING CORPORATIONS.

§ 4989. **Mining corporations to file statement before offering stock for sale.** No shares or certificates of stock in any mining corporation established under

the laws of this state, or any state, territory, province, country or government, shall be sold or offered for sale within this state by such corporation, or by any person, firm, association or corporation acting as agent, representative, attorney or broker for such corporation, until such corporation shall have filed in the office of the secretary of state a statement under oath, showing the financial condition of such corporation, the location of the mine or mines, owned by such corporation, with plans of the same; the amount of work done thereon; the amount of cash expended for improvements thereon and the condition of the plant and machinery connected therewith. Such statements shall be signed by the president, secretary and treasurer of such corporation and shall be verified by the oath of each of such officers to the effect that the same is in all respects true.

Provided that this act shall not apply to the sale, or offering for sale, of shares or certificates of stock in mining corporations, the sale of which is authorized under the provisions of chapter 91, Session Laws of 1915, (see note preceding § 5235a1, post) or amendments thereto. [Laws 1923, ch. 180, § 1.]

Licenses, 37 C. J. pp. 273-274 §§ 166-168.

CHAPTER 23.

RELIGIOUS, EDUCATIONAL AND BENEVOLENT CORPORATIONS.

ARTICLE 1. GENERAL PROVISIONS, § 5005.

1a. CORPORATIONS EXTINCT; CHURCHES, §§ 5012a1-5012a3.

3. FRATERNAL CORPORATIONS, § 5017.

4. STATUS AND ORGANIZATION OF FRATERNAL CORPORATIONS, §§ 5025, 5030.

5. FRATERNAL BENEFICIARY ASSOCIATIONS, § 5053.

6. FRATERNAL BENEFIT SOCIETIES, §§ 5059-5088.

7a. MATERNITY HOSPITALS, 5099a1-5099a12.

7b. CHILDREN'S HOMES, §§ 5099b1-5099b10.

7c. PLACING OF CHILDREN IN FAMILY HOME, §§ 5099c1-5099c11.

8. HOMES FOR ORPHANS, §§ 5100-5108.

9. DEPENDENT CHILDREN, §§ 5109, 5110.

ARTICLE 1.—GENERAL PROVISIONS.

§ 5005. **How formed.** A corporation for religious, educational, benevolent, charitable or scientific purposes or a commercial or social corporation not organized for profit may be formed in the manner provided in chapter 12, amending chapter 12 of the Civil Code of North Dakota. [Laws 1915, ch. 95, § 1.]

Beneficial Associations, 7 C. J. p. 1058 §§ 7-8; Charities, 11 C. J. p. 372 § 101; Colleges and Universities, 11 C. J. p. 980 § 4; Industrial Co-operative Societies, 31 C. J. p. 961 § 2; Religious Societies, 34 Cyc. 1116.

Incorporation of religious societies. 23 R. C. L. 424.

ARTICLE 1a.—CORPORATIONS EXTINCT; CHURCHES.

§ 5012a1. **In whom property vests.** All the property, both real and personal, belonging to or held in trust for any church, church society or denominational religious society organized under the laws of the state of North Dakota that has become or shall become extinct, shall vest in and become the property of the central North Dakota society, convention or associations with which said church or religious society is associated or affiliated, provided that said central association, society or convention is duly incorporated under the laws of the state of North Dakota. [Laws 1915, ch. 94, § 1.]

§ 5012a2. **When declared extinct; procedure.** Any denominational church or religious society which has failed for two consecutive years next prior thereto to maintain religious services according to the custom and usage of said denomination or society, or which has less than ten resident attending members making an annual contribution towards its support, may be declared extinct in the following manner, viz.: upon presentation to the district court of the district within which said church or society is located, of a certified petition, signed by at least the majority of the resident attending members, stating fully the facts in the case, the said court, or a judge thereof, shall issue an order to show cause why said church or society should not be declared extinct. Said order to show cause shall be made returnable at a term of said court held in and for the county within which said church or society is located, and not less than thirty days' notice of the hearing of said petition shall be given by advertisement in a newspaper published in said county, designated by the judge of said court. The said judge shall order such additional notice to be given, either by personal service or otherwise, as to him shall seem expedient. [Laws 1915, ch. 94, § 2.]

§ 5012a3. **Order declaring extinct; how property used.** On evidence being furnished to the satisfaction of the said court or the judge thereof that the said church or religious society has ceased to hold services in and used said property for religious worship or service for a term of two years previous to such application, the said district court or judge thereof may grant an order declaring such church or society extinct and thereon direct that all its temporalities shall be transferred to and thereupon shall be taken possession of by the central North Dakota organization or society of said church or denomination, or directing that the same be sold in such manner and upon such notice as shall be by the said court decreed, and that the proceeds thereof, after payment of debts of said church or society, be paid over to the said central society, association or convention. All property and proceeds from the sale of property so transferred to said central organization as hereinbefore provided, shall be used and applied for religious purposes within the state of North Dakota, and shall not be diverted for any other purpose. [Laws 1915, ch. 94, § 3.]

Disposition of property of church upon its dissolution. 47 L.R.A.(N.S.)1015.

ARTICLE 3.—FRATERNAL CORPORATIONS.

§ 5017. Comp. Laws, 1913.
Glein v. Miller, 45 N. D. 1, 176 N. W. 113.

ARTICLE 4.—STATUS AND ORGANIZATION OF FRATERNAL CORPORATIONS.

§§ 5025, 5030. Comp. Laws, 1913.
State ex rel. Linde v. Packard, 35 N. D. 298, L.R.A.1917B, 710, 160 N. W. 150.

ARTICLE 5.—FRATERNAL BENEFICIARY ASSOCIATIONS.

§ 5053. Comp. Laws, 1913.
Constitutionality of section upheld. Brown v. Steckler, 40 N. D. 113, 1 A.L.R. 753, 168 N. W. 670.

ARTICLE 6.—FRATERNAL BENEFIT SOCIETIES.

§§ 5059, 5061a. Comp. Laws, 1913.
Dinnie v. United Commercial Travelers, 41 N. D. 42, 169 N. W. 811.

§ 5063. Comp. Laws, 1913.
Taylor v. Grand Lodge, A. O. U. W. 45 N. D. 468, 178 N. W. 130.

§ 5064a. **Fraternal societies may establish classified membership.** Any fra-

ternal society chartered or transacting business in this state is hereby authorized and empowered to establish or maintain separate classes of membership each class having a separate form of contract of similar general plan and character in its purpose; the assets or mortuary collections secured from the member of each class respectively shall be carried and maintained separately for such class, and the required reserve of such accumulation of such class, if contract therefor provides for such a fund, shall be set apart and held specifically and separately for the use and benefit of such particular class, and shall not thereafter be mingled with the assets or mortuary collections of any other class of the society. [Laws 1919, ch. 155, § 1.]

Beneficial Associations, 7 C. J. pp. 1085-1086 §§ 39-46.

§ 5066. Comp. Laws, 1913.

Interest of insured in fund. *Taylor v. Grand Lodge, A. O. U. W.* 45 N. D. 468, 178 N. W. 130.

§ 5070a. **Authority to provide whole family protection.** Any fraternal benefit society authorized to do business in this state and operating on the lodge plan, may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and sixteen years at next birthday upon application by some person responsible for the support of said child. Any such society may at its option organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society.

The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: Two, thirty-four dollars; three, forty dollars; four, forty-eight dollars; five, fifty-eight dollars; six, one hundred and forty dollars; seven, one hundred and sixty-eight dollars; eight, two-hundred dollars; nine, two hundred and forty dollars; ten, three hundred dollars; eleven, three hundred and eighty dollars; twelve, four hundred and sixty dollars; thirteen to fifteen, five hundred and twenty dollars; age sixteen, six hundred dollars. No benefit certificate as to any child shall take effect until after medical examination or inspection, in accordance with the laws of the society, nor shall any such benefit certificate be issued unless the society shall simultaneously put in force at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table" or the "English Live Table Number Six" and a rate of interest not greater than four per cent per annum, or upon a higher standard; provided, that contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws, and provided further, that extra contributions may be made if the reserve hereafter provided for become impaired. Any society entering into such insurance agreement shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions, and all the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized; provided, that upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. An entirely

separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the Insurance Commissioner by any society availing itself of the provisions hereof. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded, or modified, nor shall the funds be diverted for any use other than as herein specified, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, re-insurance, merger or other change in the condition of the status of the society. [Laws 1919, ch. 156, § 1.]

Beneficial Associations, 7 C. J. pp. 1095-1096 §§ 52-53, p. 1087 § 40, p. 1108 § 73.

Eligibility of infants to membership in benefit societies. 19 R. C. L. 1238.

§ 5088. Comp. Laws, 1913.

Dimmie v. United Commercial Travelers, 41 N. D. 42, 169 N. W. 811.

ARTICLE 7a.—MATERNITY HOSPITALS.

Explanatory note. Laws 1923, ch. 164, comprising this article, repealed, by § 12 (§ 5099a12, post), the earlier law on this subject (Laws 1915, ch. 183), which also covers matter contained in the two following articles (7b and 7c) and is also repealed by §§ 5099b10 and 5099c11, post. In so far as the sections in the two acts correspond, both are noted in the brackets [] at the ends of the sections.

§ 5099a1. **License required.** Any person, partnership, voluntary association or corporation, which owns or operates a maternity hospital, as hereinafter defined, shall secure annually from the board of administration a license so to do. [Laws 1923, ch. 164, § 1; Laws 1915, ch. 183, § 1.]

§ 5099a2. **Maternity hospital defined.** A maternity hospital is defined as any hospital, or other premises, where more than one woman is received during any period of six months for shelter, care or treatment during pregnancy, or delivery, or within ten days after delivery, provided, that this act shall not apply to any hospital, or other premises, owned or operated by the state. [Laws 1923, ch. 164, § 2; Laws 1915, ch. 183, § 2.]

§ 5099a3. **Licenses, to whom granted.** Licenses for the operation of maternity hospitals shall be issued by the board of administration and shall be in force and effect for a period not exceeding one year. Licenses shall be granted to reputable and responsible persons upon a showing that the premises to be used as a maternity hospital are in fit sanitary condition and properly equipped to provide good care and treatment. It also shall appear that the persons in active charge of the hospital, and their assistants, are qualified by training and experience to carry on efficiently the duties required of them; that the hospital is likely to be conducted for the public good, and in accordance with sound social policy; and that the health and well-being of the infants born therein, and the health, morality and well being of the parties treated therein, will be properly safe-guarded. [Laws 1923, ch. 164, § 3; Laws 1915, ch. 183, § 6.]

§ 5099a4. **License; revocation.** The board of administration shall have authority to revoke a license of any maternity hospital upon a proper showing that any of the conditions set forth in section 3 as prerequisites for the issuance of the license no longer obtained, or that the license was issued upon fraudulent or untrue representations or that the owner or operator of such hospital has violated any of the rules and regulations of the board, or has been guilty of the violations of any law of the state disclosing moral turpitude. Before any application for license to conduct a maternity hospital shall be denied or before revocation of any such license shall take place, written charges as to the reasons therefor shall be served upon the applicant or licensee, who shall

have the right to a hearing before the board, if such hearing is requested within ten days after service of the written charges. [Laws 1923, ch. 164, § 4; Laws 1915, ch. 183, § 7.]

§ 5099a5. **Appeal.** There shall be an appeal to the district court from any decision of the board denying an application or revoking a license. The procedure on such appeal shall be the same so far as applicable as in the case of appeal from a decision of the board of county commissioners. The written notices and decisions shall be treated as pleadings. The appeal may be brought on for hearing summarily by an order to show cause. Either party may appeal to the supreme court within five days after notice of filing the decision in the manner provided for appeals in a civil action. No revocation shall be effective until the determination of an appeal. [Laws 1923, ch. 164, § 5.]

§ 5099a6. **Form of license.** The license shall state the name of the licensee, designate the premises to which the license is applicable and the number of patients who may be received in such premises at any one time. [Laws 1923, ch. 164, § 6; Laws 1915, ch. 183, § 6.]

§ 5099a7. **Regulation by board of administration.** The board of administration may prescribe forms for the registration and record of persons cared for in maternity hospitals and shall make such reasonable rules and regulations for the conduct of such hospitals as are necessary to carry out the purposes of this act. The board and its authorized agents may inspect such hospitals at any time and shall have full and free access to every part thereof. The records shall be open for their inspection and they shall have authority to see and interview patients therein. [Laws 1923, ch. 164, § 7.]

§ 5099a8. **Attendance on births.** Every birth occurring in a maternity hospital shall be attended by a legally qualified physician or midwife. The licensee of the hospital shall report to the board of administration all births occurring within the hospital. These reports shall be made within twenty-four hours after the birth occurs and on blanks to be provided by the board for that purpose. [Laws 1923, ch. 164, § 8; Laws 1915, ch. 183, §§ 8, 9.]

§ 5099a9. **Records protected.** No agent of the board of administration or of any board of health, or the licensee, shall disclose the contents of the records of maternity hospitals or of the reports received therefrom, except in a judicial proceeding, or to officers of the law or other legally constituted boards or agencies or to persons having a direct interest in the well-being of the patient, or her infant, and in a position to serve their interests should that be necessary. [Laws 1923, ch. 164, § 9.]

§ 5099a10. **Disposing of infants prohibited.** No licensee of a maternity hospital shall undertake, directly or indirectly, to dispose of infants by placing them in family homes for adoption or otherwise. No licensee as an inducement to a woman to go to any maternity hospital for confinement care shall in any way offer to dispose of any child, or advertise that he will give children for adoption or hold himself out, directly or indirectly, as being able to dispose of children. [Laws 1923, ch. 164, § 10; Laws 1915, ch. 183, § 12.]

Explanatory note. See also §§ 9607, 9608, post.

§ 5099a11. **Penalty.** Every person who violates any of the provisions of this act, or who makes any false statements on reports to the board of administration shall upon conviction be guilty of a misdemeanor. [Laws 1923, ch. 164, § 11; Laws 1915, ch. 183, § 14.]

§ 5099a12. **Repeal.** Chapter 183 of the Laws of 1915, and all other acts or parts of acts inconsistent herewith, are hereby repealed. [Laws 1923, ch. 164, § 12.]

Explanatory note. See note preceding § 5099a1, ante.

ARTICLE 7b.—CHILDREN'S HOMES.

Explanatory note. See note preceding § 5099a1, ante.

§ 5099b1. **License required.** Any person, partnership, voluntary association or corporation, which owns or operates a home or institution receiving, during the calendar year, more than three children under the age of eighteen years, shall procure annually from the board of administration a license so to do; provided, however, that this act shall not apply when the children received by such person are related to him by blood or marriage; and provided, further, that this act shall not apply to any home or institution under the management and control of the state. [Laws 1923, ch. 161, § 1; Laws 1915, ch. 183, § 6.]

§ 5099b2. **License, how granted.** Licenses under this act shall be granted by the board of administration and shall be in force and effect for a period not exceeding one year. Such licenses shall be issued to reputable and responsible persons upon a showing that the premises to be used are in fit sanitary condition and properly equipped to provide good care for all children who may be received. It shall also appear that the persons in active charge of such a home or institution, and their assistants, are properly qualified to carry on efficiently the duties required of them; that such home or institution is likely to be conducted for the public good in accordance with sound social policy, and with due regard to the health, morality and wellbeing of all children cared for therein; and that the institution or home will be maintained according to the standards prescribed for its conduct by the rules and regulations of the board. [Laws 1923, ch. 161, § 2; Laws 1915, ch. 183, §§ 6, 13.]

§ 5099b3. **License, how revoked.** The board of administration shall have authority to revoke the license of any home or institution upon a proper showing that any of the conditions set forth in section 2 as prerequisites for the issuance of the license, no longer obtain, or that the license was issued upon fraudulent or untrue representations; or that the owner or proprietor of such home or institution has violated any of the rules and regulations of the board of administration, or has been guilty of the violation of any law of the state disclosing moral turpitude. [Laws 1923, ch. 161, § 3; Laws 1915, ch. 183, § 7.]

§ 5099b4. **License; hearing when denied.** Before any application for a license under the provisions of this act shall be denied, or before revocation of any such license shall take place, written charges as to the reasons therefor shall be served upon the applicant or licensee, who shall have the right to a hearing before the board of administration, if such hearing is requested within ten days after service of the written charges. [Laws 1923, ch. 161, § 4.]

§ 5099b5. **Appeal.** There shall be an appeal to the district court from any decision of the board of administration denying an application or revoking a license. The procedure of such appeal shall be the same so far as applicable as in the case of appeal from a decision of the board of county commissioners. The written notices and decisions shall be treated as pleadings. The appeal may be brought on for hearing summarily by an order to show cause. Either party may appeal to the supreme court within five days after notice of filing the decision in the manner provided for appeals in a civil action. No revocation shall be effective until the determination of an appeal. [Laws 1923, ch. 161, § 5.]

§ 5099b6. **Authority of board of administration.** The board of administration may prescribe forms for the registration and record of all children cared for in any home or institution licensed under this act, and shall make such reasonable rules and regulations for the conduct of such place as are necessary to carry out the purposes of this act. The board and its authorized agents, may inspect such licensed premises at any time, and shall have full and free

access to every part thereof. All records shall be open for their inspection and they shall have authority to see and interview all children cared for therein. [Laws 1923, ch. 161, § 6.]

§ 5099b7. **Records protected.** No agent of the board shall disclose the contents of the records of homes or institutions licensed under this act, or of reports which may be received therefrom, except in a judicial proceeding, or to officers of the law or other legally constituted boards or agencies, or to persons having a definite interest in the well-being of the child or children concerned and who are in a position to serve their interests should that be necessary. [Laws 1923, ch. 161, § 7.]

§ 5099b8. **Acts prohibited.** No licensee under the provisions of this act shall hold himself out as having authority to dispose of any child, or advertise that he will give children for adoption, or hold himself out, directly or indirectly, as being able to dispose of children, unless he shall have been expressly licensed so to do by the board of administration in accordance with law. [Laws 1923, ch. 161, § 8; Laws 1915, ch. 183, § 12.]

§ 5099b9. **Penalty.** Every person who violates any of the provisions of this act shall upon conviction be guilty of a misdemeanor. [Laws 1923, ch. 161, § 9; Laws 1915, ch. 183, § 14.]

§ 5099b10. **Repeal.** Chapter 183, Session Laws of 1915, and all acts or parts of acts inconsistent herewith, are hereby repealed. [Laws 1923, ch. 161, § 10.]

Explanatory note. See note preceding § 5099a1, ante.

ARTICLE 7c.—PLACING OF CHILDREN IN FAMILY HOME.

Explanatory note. See note preceding § 5099a1, ante.

§ 5099c1. **License required.** Any person, partnership, voluntary association or corporation, which undertakes to place children in family homes for temporary or permanent care, shall procure annually from the state board of administration a license so to do, and shall be known, and is hereinafter referred to, as a child placing agency. [Laws 1923, ch. 162, § 1; Laws 1915, ch. 183, § 6.]

§ 5099c2. **License, how granted.** Licenses for the conduct of child placing agencies shall be issued by the board of administration upon application and shall be granted for a period not exceeding one year. Such licenses shall be issued to reputable and responsible applicants upon a showing that they, and their agents, are properly equipped by training and experience to find and select suitable temporary or permanent homes for children, and to supervise such homes when children are placed in them, to the end that the health, morality and general well-being of children placed by them will be properly safeguarded. [Laws 1923, ch. 162, § 2; Laws 1915, ch. 183, § 6.]

§ 5099c3. **License, how revoked.** The board of administration shall have the authority to revoke the license of any child placing agency upon a proper showing that any of the conditions set forth in section 2 as prerequisites for the issuance of the license no longer obtain, or that the license was issued upon fraudulent or untrue representations, or that the licensee has violated any of the rules and regulations of the board of administration, or has been guilty of the violation of any state law disclosing moral turpitude. [Laws 1923, ch. 162, § 3; Laws 1915, ch. 183, § 7.]

§ 5099c4. **License, hearing when denied.** Before any application for license to conduct a child placing agency shall be denied, or before the revocation of any such license shall take place, written charges as to the reasons therefor shall be served upon the applicant or licensee, who shall have the right to a hearing before the board if such a hearing is requested within ten days after service of the written charges. [Laws 1923, ch. 162, § 4.]

§ 5099c5. **Appeal.** There shall be an appeal to the district court from any decision of the board denying an application or revoking a license. The procedure on such appeal shall be the same so far as applicable as in the case of appeal from a decision of the board of county commissioners. The written notices and decisions shall be treated as pleadings. The appeal may be brought on for hearing summarily by an order to show cause. Either party may appeal to the supreme court within five days after notice of filing the decision in the manner provided for appeals in a civil action. No revocation shall be effective until the determination of an appeal. [Laws 1923, ch. 162, § 5.]

§ 5099c6. **License, form.** The license shall state the name of the licensee and his address, shall set forth the number of children who may be placed by such licensee during the terms for which the license is issued, and shall indicate whether the licensee is authorized to find temporary or permanent homes for children, or both. [Laws 1923, ch. 162, § 6; Laws 1915, ch. 183, § 6.]

§ 5099c7. **Authority of board of administration.** The board of administration may prescribe the forms for the registration and record of children placed by such child placing agency, and shall make such reasonable rules and regulations in connection with such placements as are necessary to carry out the purposes of this act. All records shall be open to the inspection of the board. [Laws 1923, ch. 162, § 7.]

§ 5099c8. **Duties of licensees.** Every licensee shall keep a full record and social history of each child received for placement and a similar record and history of his family. No child shall be placed in any foster home until adequate investigation has been made as to the suitability of the proposed foster parents and their home surroundings. The licensee shall report to the board of administration the name and address of each child to be placed in a permanent foster home, the name and address of the proposed foster parents, and such other facts and information as shall be requested by the board. It shall thereupon be the duty of the board to visit the proposed foster home and make such other inquiries and investigations as may be necessary to ascertain whether the home is a suitable one for the child, and shall continue to visit and supervise in such manner as it may deem necessary. Whenever satisfied that a child has been placed in an unsuitable home the board may order its return to the agency which has placed it, and if such order is not obeyed within thirty days it may revoke the license of the agency so placing and shall itself take charge of, and provide for, the child. [Laws 1923, ch. 162, § 8; Laws 1915, ch. 183, § 9.]

§ 5099c9. **Placement contract.** Every child placing agency upon placing a child in a foster home, shall enter into a written agreement with the persons taking the child, which shall provide that the placing agency shall have access at all reasonable times to such child, and to the home in which he is living, and for the return of the child to the placing agency whenever in the opinion of such agency, or of the board of administration, the best interest of the child shall require. [Laws 1923, ch. 162, § 9.]

§ 5099c10. **Penalty.** Every person who violates any provision of this act shall upon conviction be guilty of a misdemeanor. [Laws 1923, ch. 162, § 10; Laws 1915, ch. 183, § 14.]

§ 5099c11. **Repeal.** Chapter 183 of the Session Laws of 1915, and all acts or parts of acts inconsistent herewith, are hereby repealed. [Laws 1923, ch. 162, § 11.]

Explanatory note. See note preceding § 5099a1, ante.

ARTICLE 8.—HOMES FOR ORPHANS.

§ 5100. **Rules and regulations.** Whenever not less than twenty reputable

citizens of the state of North Dakota have associated, or shall associate, themselves into a corporation under the laws of this state, for the purpose of securing homes for orphans, or for homeless, dependent, neglected or grossly ill-treated children, by adoption or otherwise, into family homes, have secured a license from the board of administration to carry on such work of placing children in foster homes, and have filed, or shall file, with the secretary of state, their articles of incorporation, together with a certificate signed by the governor and three or more members of the supreme court of the state of North Dakota, of their confidence in said corporation, it shall have power to receive such children for the purpose above expressed, in the manner herein specified; provided, that at the end of ten years such power shall cease unless a new certificate as provided above, signed by at least three members of the supreme court of North Dakota, shall be filed as above, and such certificate shall be filed every ten years during the continuance of such society. Such society shall have a main office and adopt rules for the transaction of business, which shall be published, and its financial records shall be open to the inspection of the public. [Laws 1923, ch. 160, § 1.]

§ 5100a1. Charters validated. All corporations heretofore organized or operated under the provision of section 5100 of the Compiled Laws of the state of North Dakota for the year 1913, whose charters have become forfeited or affected by reason of failure or neglect to secure a new certificate, as in said section provided, shall be and the same are hereby validated for all purposes; provided, that any such corporation, at any time within ninety (90) days after the taking effect of this statute, with the approval of the attorney general's department of this state and the payment of a penalty of five dollars (\$5.00), complies with the provisions of said section 5100 with reference to securing a new certificate; and the charter of any such corporation, complying with the provisions of this statute within said period, is hereby declared reinstated and valid in all respects. [Laws 1919, ch. 98, § 1.]

§ 5100a2. Emergency. Whereas an emergency exists in that there is no provision for validating and reinstating corporations, which have failed or neglected to secure a renewal certificate under the provisions of sec. 5100 of the Compiled Laws of 1913 of the state of North Dakota, this act shall take effect and be in force from and after its passage and approval. [Laws 1919, ch. 98, § 2.]

§ 5101. Powers of society. Such society shall have the power to receive into its hands and under its control, and may become the legal guardian of, any child under fourteen years of age without its consent, and over fourteen years and under eighteen years with his consent, who shall be committed as a delinquent, dependent or neglected child, to its guardianship by a court of competent jurisdiction; and such society is hereby authorized and empowered to consent, through its duly authorized agent, in the courts of this state, to the adoption of such child in accordance with the statutes of the state on that subject, and such agent or such society shall have power to administer oaths and acknowledge affidavits in all matters pertaining to the business of such society. Such society shall have the power and authority to enter into agreements with persons taking children which agreements in each case shall provide for the proper care of the child until it shall reach the age of eighteen years, and may also provide that any such child so placed shall be returned to the society upon its request. [Laws 1923, ch. 160, § 2.]

§ 5106a1. Importation of children. Any person, partnership, voluntary association or corporation, which undertakes to bring or send children from any state into this state for placement in family homes, shall first procure a license from the board of administration and file with that board a bond to the state in the sum of one thousand dollars, to be approved by the attorney general,

conditioned that no child will be brought into the state who is incorrigible, unsound of mind or body, or likely to become a public charge; that any child so brought in will be promptly removed upon notice from the board; that upon the placing of children brought into the state in family homes a report will be made to the board; and that all the provisions of the statutes relating to the placement of children will be complied with. Provided, however, that this section shall not apply to a resident of the state who personally brings a child into the state for permanent care or adoption into his own family, except that in such case he shall report to the board his own name and address, the name of the child, and the name and address of the person, organization or institution from which the child was received. [Laws 1923, ch. 159, § 1.]

§ 5106a2. Exportation of children. No person, partnership, voluntary association or corporation, shall take or send any child out of the state for placement in a family home in another state without first securing the consent of the board of administration so to do, and without first reporting to that board the name and address of any child so taken or sent and the name and address of the family which is to receive the child, together with such information concerning the family and the child as the board may require. Provided, however, that this section shall not apply to a parent who personally removes his child from the state. [Laws 1923, ch. 159, § 2.]

§ 5106a3. Penalty. Any person who violates any of the provisions of this act (§§ 5106a1, 5106a2, ante) shall be guilty of a misdemeanor. [Laws 1923, ch. 159, § 3.]

§ 5106a4. Repeal. Sections 5107 and 5108 of the Compiled Laws for 1913, and all acts or parts of acts, inconsistent herewith, are hereby repealed. [Laws 1923, ch. 159, § 4.]

§§ 5107, 5108. Repealed by § 5106a4, ante.

ARTICLE 9.—DEPENDENT CHILDREN.

§ 5109. Cared for at public expense; jurisdiction of juvenile court. Any minor child under the age of eighteen years, who shall by reason of the failure of either or both of its parents or custodian to support such child, become dependent upon public charity, or who may be deserted by its parent or parents or custodians without arrangement for its proper care, shall be deemed abandoned and may be cared for at public expense by the overseers of the poor. Such child shall also be subject to the jurisdiction of the juvenile court of this state and may be committed to any reputable person or organization duly licensed for the care of children, or otherwise, as provided for the commitment by that court of dependent and neglected children. [Laws 1923, ch. 158, § 1.]

Infants, 31 C. J. p. 987 § 5, p. 989 § 7, p. 993 § 13.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent. 19 A.L.R. 616.

Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court. 11 A.L.R. 147.

Power of juvenile courts to punish for contempt. 8 A.L.R. 1548.

Juvenile courts 14 R. C. L. 277 and Supps.

§ 5110. When subject to jurisdiction of juvenile court. Any minor child under the age of eighteen years, who shall have been left for board with any reputable organization incorporated under the laws of North Dakota and licensed by the board of administration, for the care of placing of children, and whose board shall not have been paid for a period of three months without reasonable excuse, shall be subject to the jurisdiction of the juvenile court and may upon a proper proceeding be committed to the guardianship of such organ-

ization, or otherwise, as provided for the commitment by the court of dependent and neglected children. [Laws 1923, ch. 158, § 2.]

Infants, 31 C. J. p. 989 § 7.

Juvenile courts. 14 R. C. L. 277 and Supps.

CHAPTER 25.

STATE POULTRY ASSOCIATION.

§ 5117. **Appropriation.** There is hereby appropriated out of the funds of the state treasury not otherwise appropriated, the sum of three hundred dollars to be expended by the North Dakota Poultry Association in payment of premiums and special awards in connection with its annual exhibits. [Laws 1923, ch. 100, § 1.]

Explanatory note. The original § 5117 was repealed by Laws 1923, ch. 100.

Agriculture, 2 C. J. p. 990 § 7.

Purposes justifying appropriation of state money. 25 R. C. L. 398 and Supps.

CHAPTER 26.

BUILDING AND LOAN ASSOCIATIONS.

§ 5123a1. **Directors; terms.** A building and loan association organized under the laws of the state of North Dakota may provide by its by-laws for the election of its directors for a term of three years. [Laws 1923, ch. 148, § 1.]

Building and Loan Associations, 9 C. J. p. 927 § 15.

§ 5123a2. **Same; division into groups.** When any such building and loan association adopts by-laws for the election of its directors for a term of three years, then at the first annual election of directors, after the adoption of such by-laws, the directors shall be divided into three groups equal in number as nearly as practicable, the first group to be elected as directors for a period of one year, the second group for a period of two years, and the third group for a period of three years so that as nearly as possible the terms of one-third of such directors shall expire each year and thereafter such directors shall be elected for the full period of three years. [Laws 1923, ch. 148, § 2.]

Building and Loan Associations, 9 C. J. p. 927 § 15.

CHAPTER 27.

RIGHT OF WAY FOR TELEPHONE AND ELECTRIC LIGHT SYSTEMS.

§ 5144. **Right of way for telephone lines and electric light systems.** The board of county commissioners of any county, board of supervisors of any township, board of aldermen of any incorporated city, or board of trustees of any town or village in this state, may, when deemed for the best interest of their respective municipal corporations, grant to any person, who is a resident of this state, or to any company or corporation, organized under the laws of this state, or to any company or corporation duly licensed to do business within this state, the right of way for the erection of a telephone line or electric light system over or upon any public grounds, streets, alleys or highways under the care or supervision of such board granting such right of way. Such right of way shall be granted subject to such conditions, restrictions and regulations as may be prescribed by the board granting the same, as to what grounds, streets, alleys or highways said lines shall run upon, over or across, and as to the places where the poles to support the wires shall be located, and all grants of right of way for the construction of telephone lines or electric light

systems heretofore made, in accordance herewith, by any board above mentioned, are hereby made valid. [Laws 1925, ch. 188, § 1.]

Electricity, 20 C. J. p. 324 § 25; Telegraphs and Telephones, 37 Cyc. 1627, 1633.

Right to transfer or mortgage privilege to use street for telegraph, telephone, or other quasi-public purposes. L.R.A.1917D, 707.

Privilege of using street for wires as a contract. L.R.A.1918E, 907.

Right to carry wires across railroad. L.R.A.1915B, 823.

Perpetual franchise to occupy street. 2 A.L.R. 1105.

Grant by state or municipal corporations of right of way to telephone companies. 26 R. C. L. 503, 505 and Supps.

CHAPTER 28.

BANKING CORPORATIONS.

Explanatory note. Robbery of bank, see post, § 9529a.

§ 5146. Repealed by Laws 1915, ch. 43, § 4.

Appeal, from order of state banking board, requiring removal of objectionable securities. Youmans v. Hanna, 35 N. D. 479, 160 N. W. 705.

Repealed by § 43, Laws 1915. State ex rel. Packard v. Jorgenson, 31 N. D. 563, 154 N. W. 525.

See also State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408; Jensen v. Sawyer State Bank, 44 N. D. 225, 173 N. W. 162; State ex rel. Langer v. Lofthus, 45 N. D. 357, 177 N. W. 755; Youmans v. Hanna, 35 N. D. 513, 161 N. W. 797.

§ 5146(6) **Appointment of deputies.** The state examiner may, subject to the approval of the state banking board, appoint and at pleasure remove, not more than thirteen deputy examiners, one reconciliation clerk, one stenographer and such other employees as may in the judgment of the state banking board, be necessary for the proper discharge of the business of his department. Each deputy examiner shall give bond to the state in the sum of \$10,000 to be approved and filed in the same manner as the bond of the state examiner. The state examiner shall select and designate one of said deputy examiners to be the office deputy and to act during the absence or disability of the state examiner, and in such cases the deputy examiner so authorized shall have charge of the office and administer its affairs. Eight of the said deputy examiners so appointed shall have had at least three years active experience in bank work within this state and shall furnish such evidence of qualification as expert accountants and general fitness for the duties as may be demanded by the banking board. [Laws 1917, ch. 219, § 1.]

Explanatory note. Laws 1917, ch. 219, does not expressly amend § 5146 or any other sections of the Compiled Laws, but it is very obvious that, notwithstanding the repeal of § 5146 as noted above, § 1 of ch. 219 is similar to subdiv. 6, § 2 to subdiv. 7, and § 3 contains new matter on the same subject as § 5146.

Banks and Banking, 7 C. J. p. 481 § 12; States, 36 Cyc. 859.

Examination and supervision of banks by public officers as impairment of charter rights. 8 A.L.R. 898.

Validity of obligation given bank as affected by concealment of illegal transactions from bank examiner. L.R.A.1916A, 1218.

Official bonds. 22 R. C. L. 496 et seq. and Supp.

Appointment of deputies. 22 R. C. L. 582 and Supps.

Bonds of deputies. 22 R. C. L. 587 and Supps.

§ 5146(7). **Districts; how divided.** For the purpose of the better administration of his department the state examiner shall, immediately after the taking effect of this act, proceed to divide the state into eight districts which shall have as nearly as may be, banks and other financial institutions of an equal number, and arranged with reference to convenience and economy in travel and shall at once designate the district in which each of his eight exam-

iners shall make examinations, and such deputy examiners shall confine their work, as nearly as may be, to the examination of corporations located within their respective districts, except that any such deputy examiner may be temporarily transferred to other districts, or more than one deputy examiner may be assigned temporarily to any district when the proper performance of the work therein would indicate the necessity for so doing. No deputy examiner shall have any interest directly or indirectly in any corporation within the jurisdiction of the banking department, nor in any corporation engaged wholly or in part in the writing or issuing of bonds of or for any such corporation or of the officers or employees of any such corporation. [Laws 1917, ch. 219, § 2.]

Explanatory note. See note preceding this subdivision.

§ 5146(10). **Salaries.** The salary of the office deputy shall be twenty-five hundred dollars per annum, and the salary of each other deputy two thousand dollars per annum and in addition thereto he shall be paid his actual and necessary traveling expenses when engaged in the discharge of his duties; the salary of the reconciliation clerk shall be fifteen hundred dollars per annum; salary of the stenographer shall be twelve hundred dollars per annum and the salaries of other clerks or assistants herein provided for, shall be fixed by the state banking board. [Laws 1917, ch. 219, § 3.]

Explanatory note. See note following subdiv. 6 of this section, ante.

§ 5146(11). **Repeal.** All acts or parts of acts in so far as they conflict with the provisions of this act are hereby repealed. [Laws 1917, ch. 219, § 4.]

§ 5146a. Repealed by Laws 1915, ch. 43, § 4.

Section repealed by § 43, Laws 1915. State ex rel. Packard v. Jorgenson, 31 N. D. 563, 154 N. W. 525.

§ 5147. Comp. Laws, 1913.

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

§ 5148. Comp. Laws, 1913.

Dyer v. Hall, — N. D. —, 199 N. W. 754; Security State Bank v. State Bank, 31 N. D. 454, 154 N. W. 282.

§ 5149. Comp. Laws, 1913.

Dyer v. Hall, — N. D. —, 199 N. W. 754.

§ 5150. Comp. Laws, 1913.

Duty of board of bank directors to procure and file surety bond, insuring their own fidelity as officers and employees of the bank. McIntosh v. Dakota Trust Co., — N. D. —, 40 A.L.R. 1021, 204 N. W. 818.

See also International Harvester Co. v. State Bank, 38 N. D. 632, 166 N. W. 507; Security State Bank v. Fischer, 42 N. D. 35, 171 N. W. 866; Russell Grader Mfg. Co. v. Farmers Exch. State Bank, — N. D. —, 194 N. W. 387.

§ 5151. Comp. Laws, 1913.

Electrical appliances, necessary to furnish light through bank building, "fixtures" within meaning of this section. Farmers State Bank v. Richter, 48 N. D. 1233, 189 N. W. 242.

Section does not prohibit use of undivided profits in and of the 30% of capital stock, and unimpaired surplus, for erection of bank building. Sarles v. Scandinavian American Bank, 33 N. D. 40, 156 N. W. 556.

Contract by bank to purchase land in excess of limitation, unenforceable. Smith v. Rennix, — N. D. —, 204 N. W. 843.

§ 5152. Comp. Laws, 1913.

Contract by bank to pay mortgage on land conveyed to it, unenforceable. Smith v. Rennix, — N. D. —, 204 N. W. 843.

§ 5155. **Capital stock.** Hereafter no banking association shall be organized

under this chapter with a capital stock of less than fifteen thousand dollars, nor in towns or cities of over one thousand inhabitants with a capital stock of less than twenty thousand dollars; nor, in cities of over two thousand inhabitants, with a capital stock of less than thirty thousand dollars; nor, in cities of over three thousand inhabitants, with a capital stock of less than thirty-five thousand dollars; nor, in cities of over four thousand inhabitants, with a capital stock of less than forty thousand dollars; nor, in cities of over five thousand inhabitants, with a capital stock of less than fifty thousand dollars. All of the capital stock of every such association shall be paid in before it shall be authorized to commence business, and evidence of such payment of capital stock either in actual money or a deposit in a previously approved correspondent bank must be furnished to the state examiner or deputy examiner before the certificate of authority may be delivered. For the purposes of this section, the population of the city may be determined by using the population shown by the most recent state or national census. No association having been organized to transact business in any city, and which may have sold or converted its business to a national bank, or other banking business which is continued at the same place, shall be allowed to remove its charter or its articles of incorporation to, and recommence business at another place; but where it can be clearly shown that a banking association which has not changed, sold or converted its business as hereinbefore recited, is located at a place where there is not sufficient business for the profitable conduct of a bank, such association may apply to the banking board for authority to remove its business to some other place within the state and to change its name if desired; and upon the approval of such application by the state banking board and the proper amendment of the articles of incorporation, the board may issue authority for such removal and change; provided, that no such association shall be allowed to remove its business to any city without having the full amount of capital stock required by this chapter for a new organization in such city. The corporate existence of any bank or corporation heretofore organized with a capital of less than fifteen thousand dollars shall not be renewed unless such corporation seeking to renew its existence shall increase its capital to the amount required by this act for the organization of a new banking corporation in the city where such bank is located at the time of such renewal. When any association whose capital is less than twenty thousand dollars, applies for a renewal of its corporate existence, it shall, before being permitted to continue its corporate existence, furnish satisfactory evidence through the state banking board that its articles of incorporation have been properly amended and the full amount of the increased capital has been actually paid in cash; provided, that such association in renewing its existence, may, with the consent and approval of the state banking board, convert its then accumulated surplus and undivided profits into capital, to be apportioned among the shareholders entitled thereto. [Laws 1915, ch. 56, § 1.]

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

Banks and Banking, 7 C. J. p. 491 §§ 31-32.

Consideration for obligation given to make good depletion of capital of bank. L.R.A.1917B, 688.

Requirement that banks shall have certain paid-up capital. 3 R. C. L. 382.

Power to limit number of banks to needs of business demands of community. 3 R. C. L. 384 and Supps.

§ 5160. Comp. Laws, 1913.

Jensen v. Sawyer State Bank, 44 N. D. 225, 173 N. W. 162.

§ 5164. Comp. Laws, 1913.

Reimers v. Larson, — N. D. —, 40 A.L.R. 1177, 202 N. W. 653.

§ 5166. Comp. Laws, 1913.

Taking interest in advance on loan, not usury. Sundahl v. First State Bank, 32 N. D. 373, 155 N. W. 794.

§ 5167. **Regular and special reports; penalties for failure to make.** Every banking association, savings bank, and trust company organized under this chapter, shall make three or more reports each year to the state examiner, the number to be determined by the state banking board, in such form as the state banking board shall prescribe; such forms to be as nearly as possible like those prescribed by the comptroller of the currency for similar reports for national banks. Such reports shall exhibit in detail, under appropriate heads, the resources and liabilities of the association at the close of the business on a past day by him specified, which shall if practicable, be the same day for which similar reports are required from national banking associations within the state by the comptroller of the currency of the United States. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the examiners within seven days after receipt of the request for the same, and an abstract of not less than three of such reports in a form prescribed by the board, shall be published, at the expense of the association, in some newspaper in the city, town or village where such bank is located, and in case there is no such newspaper, then in the official newspaper of the county in which such association is located. The state banking board shall also call for a special report from any association whenever in their judgment the same is necessary in order to obtain full and complete knowledge of its condition. Every association which fails to make and transmit any report required in pursuance of this section, shall forfeit and pay to the state a penalty of two hundred dollars for each delinquency. [Laws 1925, ch. 94, § 1.]

Reimers v. Larson, — N. D. —, 40 A.L.R. 1177, 202 N. W. 653.

Banks and Banking, 7 C. J. p. 720 §§ 465-466.

Power to require periodical reports by banks as to their financial condition.

3 R. C. L. 383 and Supps.

Penalty for false reports by banks. 3 R. C. L. 503.

§ 5168. Comp. Laws, 1913.

Receiver of insolvent bank may enforce added liability against stockholders.

Davis v. Johnson, 41 N. D. 85, 170 N. W. 520.

Stockholder cannot offset indebtedness owing to him by bank, in action by receiver to realize on superadded liability. Reimers v. Larson, — N. D. —, 40 A.L.R. 1177, 202 N. W. 653.

See also Wald v. Wheelon, 27 N. D. 624, 147 N. W. 402; Youmans v. Hanna, 35 N. D. 513, 161 N. W. 797.

§ 5170. **Reserve fund.** From and after January 1st, 1926, and up until January 1st, 1927 each banking corporation or association shall at all times have on hand in available funds an amount which shall equal fifteen per cent of its demand deposits and amounts due to other banks and ten per cent of its time deposits, and from and after January 1st, 1927 such banking corporation or association shall at all times have on hand in available funds an amount which shall equal twenty per cent of its demand deposits and amounts due to other banks and ten per cent of its time deposits; three-fifths of this amount may consist of balances due to the corporation or association from the Bank of North Dakota, or good solvent state or national banks or trust companies, which carry sufficient reserve to entitle them to act as such depository banks, and are located in such commercial centers as will facilitate the purposes of banking exchanges, and which depository banks shall have been first approved by the state banking board, and the remaining two-fifths of such reserve shall consist of actual cash on hand; cash items shall not be included in computing reserve, and no corporation or association shall carry as cash, or cash items, any paper or other matter except legitimate bank exchange which will be cleared on the same or next succeeding day. Provided, however, that any state banking corporation or association with the permission of the state banking board may carry not to exceed one-fourth of its legal reserve in United States certificates of indebtedness, United States bonds,

North Dakota land series bonds, North Dakota bank of North Dakota bonds and North Dakota mill and elevator bonds. Whenever the available funds within the meaning of this section, shall be below the requirements hereinbefore stated, such corporation or association shall not increase its liabilities by making any new loans or discounts other than by discounting or purchasing bills of exchange, payable at sight, or make any dividend of its profits until the required proportion between the aggregate amount of the deposits and its lawful money reserve has been restored and the state banking board must notify any corporation or association whose lawful money reserve shall be below the amount required to be kept on hand to make good such reserve and if such corporation or association shall fail to do so for a period of thirty days after such notice, the state banking board may impose a penalty of not less than one hundred dollars or more than five hundred dollars which shall be collected in the same manner as other penalties prescribed in this chapter. [Laws 1925, ch. 95; Laws 1919, Sp. Sess. ch. 23; Laws 1915, ch. 58, § 1.]

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408; Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

Banks and Banking, 7 C. J. p. 486 § 16.

Requirements as to reserve capital. 3 R. C. L. 382.

§ 5172. Comp. Laws, 1913.

Validity of contract between two banking associations to make secret loans in excess of limit. Oakes Nat. Bank v. Farmers State Bank, — N. D. —, 201 N. W. 696.

See also Wald v. Wheelon, 27 N. D. 624, 147 N. W. 402; Youmans v. Hanna, 35 N. D. 479, 160 N. W. 705; Youmans v. Hanna, 35 N. D. 513, 161 N. W. 797.

§ 5173. Comp. Laws, 1913.

Bank not liable for breach of contract to loan one individual excessive sum of money, such contract being illegal. Wald v. Wheelon, 27 N. D. 624, 147 N. W. 402.

See also Youmans v. Hanna, 35 N. D. 479, 160 N. W. 705; Youmans v. Hanna, 35 N. D. 513, 161 N. W. 797. Smith v. Rennix, — N. D. —, 204 N. W. 843; Oakes Nat. Bank v. Farmers State Bank, — N. D. —, 201 N. W. 696.

§ 5174. **Penalties for false statements or entries.** Every officer, agent or clerk of any association organized under this chapter, who willfully and knowingly subscribes or makes any false statements or entries in the books of such association, or knowingly subscribes or exhibits any false paper with intent to deceive any person authorized to examine as to the condition of such association, or willfully subscribes or makes false reports, shall be punished by imprisonment in the state penitentiary not less than one nor exceeding ten years, or in the county jail not exceeding one year, or by a fine not exceeding ten thousand dollars, or by both such fine and imprisonment. [Laws 1915, ch. 57, § 1.]

In prosecution for making false entries in books of bank, gain to defendant or prejudice to bank, not an ingredient of offense. State v. Davidson, 46 N. D. 564, 180 N. W. 31.

See also Youmans v. Hanna, 35 N. D. 479, 160 N. W. 705; Oakes Nat. Bank v. Farmer's State Bank, — N. D. —, 201 N. W. 696.

Banks and Banking, 7 C. J. pp. 574-577 §§ 193-195.

Penalties for false bank statements or entries. 3 R. C. L. 503.

§ 5174a. **Emergency clause.** Whereas, doubt exists as to the meaning of the provision contained in said section 5174 designating the penalty and therefore an emergency exists, for that reason this act shall take effect and be in force from and after the date of its passage and approval. [Laws 1915, ch. 57, § 3.]

§§ 5176, 5178. Comp. Laws, 1913.

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

§ 5179. **Fees for examination.** Every corporation contemplated to be, by

this act, placed under the jurisdiction and control of the state banking board, and made subject to the examination of the state examiner and his deputy examiners, shall if a new corporation, prior to receiving its certificate of authority to commence business, and in all cases within ten days after each examination, pay into the state treasury the following fee, to-wit: A fee of one and one-half hundredths of one per cent of the gross amount of the assets of said bank on the day of examination, exclusive of expenses, interest and taxes paid; provided that the fee hereunder shall be not less than fifteen dollars and not more than two hundred dollars.

Building and loan associations, mutual improvement corporations, mutual investment corporations, and other corporations of a mutual character, having no capital stock, or a nominal capital stock, shall pay a semi-annual fee of twenty-five dollars for the first one hundred thousand dollars of assets, and five dollars for each additional one hundred thousand dollars or major fraction thereof of assets.

The treasurer shall report such payments to the banking board, and if any such corporation shall be delinquent more than twenty days in making such payments, the board may make an order suspending its functions until such payment of the amount due and a penalty of five dollars additional for the delay. [Laws 1921, ch. 22, § 1; Laws 1915, ch. 55, § 1.]

Banks and Banking, 7 C. J. p. 483 § 13; Building and Loan Associations, 9 C. J. pp. 923-924 §§ 8-10.

§ 5182. Comp. Laws, 1913.

Reimers v. Larson, — N. D. —, 202 N. W. 653.

§ 5183. Comp. Laws, 1913.

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408; Youmans v. Hanna, 35 N. D. 479, 160 N. W. 705; Youmans v. Hanna, 35 N. D. 513, 161 N. W. 797.

§ 5186. Comp. Laws, 1913.

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

§ 5187. **Assets not to be used in other business.** No bank shall as principal employ its money or other of its assets, directly or indirectly, in trade or commerce, nor employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm or association, nor shall it invest any of its assets in speculative margins of stocks, bonds, grain, provisions, produce or other commodities, except that it shall be lawful for banks to make advances for grain or other products in store or in transit to market; provided, nevertheless, that this act shall not be construed as in any way preventing a bank from investing such part of its funds in stock of the Federal Reserve Bank of this district as may be necessary to become a member of the Federal Reserve Association and from carrying such stock among its assets. [Laws 1915, ch. 54, § 1.]

Purchase by bank of stock in electric company to procure electric lights, not an "investment in stock of other corporations." Farmer's State Bank v. Richter, 48 N. D. 1233, 189 N. W. 242.

Bank's purchase of stock in electric company to enable bank to procure electric lights held not an investment in stock of other corporations. Farmer's State Bank v. Richter, 48 N. D. 1233, 189 N. W. 242.

See also Smith v. Rennix, — N. D. —, 204 N. W. 843.

Banks and Banking, 7 C. J. pp. 589-592 §§ 223-230, p. 594 § 236.

Power to restrict investments for bank assets. 3 R. C. L. 383.

Power of banks to purchase stock of other corporations. 3 R. C. L. 433 and Supps.

§ 5187a. **Emergency.** Whereas, an emergency exists in that the present law denies the banks of this state the right to join such association, this act shall

take effect and be in force from and after its passage and approval. [Laws 1915, ch. 54, § 2.]

§ 5188. Comp. Laws, 1913.

Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

§ 5189. **Insolvent; when.** A bank shall be deemed insolvent: I, when the actual cash market value of its assets is insufficient to pay its liabilities; II, when it is unable to meet the demands of its creditors in the usual and customary manner; III, when it shall fail to make good its reserve as required by law; IV, when it shall fail to comply with any lawful order of the state banking board within any time specified therein; but its property shall not be subject to attachment or levy, nor shall a receiver be appointed during such reasonable time as the state examiner may require for examination. After such examination if the state examiner shall deem best he shall with the approval of the state banking board appoint a receiver who shall take possession, under the direction of the state examiner, of books, records, and other property, collect the debts, sell or compound bad or doubtful ones, and sell all corporate property on such terms as the state examiner shall direct, and when necessary pay corporate debts and enforce the individual liability of stockholders. He shall pay over all moneys received by him and make report of his doings to the examiner at such times and in such manner as he may prescribe. Whenever, after report by such officers and before the appointment of a receiver, said examiner shall find the bank in such condition that all creditors aside from stockholders can be paid in full from its assets, he may relinquish possession of its property to its proper officers; provided, however, that the bank shall pay into the state treasury a fee of ten dollars per day and the hotel and traveling expenses of the state examiner or deputy state examiner, who shall have been in charge of the bank during this period, and such bank may, with the consent of the state examiner, resume business upon such conditions as may be approved by him. Upon taking possession of the property and business of such bank the state examiner is authorized to collect moneys due to such bank and to do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof. [Laws 1915, ch. 53, § 1.]

State examiner is granted power to appoint receiver of a banking corporation, before appointment, he may take charge of bank, and release possession to officers without receiver. State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

See also Youmans v. Hanna, 35 N. D. 479, 160 N. W. 705; Youmans v. Hanna, 35 N. D. 513, 161 N. W. 797; Davis v. Johnson, 41 N. D. 85, 170 N. W. 520; Wirtz v. Nestos, — N. D. —, 200 N. W. 524.

Banks and Banking, 7 C. J. p. 727 § 482, p. 733 §§ 486-489, pp. 736-737 §§ 503-505, p. 742 §§ 519-522.

Common-law priority of state or United States in payment from assets of insolvent bank. L.R.A.1918A, 398.

Prerogative right of county or other political subdivision to preference. 36 A.L.R. 640.

Constitutionality of statute relating to preference of public funds on insolvency of bank. 31 A.L.R. 790.

Right to preference in respect of public funds deposited in bank which subsequently becomes insolvent. L.R.A.1917A, 663.

Reorganization of banking corporation in insolvency proceeding as affecting liability on existing obligations. L.R.A.1918B, 619.

Constitutionality of statute authorizing officer to take charge of assets of bank upon suspicion of insolvency. L.R.A.1915E, 675.

Receipt of deposit after banking hours as affecting right of depositor to reclaim it on bank's insolvency. 15 A.L.R. 429.

Waiver of right of government to preference in assets by taking security. 24 A.L.R. 1495.

When bank insolvent. 3 R. C. L. 482, and Supps.

Proceedings for winding up affairs of insolvent bank. 3 R. C. L. 641 and Supps. 1055

CHAPTER 28A.

STATE BANKING ASSOCIATIONS.

§ 5191a1. Rediscounts; borrowing; pledging. No state banking association, as defined herein, shall, directly or indirectly, either within or without the state, make any re-discount, or contract to borrow, or borrow money, or pledge or hypothecate, or contract to pledge or hypothecate any of its assets, except in accordance with the provisions of this act. [Laws 1925, ch. 92, § 1.]

Banks and Banking, 7 C. J. p. 592 §§ 231-232, p. 720 § 463.

Power of bank to pledge assets. 3 R. C. L. 419 and Supps.

Power of banks to borrow money. 3 R. C. L. 427 and Supps.

§ 5191a2. Normal and emergency borrowing power; limitation. Any state banking association, as defined herein, shall have power to contract to and borrow money as follows:

1. A sum equal to twenty per centum of its deposits without the prior authorization therefor by the state examiner.

2. A sum in excess of the preceding limitation only after prior authorization by the state examiner, granted upon the application of such banking association, for the following purposes only:

- (a) Restoring depleted legal reserve, or in anticipation of such depletion within thirty (30) days,—
- (b) to protect the assets of such bank,—
- (c) to avert any other actual or imminent emergency which, in the judgment of the state examiner, would be dangerous to the interests of such bank, or its depositors and other creditors.

Such authorization shall be granted by the state examiner only after examination by him of the affairs of such banking association, and such authorization shall be granted and exercised under rules and regulations adopted, and orders prescribed by the state banking board. This section shall not apply to loans made before this act takes effect, nor to renewals thereof, nor to renewals of loans made hereunder. [Laws 1925, ch. 92, § 2.]

Banks and Banking, 7 C. J. p. 592 § 231.

Power of banks to borrow money. 3 R. C. L. 427 and Supps.

§ 5191a3. Ratio; pledge; assets. It shall be unlawful for any state banking association, as defined herein, to pledge or hypothecate more than one and one-half dollars of the face value of any of its assets for each one dollar of money borrowed, excepting for money borrowed upon authorization of the state examiner, who shall fix the amount and kind of assets which may be pledged or hypothecated for such purpose. [Laws 1925, ch. 92, § 3.]

Banks and Banking, 7 C. J. p. 592 § 232.

Power of banks to pledge assets. 3 R. C. L. 419 and Supps.

§ 5191a4. Re-discounts; contracts to purchase. In addition to its power to borrow as herein prescribed, any state banking association, as herein defined, shall have power to incur liability in an amount equal to ten per centum of its deposits, upon endorsement of notes and bills re-discounted, but no liability or obligation upon endorsements in excess of such ten per centum of its deposits shall be binding upon such association, and it shall have no power to incur any obligation or liability to re-purchase loans and discounts, bills receivable or other assets disposed of by it. The state examiner, under rules and regulations prescribed by the state banking board, shall have power to increase the limit of liability upon endorsements by such state banking associations upon notes and bills re-discounted as in his judgment seems best. The discount of bills of exchange, drawn in good faith against agricultural products, raw or manu-

factured, and other commodities of trade, in transit, shall not come within the provisions hereof. [Laws 1925, ch. 92, § 4.]

Banks and Banking, 7 C. J. p. 588 § 221, p. 592 § 231, p. 594 § 235, p. 712 § 446, p. 720 § 464.

Discounts. 3 R. C. L. 607.

§ 5191a5. Directors authorize; officers execute; record. Every state banking association as defined herein, shall, prior to the borrowing of money, or re-discounting bearing endorsement, receive approval by action of its board of directors, to be evidenced by resolution recorded upon its minute book, and no banking association shall have power to contract and to pledge or hypothecate any of its assets without resolution of its board of directors authorizing the same, spread upon its minute book, and each proposed loan, either with or without security, or re-discount with endorsement, shall be acted upon separately by such board. Instruments evidencing such loans, pledges and hypothecations and endorsement upon re-discounts, shall be executed by the officer and officers designated in such resolution, and all such loans and re-discounts shall immediately be entered and carried upon the account books and records of the association as bills payable, or re-discounts as the case may be. Copies of such minutes, books and records authenticated by the oath of an officer of such association shall be sufficient to support such loan, re-discount or pledge. A complete record and description of the pledged assets and re-discounts shall be entered and maintained by such banking associations in a book devoted to the purpose, the form of which shall be prescribed by the state examiner. [Laws 1925, ch. 92, § 5.]

Banks and Banking, 7 C. J. pp. 545-546 §§ 152-154.

Authorization by directors of loan to bank. 3 R. C. L. 440 and Supps.

§ 5191a6. Pledgee may collect, renew, additionally secure, release and assign; expense. Holders of pledged or hypothecated notes or other evidence of indebtedness pledged by state banking associations, as defined herein, shall have the right to collect and enforce payment, and to renew or extend the time of payment thereof, (if no endorser, guarantor or joint maker be, by reason of such renewal, released thereby), and, provided that such extension is for a period of not longer than fifteen (15) months, and to accept from makers of such pledged or hypothecated notes and other evidences of indebtedness, security or additional security for the payment thereof, and upon payment in full by any maker to give and execute discharges and releases of instruments and securities, and shall have the power to sell, assign and transfer any note with the security therefor so pledged, upon payment of the full amount due thereon from the maker. The pledgee shall be entitled to be reimbursed out of the pledged assets, or its proceeds, for his reasonable and necessary expenses incurred and expended in collecting, renewing, securing and otherwise protecting the assets pledged or hypothecated to him. [Laws 1925, ch. 92, § 6.]

Pledges, 31 Cyc. 826, 829.

§ 5191a7. Foreclosures. Other than provided by section eight (8) thereof no pledge contracts authorized hereby, shall be foreclosed except by an action in equity, brought in the district court of the county in which the pledgor association is located, and the receiver of any such banking association shall have the right to enjoin any foreclosure under section eight (8) of this act, of any such pledge contracts, and to require such foreclosure to be by action in equity, where there is a defense or counterclaim to the debt secured, or the pledge contract. [Laws 1925, ch. 92, § 7.]

Pledges, 31 Cyc. 883-884; Banks and Banking, 7 C. J. p. 753 § 560, p. 735 § 502.

§ 5191a8. Foreclosure of pledge; closed banks. In case of default by the pledgor association, in the hands of a receiver, after demand for and neglect of payment, the pledgee shall have the right in lieu of foreclosure by the action

in equity provided in section seven (7) hereof to apply to a judge of the district court for the county within which the closed bank is situated for an order authorizing the foreclosure and sale of the pledge. Fifteen days notice of such application shall be given by personal service or registered mail to the state examiner and to the receiver of the closed pledgor association.

The state examiner, or receiver, or any of the depositors or other creditor of such closed bank may contest the granting of such order. Such order shall not be granted unless it appear by competent evidence that all reasonable efforts for the collection of the pledged paper have been made, and that there is no reasonable probability of further collection thereof within a reasonable period, and at reasonable expense, nor unless it shall appear that it is to the best interest of the pledgee, the said closed bank or its successor, or receiver, and the depositors and creditors thereof that such foreclosure and sale shall be had. The order for foreclosure and sale shall direct the sheriff of the county to make the sale, and the notice to be given thereof, and the newspaper wherein such notice shall be published, which notice shall not be less than fifteen (15) days, and shall be served personally or by registered mail upon the state examiner, and the receiver, and by publication at least for two successive weeks prior to the sale. All sales shall be made at the front door of the court house of the county within which said pledgor association is situated, beginning at the hour of two o'clock in the afternoon of the day specified, separately, article by article, for cash, to the highest bidder. Any amount received from said sale in excess of the debt secured shall be paid to the receiver, upon confirmation of the sale. Within five (5) days after the sale the sheriff shall report the same in detail to the clerk of the district court, and file a copy thereof with the state examiner and the receiver. The pledgee may purchase at such sale, and upon confirmation, if the successful bidder, the amount of such bid shall be credited upon the debt secured. [Laws 1925, ch. 92, § 8.]

Banks and Banking, 7 C. J. p. 750 § 545.

Foreclosure of pledge. 22 R. C. L. 685 and Supps.

§ 5191a9. Redemption. The possession of the property sold, and of the proceeds thereof, shall be retained by the sheriff unless the court otherwise directs, until the expiration of the redemption period herein prescribed, whereupon, and upon the confirmation of the sale the same shall be delivered to the persons entitled thereto. At any time within fifteen (15) days after the sale the receiver may give notice to the sheriff of his intention to redeem therefrom, and shall have the full period of five (5) days thereafter to redeem by paying to the sheriff the amount paid by the purchaser; such redemption may be made of any or all of the articles sold. Redemptions may also be made by depositors or other creditors within ten (10) days after such sale by depositing with the sheriff the amount paid by the purchaser, and by serving notice of such redemption upon the receiver and the sheriff, which said notice shall state the amount which such redemptioner will credit upon his debt for the privilege of redeeming from the purchaser. Notice of redemption may be given by more than one creditor for any one note or other article, and the creditor offering the largest credit upon his debt shall be awarded the right of redemption. Provided, however, that the receiver's right of redemption shall be superior to all other redemption rights. A redemption vests in the redemptioner or receiver the title to said notes or other articles upon confirmation of the sale as provided herein. Report of the sale and of the redemptions thereunder shall be made to the court by the sheriff within thirty (30) days after the sale, and the court may order hearing thereon, with such notice as it may deem proper, not exceeding twenty (20) days and upon such hearing shall have power, either to confirm or set aside the sale, or to order a new sale, or to direct such other proceedings as may seem to the best interests of the pledgee, the banking association, its successor, receiver, its depositors and creditors, and thereupon all documents arising from proceedings hereunder shall be filed with the clerk of

the district court. Upon the confirmation of the sale, out of the proceeds thereof the pledgee shall be reimbursed for the costs and disbursements paid and incurred in connection therewith, including a reasonable attorney's fee, not exceeding fifty dollars (\$50), to be allowed by the court in the order of confirmation; sheriff shall receive the same fees and commissions allowed him in the foreclosure of chattel mortgages, not exceeding fifteen dollars (\$15); the remainder of such proceeds shall be applied upon the debt secured, upon which debt interest shall be computed to the date of such payment, and any residue shall be paid to the receiver. During the period of foreclosure and redemption any debtor may pay upon his debt to the person having custody of such pledged collateral, which person is hereby authorized to receipt to the person paying, and upon full payment to release and discharge such debt and surrender the evidence thereof. [Laws 1925, ch. 92, § 9.]

Redemption of pledge. 21 R. C. L. 683 and Supps.

§ 5191a10. Pledged contracts and sales void. Any pledge or hypothecation of any of the assets of a state banking association, or the sale of any of the pledged assets of any such state banking association made in violation of this act shall be null and void, and of no force and effect, and shall not be binding on any of the parties affected thereby. [Laws 1925, ch. 92, § 10.]

Banks and Banking, 7 C. J. p. 592 § 232, p. 596 § 240.

§ 5191a11. Penalties. Any officer, director, agent or employee of any state banking association, as defined herein, who shall borrow money for, or on behalf, or in the name of any such state banking association, or who shall obligate any such state banking association upon rediscounts, or who shall pledge or hypothecate any of the assets of such state banking association in violation of the provisions of this act, or make any false statement, report, record or copy thereof provided for in section five (5) hereof, and any person who shall counsel, aid or abet, or conspire with, or be accessory thereto, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state penitentiary for a term of not less than one year, nor more than five years, or a fine of not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment. [Laws 1925, ch. 92, § 11.]

Banks and Banking, 7 C. J. p. 574 §§ 193-194.

§ 5191a12. Defining state banking associations. For the purposes of this act every corporation organized under the laws of this state for state banking association, savings banks, trust companies, building and loan associations, and all corporations or other associations, excepting national banks, whose business, in whole or in part consists of the taking of money on deposit, shall be held and are hereby declared to be state banking associations, and as thus defined shall be subject to the provisions of this act. [Laws 1925, ch. 92, § 12.]

Banks and Banking, 7 C. J. p. 473 § 1.

CHAPTER 28B.

ADMINISTRATION OF INSOLVENT BANKS.

Explanatory note. Laws 1923, ch. 137, constituting this chapter, began with the following preamble:

Whereas, there are a large number of insolvent banks in the state, located in many different communities with thousands of depositors and other creditors, within and without the state, the obligations of which banks have remained for a long period of time unpaid, and by reason thereof the credit of the state is being injured, and hardship and injury being inflicted upon thousands of its citizens and citizens of other states, and

Whereas, in the judgment of the legislative assembly the ordinary judicial and administrative machinery of the state is insufficient and illy adapted to the successful and expeditious administration of the affairs of such insolvent banks, and their assets

are being absorbed and depleted by expenses of administration, without corresponding liquidation of their obligations, and by reason of lack of sufficient legal authority to deal with their assets and administer their affairs, such assets are being appropriated by secured creditors in large amounts beyond the indebtedness secured, and the ordinary creditors are being thereby injured, and the depositors guaranty fund is being depleted and overwhelmed with liabilities which it is liable to be unable to discharge, and

Whereas, by reason of the facts a situation of great public interest and concern has been created affecting the people of the state, as a whole, which cannot be properly and sufficiently protected according to the ordinary course of legal proceedings, and the legislature deems it proper for the supreme court to assume and exercise its original jurisdiction upon the ground that it is necessary for the protection of public interest, it is hereby enacted as follows.

§ 5191b1. Jurisdiction of Supreme court. The supreme court of the state or North Dakota is hereby given and requested to exercise, original jurisdiction of the insolvency proceedings to liquidate and wind up the affairs of all insolvent state banks within the state, at the time of the taking effect of this act, and all such as may become insolvent during its continuance. [Laws 1923, ch. 137, § 1.]

Banks and Banking, 7 C. J. p. 724 § 473, p. 732 § 485, p. 733 § 488; Courts, 15 C. J. p. 1104 § 535.

Jurisdiction of courts over proceedings to wind up affairs of insolvent bank. 3 R. C. L. 641 and Supps.

§ 5191b2. List of closed banks to be certified to attorney general. Immediately upon the taking effect of this act the state examiner shall certify to the attorney general a list of all state banks in the state now closed as insolvent, whether in the hands of receivers, the state examiner's office, or other trustees or agents of the state, together with a concise statement, showing the time of insolvency, the name of the receiver in charge, and such other information as the state examiner believes will be of importance to the attorney general. [Laws 1923, ch. 137, § 2.]

§ 5191b3. Proceeding for winding up. Immediately upon receiving such certificate the attorney general shall institute a proceeding in the supreme court entitled in the name of the state of North Dakota, for itself, and on behalf of all creditors of such banks, as plaintiffs, against all of said insolvent banks as defendants, for the purpose of declaring them insolvent and winding up their affairs as insolvent banking associations. Such proceedings shall be brought by the filing in the office of the clerk of the supreme court of a complaint reciting briefly the facts as to the insolvency of each of such banks, and the name of the receiver or other officer in charge.

Upon the filing of such complaint the attorney general shall issue a summons in the usual form of summons issued in actions in the district court of the state, and containing an additional statement to the effect that a petition charging the bank in question with being insolvent is on file in the office of the clerk of the supreme court, and that unless answer is made thereto within 15 days from such service such complaint will be taken as confessed. Such summons, however, as prepared for service on individual banks need only name as a defendant the particular bank upon which service thereof is to be made, and such service may be made upon any officer of such bank.

Service of such summons may be made in the same manner as the service of summons in ordinary civil actions is made, and the sheriff of the county in which the bank to be served is located shall upon request of the attorney general immediately make service, or cause service thereof to be made, as in ordinary actions, but he shall not be entitled to collect any fees or expenses for making such service, and he shall make return thereof when served to the attorney general. [Laws 1923, ch. 137, § 3.]

Banks and Banking, 7 C. J. pp. 722-724 §§ 469-476.

Proceedings for winding up affairs of insolvent banks, 3 R. C. L. 641 et seq. and Supps.

§ 5191b4. Time to answer. Upon the service of the summons as aforesaid the defendant bank shall have fifteen days within which to serve and file an answer denying insolvency, or any other material fact stated in the petition and unless within such fifteen days such answer is served and filed the insolvency of such defendant shall be deemed confessed. [Laws 1923, ch. 137, § 4.]

Banks and Banking, 7 C. J. p. 724 § 476.

§ 5191b5. Court commissioner; qualifications; jurisdiction; review of decision of. Upon the taking effect of this act the supreme court shall appoint a court commissioner who shall have all the qualifications prescribed by law for a judge of the supreme court to whom it may refer any matters committed to the jurisdiction of the court by this act, who shall act for and on behalf of the supreme court in hearing evidence, finding facts and making orders in any matter arising in connection with the action or actions instituted in such court under the provisions of this act.

Such commissioner may sit for hearing and determination of any question of law or fact that may arise in such action or actions at any place within the state, and any such hearing may be brought on upon reasonable notice given by the commissioner to the party in interest of the time and place of such hearing, and in the exercise of the jurisdiction conferred upon him, said commissioner may permit matters to be brought before him either upon ordinary notice served upon the parties or by order to show cause, according to the practice of the district courts.

Any decision of the commissioner may be reviewed by the supreme court on the motion of any party aggrieved at such times and under such rules as the court may prescribe, and unless objected to by motion to review as herein provided, the court may deem the decision of the commissioner correct and without notice or application affirm the same.

Any party desiring to have a review of the decision of the commissioner by the supreme court must within three days after the making of the same, if he is present personally or by counsel, or within three days after written notice thereof, if not present, file with the commissioner a brief written statement of the grounds of his objection and containing the post office address of the party or his attorney upon which notice of hearing shall be served. Such statement shall be filed by the commissioner with the clerk of the supreme court and notice of the hearing of such motion for review shall be given to the complaining party by letter addressed to him, or his attorney at the place named in such statement. The time of giving notice of such hearing to be fixed by rule or order of the supreme court. [Laws 1923, ch. 137, § 5.]

Banks and Banking, 7 C. J. p. 724 § 473, p. 727 § 481; Courts, 15 C. J. p. 1104 § 535; Court Commissioners, 15 C. J. pp. 681-684 §§ 1-13; Constitutional Law, 12 C. J. p. 818 § 264.

§ 5191b6. Same; salary; clerical assistance; oath. Such commissioner shall be paid out of the general funds of the state the same salary as is paid to justices of the supreme court and may employ such clerical assistance as shall be allowed by the court, and shall be reimbursed by the state for all his actual expenses incurred in connection with the performance of his duties to be passed upon by the state auditing board as other claims against the state. Such commissioner shall take the constitutional oath to perform his duties according to the Constitution of the United States and the state of North Dakota. [Laws 1923, ch. 137, § 6.]

Court Commissioners, 15 C. J. p. 684 § 11.

§ 5191b7. Rules and regulations. The supreme court shall make rules and

regulations from time to time governing the reference of matters to the commissioner and the exercise of his jurisdiction and powers and the manner and method of reviewing his decisions. [Laws 1923, ch. 137, § 7.]

Banks and Banking, 7 C. J. p. 724 § 473, p. 733 § 488.

§ 5191b8. Receiver; appointment of; superseding other receiver. Upon the filing of the complaint aforesaid the court shall appoint a receiver, or two joint receivers, of all said insolvent banks, which receiver shall have all the powers and authorities ordinarily possessed and exercised by receivers of insolvent corporations or prescribed by statute and the court shall have all the power and authority with regard to the administration and closing of the affairs of such banks as are ordinarily possessed and exercised by courts of equity over the affairs of insolvent corporations. If upon a hearing on an issue raised by answer to the complaint, it shall be established that any bank proceeded against is not insolvent, then the receiver shall be deemed to have been a temporary receiver, and shall account and be discharged accordingly as to such bank, in all other respects the receiver shall be deemed to be a permanent receiver.

The receiver so appointed by the court shall supersede and supplant any receiver theretofore appointed by the banking department, or by any other court, or any examiner or officer of the banking department that may be in charge of any of such banks, but until the receiver appointed under this act shall take possession of any such bank the receiver, or other officer already in charge, shall continue, and it shall be his duty to protect, conserve and administer its affairs to the best of his ability, and he shall remain liable under his bond for all his acts committed prior to being finally relieved of his trust. [Laws 1923, ch. 137, § 8.]

Provision for appointment of receiver by court for insolvent banking corporation, does not create civil office, nor is receiver appointed, holder of civil office. *Baird v. Lefor*, — N. D. —, 38 A.L.R. 807, 201 N. W. 997.

See also *State v. First State Bk.* — N. D. —, 202 N. W. 391; *Reimers v. Larson, Nelson & Albrecht*, — N. D. —, 40 A.L.R. 1177, 202 N. W. 653.

Banks and Banking, 7 C. J. p. 724 § 480, p. 733 §§ 487-488, p. 734 § 496; *Receivers*, 34 Cyc. 1.

Appointment of receiver for insolvent banks. 3 R. C. L. 641 and Supps.

§ 5191b9. Proceeding against other banks deemed insolvent. If during the life of this act any other banking association shall be deemed insolvent by the authorities vested by law with the right to institute insolvency proceedings against the banks, and such authorities desire to institute such proceedings, they shall make report thereof to the attorney general, with the necessary facts as to insolvency, and he shall file a complaint such as hereinbefore provided for, as to such other association or associations, as to which it is desired to institute proceedings, joining as many as is desirable in one proceeding; and the same proceedings shall be had thereon as is provided with reference to associations already insolvent, and the court shall thereupon in like manner appoint the same receiver, or receivers, for such additional association, or associations, and the original proceeding provided for herein, and all subsequent proceedings that may be taken as in this section provided shall be deemed to be merged and amalgamated into one proceeding, but the affairs of each association shall be kept separate. [Laws 1923, ch. 137, § 9.]

Banks and Banking, 7 C. J. pp. 722-724 §§ 469-476.

§ 5191b10. Receiver; application to commissioner for instructions. The receiver appointed hereunder shall from time to time apply to the commissioner for guidance and instructions and for the purpose of obtaining orders and directions with reference to the administration of the affairs or the disposition of the property of any of the banks under his control, as receiver, in the same way and as far as may be practicable under the same course of procedure that receivers appointed by district courts apply to such district courts, and the

receiver or any other parties aggrieved by any determination of the commissioner may apply to the court for a review thereof, as hereinbefore provided for. [Laws 1923, ch. 137, § 10.]

Banks and Banking, 7 C. J. pp. 736-737 § 503; Receivers, 34 Cyc. 246-250.

§ 5191b11. Fixing amount of expenses of receivership chargeable to different banks. At any time when the affairs of any bank under the receivership aforesaid are ready to be closed, the court shall fix the amount of the expense of the receivership properly chargeable to such bank. [Laws 1923, ch. 137, § 11.]

Receivers, 34 Cyc. 350-352, 364.

§ 5191b12. Procedure. So far as practicable, except as herein otherwise provided, and except as may be otherwise provided by the court, the ordinary rules of procedure applicable to like actions in the district court shall govern the proceedings herein provided for; but the court may from time to time prescribe such rules of procedure as it shall from time to time find best adapted to the furtherance of the general purpose of expeditiously and economically winding up the affairs of insolvent banks. [Laws 1923, ch. 137, § 12.]

Court Commissioners, 15 C. J. p. 684 § 12.

§ 5191b13. Commissioner; powers of. The commissioner appointed hereunder shall have power and authority to issue subpoenas for witnesses any place within the state, and to administer oaths and to punish for contempt, to the same extent as a judge of the district court, subject to a review of his decision by the supreme court, as in case of other decisions. At any time when district court is not in session in any county, in which the commissioner is holding a hearing, he shall have a right to take and use the court room of the district court, and he may call upon the clerk of such district court to act as his clerk, in issuing subpoenas, and may call upon the sheriff of the county to act as his court officer, and such officer shall perform such services without compensation. [Laws 1923, ch. 137, § 13.]

Court Commissioners, 15 C. J. p. 682 § 4, p. 684 § 13; Witnesses, 40 Cyc. 2155; Oaths and Affirmations, 29 Cyc. 1299; Contempt, 13 C. J. p. 46 § 62.

§ 5191b14. Place of hearing. The commissioner shall, as far as practicable, hold his hearings in the county in which the bank interested is located, and as far as practicable and with fair regard to the convenience and interest of all parties, at the most accessible point within the county. [Laws 1923, ch. 137, § 14.]

§ 5191b15. Witness fees and mileage; who liable. In all hearings before the commissioner the parties securing the attendance of witnesses shall be liable for their witness fees and mileage, as is allowed in district court, and the commissioner may make such order with reference to the payment of costs by the different parties as shall be just. [Laws 1923, ch. 137, § 15.]

Costs, 15 C. J. p. 54 § 22; Witnesses, 40 Cyc. 2188-2199.

§ 5191b16. Judgments; interlocutory or final; transcript of. The supreme court may from time to time as occasion shall require enter interlocutory or final judgments affecting the rights of particular parties to the proceedings without affecting the rights of any other party, and any judgment so entered in the supreme court may be at the request of any interested party transcribed to the district court of any county in the state where it shall be docketed by the clerk of court, and shall from the time of docketing be taken and considered as a judgment of such district court in all things the same as though originally entered, and it may be enforced as a judgment in such court. [Laws 1923, ch. 137, § 16.]

Judgments, 34 C. J. pp. 89-93 §§ 240-252.

§ 5191b17. Appropriation. There is hereby appropriated out of the general

funds of the state the sum of \$10,000.00 per year, or so much thereof as may be necessary to pay the salary of the court commissioner and the expenses incident to the performance of his duties hereunder. [Laws 1923, ch. 137, § 17.]

§ 5191b18. Transfer of proceeding to Burleigh county district court; designation of district judge; review of acts of. In case the supreme court shall be of the opinion that its original jurisdiction does not extend to the controversy or controversies referred to in this act, or if for any other reason the supreme court shall refrain from exercising its original jurisdiction with respect thereto, the proceeding shall not be dismissed, but all papers and files therein shall be transmitted to the clerk of the district court of Burleigh county, and that court shall be and is thereupon vested with full jurisdiction of such proceeding, and thereupon the supreme court, in the exercise of its supervisory jurisdiction shall designate some district judge to hear and try said controversy or controversies, and the judge so designated shall give precedence to such controversy or controversies over all other work and in the disposition thereof he shall be governed by the provisions of this act, and endeavor in every way to carry the same into effect. The district judge so designated shall perform all of the duties which the act requires to be performed by the court commissioner, and in such case no court commissioner shall be appointed. In such case the acts of the district court shall be subject to review by the supreme court in the same manner herein provided for review by the supreme court of the acts of the court commissioner. Provided that all acts of such district court performed under the provisions of this act, including the appointment of a receiver, shall be subject to the supervisory control of the supreme court. In case of the designation of a district judge as herein provided for, all his necessary traveling expenses incurred in carrying out the provisions of this act shall be paid out of the general fund of the state upon vouchers duly presented, as in other cases of the expenses of district judges. In case of the designation of a district judge as in this section provided, all further insolvency proceedings, in this act hereinbefore provided to be instituted in the supreme court, shall be instituted in the district court of Burleigh county, and conducted in like manner.

In case of the designation of a district judge as in this section provided for, the rules of procedure prescribed by the act for the court commissioner shall govern the procedure before such district judge, and the supreme court shall likewise make necessary rules governing the conduct of such proceeding or proceedings. [Laws 1923, ch. 137, § 18.]

Transfer of papers and files by Supreme Court to District Court, under this section, not assumption of jurisdiction by Supreme Court. *State v. First State Bk.* — N. D. —, 202 N. W. 391.

Designation of district judge to hear and determine actions for liquidation of insolvent banks, not designation to hear and determine actions by and against receiver. *Baird v. Lefor*, — N. D. —, 38 A.L.R. 807, 201 N. W. 997.

Action brought by receiver of insolvent bank, against stockholders, upon superadded statutory liability, may be brought in county where defendants reside. *Reimers v. Larson, Nelson & Albrecht*, — N. D. —, 40 A.L.R. 1177, 202 N. W. 653.

§ 5191b19. When act expires. This act shall expire and become inoperative for any purpose on the first day of July, 1926. [Laws 1923, ch. 137, § 19.]

Constitutionality of chapter upheld in. *State v. First State Bk.*, — N. D. —, 202 N. W. 391.

CHAPTER 28C.

CONSOLIDATION OR MERGER OF BANKS.

§ 5191c1. Right to consolidate. Any two or more banking associations organized under the laws of this state, may consolidate their capital, assets, and

liabilities, or one or more of such associations may be merged into another in the following manner: [Laws 1923, ch. 138, § 1.]

Banks and Banking, 7 C. J. p. 491 § 30; Corporations, 14a C. J. p. 1057 § 3633.

§ 5191c2. Meaning of terms. The term "consolidation" as used herein shall mean the consolidation of the liabilities, assets and corporate existence of two or more associations into a single association, which shall issue its stock to stockholders in the consolidating associations in return for the assets of the consolidating associations.

The term "merger" as used herein shall mean the taking over, or the absorption of the assets of one association by another, and the assumption of the liabilities of the association, or associations, whose assets and liabilities are taken over.

The term "old association" where hereinafter used means the associations which are consolidating or merging into the other associations, and the term "new association" means the association into which the other associations are being consolidated or merged. [Laws 1923, ch. 138, § 2.]

Corporations, 14a C. J. p. 1054 §§ 3630-3631.

§ 5191c3. Special meeting; notice. Whenever two or more banking associations shall desire to take advantage of this act, the directors of each thereof shall call a special meeting of the stockholders to act upon the proposed consolidation or merger. The notice of such meeting shall definitely state the purpose for which it is called, or the matter may be acted upon at a regular stockholders' meeting, but in that event notice of the fact that the question of consolidation or merger will be considered shall be given to each stockholder by registered mail, addressed to him at his regular business address at least ten (10) days preceding the holding of such meeting. [Laws 1923, ch. 138, § 3.]

Corporations, 14a C. J. p. 1064 § 3647.

§ 5191c4. Vote on question of. At such stockholders' meeting, the question of the proposed consolidation or merger shall be put to a vote, and each stockholder may vote thereon in person, or by proxy, the full number of shares of stock standing in his name on the books of the association. The question so put shall embody the proposed amount of capital stock of the consolidated or merged corporation, but the statement of such amount shall be only advisory, and may be varied therefrom, within the limits hereinafter prescribed, by the state examiner; or court, on passing on the question of consolidation or merger. The proposal for consolidation or merger shall be deemed lost, unless two-thirds of all of the stock shall vote in favor thereof. [Laws 1923, ch. 138, § 4.]

Corporations, 14a C. J. p. 1060 §§ 3640-3641.

Consent of stockholders to consolidation of corporations. 7 R. C. L. 165 et seq. and Supps.

§ 5191c5. Capital of new company. A consolidation shall not be permitted except upon condition that the new association have a capital of at least two-thirds of the aggregate capital of the old associations, but it may have a larger capital than that of the old associations. [Laws 1923, ch. 138, § 5.]

Corporations, 14a C. J. p. 1059 § 3637.

§ 5191c6. Stockholders' meetings; time of holding. The several stockholders' meetings at which the proposed consolidation or merger is acted upon must be held at such times that the result of all thereof may be certified to the state examiner within thirty (30) days from the date of the holding of the first of such meetings; and the result of each meeting must be certified to the state examiner by the chairman, and secretary of the meeting within ten (10) days after the holding thereof. [Laws 1923, ch. 138, § 6.]

Corporations, 14a C. J. p. 1064 § 3646.

§ 5191c7. Examination of condition. Upon receiving the certificates aforesaid, if they shall show favorable action by all of the associations concerned, the state examiner shall cause a thorough examination of the condition of the said associations to be made with a view of determining whether their condition is such that the proposed consolidation or merger would result in a sound and efficient banking association adapted to the needs of the community in which it is proposed to operate. [Laws 1923, ch. 138, § 7.]

Banks and Banking, 7 C. J. p. 481 § 12; Corporations, 14a C. J. p. 1059 § 3637.

§ 5191c8. Notice of findings; changes in conditions; appeal from adverse decision. Upon completing such examination, the state examiner shall advise each of the said associations of his findings as to whether a consolidation or merger is desirable; and in that connection, he shall indicate any changes, if any there be, in the condition of either of said associations that would make such consolidation or merger desirable, if not desirable on the conditions existing; and he may prescribe a time within which such changes in conditions may be made to warrant his approval.

If the finding of the state examiner is adverse to the proposed consolidation or merger, the associations affected may informally appeal to the banking board for a review thereof, and the board shall, as speedily as possible, set a time when it will hear any reasons that may be advanced why the findings of the state examiner should be reversed; and upon such hearing, it shall make such order as seems proper in the premises. [Laws 1923, ch. 138, § 8.]

§ 5191c9. Meeting of representatives; schedule of assets; agreement as proportion of stock to be accredited to old stockholders. If the finding of the state examiner, or the finding of the banking board, on appeal from his decision, is favorable to a consolidation or merger, either absolutely or upon conditions that were agreeable to the participating associations, each of such associations shall, by its board of directors, appoint one or more representatives to meet with the representatives of the other association, or associations, and they shall proceed to determine and make a schedule of the assets of each of the associations that shall be taken over by the new association, and they shall likewise schedule all the indebtedness of the old associations, and only such assets shall be retained by the old associations as the state examiner shall deem not proper assets to be held by the new association. In case of consolidation, such representatives shall likewise agree upon the proportion of the stock in the new association that shall be accredited to the stockholders of each of the old associations, but the distribution of such stock among the stockholders of the several old associations shall be by the old associations as hereinafter provided for. [Laws 1923, ch. 138, § 9.]

Corporations, 14a C. J. p. 1065 § 3650.

§ 5191c10. Same; reducing to writing; decision as to merger; appeal. The schedules aforesaid, and the agreement arrived at under the provisions of the last preceding paragraph shall be reduced to writing and signed in duplicate by the representatives of the old associations and shall be binding upon them and nonrevocable. If the several associations are unable to agree, no consolidation or merger shall take place. Upon the associations agreeing and signing the agreement as aforesaid, one of the duplicates shall be delivered to the state examiner who may either approve or disapprove the same, or make suggestions for the modification thereof as a condition of approval, and he may fix a time within which the conditions shall be met, and likewise agreed to in writing are resubmitted to him [sic].

And in this case likewise the association may informally appeal from the decision of the state examiner to the banking board. [Laws 1923, ch. 138, § 10.]
Corporations, 14a C. J. p. 1059 § 3637, p. 1065 § 3650.

§ 5191c11. Approval of agreement. If the state examiner, or upon appeal,

the banking board shall approve the agreement, or modified agreement entered into as aforesaid, such approval shall be endorsed on the duplicate of the agreement in the possession of the state examiner, and each of the associations shall be immediately notified of such approval. [Laws 1923, ch. 138, § 11.]

§ 5191c12. **Petition for consolidation or merger.** Upon receipt by the several associations of notice of the approval provided for in the last section, the associations seeking consolidation or merger, shall file in the office of the clerk of the district court of the county in which at least one of the associations is doing business, a petition asking for a decree of consolidation or merger, which petition shall give the names and location of the new association, and shall recite briefly the taking of the several successive steps hereinbefore provided for and a statement of the amount of the assets and indebtedness of each of the old associations to be transferred to and assumed by the new association, the amount of the capital stock, and the amount thereof to be apportioned to the stockholders of each of the old associations and the names of the first board of directors of the new association. [Laws 1923, ch. 138, § 12.]

Corporations, 14a C. J. p. 1064 § 3646.

§ 5191c13. **Notice.** Upon the filing of such petition, the clerk of the district court shall cause a notice to be issued which shall be substantially the following form:

State of North Dakota. In District Court.
County of Judicial District
In the Matter of the Application for Consolidation (or merger as the case may be) of The Bank of and the Bank of.....

The State of North Dakota to all Persons Whomsoever—Greeting:
Notice is Hereby Given that on the day of 19.. the above named banking associations filed in this office their petition, in form prescribed by law, praying a decree permitting them to consolidate (or merge, as the case may be) under the name of Bank, with its principal place of business in the of North Dakota.

That the effect of such consolidation (or merger, as the case may be) will be to transfer the principal assets of the petitioning associations to the said bank of, and to create a liability in the said last mentioned association to pay all of the debts of the said petitioning bank, and to establish a novation by the said petitioning banks, and creditors, and the said last mentioned bank.

That said petition will be heard by the Court at on the day of 19.., or as soon thereafter as counsel can be heard, at which time all creditors of the petitioners are summoned and commanded to file their appearance in the office of the Clerk of this Court together with an Answer to said petition showing cause why such consolidation (or merger, as the case may be) should not be allowed.

Attested by the Seal Clerk of the District Court of
of the Court. County, North Dakota.

Such notice so signed and attested shall be published in some newspaper qualified to publish legal notices in the county in which such petition is filed once in each week for three (3) successive weeks and the last such publication shall be at least twenty (20) days preceding the date set for the appearance, and proof of such publication shall be made by affidavit filed in the office of the

clerk of the district court as in other cases of publications of process. [Laws 1923, ch. 138, § 13.]

§ 5191c14. Decree. If at the end of twenty (20) days after the last publication, no appearance has been made in opposition to such petition, the court shall at once upon the showing of the default, make its decree permitting the consolidation, or merger, as the case may be. [Laws 1923, ch. 138, § 14.]

§ 5191c15. Hearing; burden of proof; stay of proceedings; bond; decree. In case opposition to such petition shall be made by any creditor, the court shall order a summary and speedy hearing, in which the petition and answer filed with the appearance shall constitute the pleadings; and the burden shall be upon the objecting parties to show cause why the petition should not be granted and the only cause for denying such petition shall be that the objecting creditor is in danger of being substantially damaged in his financial rights; and in case any objecting creditor shall establish that he is in danger of suffering such substantial damage, the court may order that the proceedings be stayed, and a bond of indemnity, to be approved by the court, given to him conditioned that all his legal claims against any of the old associations will be paid when due by the new association, and upon the furnishing of such indemnity, the proceedings shall be considered as though no opposition had been made thereto.

And the court shall accordingly enter its decree permitting the consolidation, or merger, as the case may be. [Laws 1923, ch. 138, § 15.]

§ 5191c16. Decree for; effect. The effect of a decree permitting consolidation, or merger, shall be to bar forever all objections thereto, and to establish a complete novation between the old associations, and creditors, and the new association to the end that from that time henceforth, the old associations are relieved of all liability to creditors, all such creditors having a valid and legal claim against the new association to the full extent that they had a claim against any of the old associations, and the new association is liable for all indebtedness of all the old associations to the same extent that they were liable, and all of the stockholders' liability, as stockholders, in the several old associations are merged into their stockholders' liability as stockholders in the new association. [Laws 1923, ch. 138, § 16.]

§ 5191c17. Conclusiveness of decree. The decree of the district court entered in the proceedings provided for in this act shall be final and conclusive, not subject to appeal, nor to motion to vacate or set aside, and not subject to be set aside or vacated on motion for a new trial. [Laws 1923, ch. 138, § 17.]

§ 5191c18. Objections; who may make; conclusiveness of determination. No stockholder of any association affected by this act who shall have voted in favor of consolidation or merger, or shall have refrained from voting shall be heard at any stage of the proceedings to object to the consolidation or merger but shall be deemed to have consented thereto, but any stockholder who voted against consolidation or merger may be heard at any stage of the proceedings, prior to the filing of the petition in court, and may at any such time formally or informally, file objection and appear before the state examiner, or the banking board, and show cause why the proposed consolidation or merger should not be allowed, but the determination of the state examiner or the banking board shall be conclusive of his rights, and no action or proceeding in court shall be maintainable by any one questioning the validity of such consolidation or merger or to recover any thing on account thereof unless the same shall be commenced prior to the time of the entry of a decree of consolidation or merger, and the court in which the petition for consolidation or merger is filed, or the appropriate federal court shall have exclusive jurisdiction of such action or proceeding. [Laws 1923, ch. 138, § 18.]

Corporations, 14a C. J. p. 1060 § 3641.

Remedies of stockholder objecting to consolidation of corporations. 7 R. C. L. 168 and Supps.

§ 5191c19. Decree of merger; transfers of assets after; decree of consolidation; what to contain; certified copy; certificate of authority. Upon the entry of a decree of merger, no further act shall be necessary to be done, except to make the transfers of the assets from the old associations to the association into which they are merged, but in case of a consolidation, the decree of the court shall specify the name and location, and the amount of the capital stock of the new association, and the proportions in which it shall be allotted to each of the old associations, apportioning the same in even hundreds of dollars. The decree shall also name the first board of directors, as set forth in the petition, or in case of the death or disability of any one or more of such proposed directors, shall substitute another or others to be nominated by the petitioners.

A certified copy of such decree shall thereupon be filed in the office of the secretary of state, accompanied by a fee of five (\$5.00) dollars, and such new association shall thereupon become a banking association in all things the same as though originally organized under the banking laws and the secretary of state shall thereupon issue to it a certificate of authority, as in the case of the incorporation of other banking associations, which certificate should be delivered to the state examiner to be in turn delivered by him to the said new association upon its being made to appear to him that all the terms and conditions of consolidation have been complied with. [Laws 1923, ch. 138, § 19.]
Corporations, 14a C. J. p. 1064 § 3646.

§ 5191c20. Election of officers. Immediately upon delivery of the certificate of authority by the state examiner to the directors of the association, they shall meet and elect officers, and until the election of such officers they shall personally supervise and conduct the business of the new association. [Laws 1923, ch. 138, § 20.]
Corporations, 14a C. J. p. 52 § 1802.

§ 5191c21. Old corporations to cease operation; old officers to continue. Upon either a consolidation or merger, as herein provided for, the old associations shall cease to operate as banking associations or to transact any business other than to administer any assets that under the terms of the consolidation or merger have not been transferred. They shall not elect any new officers or directors, but the directors and officers holding at the time of the consolidation or merger shall continue and the corporation itself shall remain in existence for a period of one (1) year during which time its remaining assets, if any must be disposed of, and the proceeds distributed among its stockholders, and at the end of one year from the filing of the decree of consolidation or merger, the said old associations shall cease to exist, unless upon good cause shown, and before the expiration of the said period of one (1) year any of said old associations shall obtain from the court an order extending the time of their existence, which order shall only be granted upon a showing of a substantial reason therefor. [Laws 1923, ch. 138, § 21.]
Corporations, 14a C. J. p. 1067 § 3655.

§ 5191c22. Statement as to new stocks due to old stockholders; proportion of stock. In case of consolidation, upon the new association coming into existence, the board of directors of each of the old associations must furnish to the board of directors of the new association a statement of the amount of stock due to each of the stockholders in such old association which shall be the same proportion of the amount of stock in the new association, allotted to such old association, that the stockholders stock bore to the total outstanding stock of the old association, and the new association shall thereupon issue its stock to such individual stockholders of the old association. Provided,

however, if the stock to which such stockholder is entitled does not consist of an even multiple of one hundred dollars, stock shall be issued to such individual stockholders entitled thereto for the even hundreds of dollars, included in the total amount, and there shall be issued by the new association a certificate in blank for the aggregate of the odd dollars of all such old stockholders in each of such old associations which certificate in blank shall be delivered to the directors of the old association in trust for the use of its stockholders and if the apportionment of such interest in such blank certificate cannot be otherwise made, the directors of such old association shall have authority to sell the same and divide the proceeds among the parties entitled thereto. [Laws 1923, ch. 138, § 22.]

Corporations, 14a C. J. p. 1068 § 3656.

§ 5191c23. Remedial purpose of act. The purpose of the act is remedial, and it is intended to remedy a well understood condition existing in the banking business of the state of North Dakota, a part of which condition is the need of larger and stronger banking institutions, and the supplying of more efficient banking service, to various communities, and to the end that such conditions may be remedied to the utmost extent possible, this act shall be in all things liberally construed, for the accomplishment of its ultimate purpose. [Laws 1923, ch. 138, § 23.]

Statutes, 36 Cyc. 1172-1177.

CHAPTER 29A.

THE BANK OF NORTH DAKOTA.

Explanatory note. Laws 1919, ch. 147, constituting this chapter, was approved on referendum. See Laws 1919, page 509.

§ 5192a1. Purpose of establishing. For the purpose of encouraging and promoting agriculture, commerce and industry, the state of North Dakota shall engage in the business of banking, and for that purpose shall, and does hereby, establish a system of banking owned, controlled and operated by it, under the name of the bank of North Dakota. [Laws 1919, ch. 147, § 1.]

Property not taken without due process of law under act, on the ground that taxes are imposed for private purposes. *Green v. Frazier*, 253 U. S. 233, 64 L. ed. 878, 40 Sup. Ct. Rep. 499.

Bank of North Dakota may function as separate agency of sovereign power. *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270.

States, 36 Cyc. 844, 846.

Power of state to establish banks. 18 R. C. L. 1274 and Supps; 25 R. C. L. 394 and Supps.

§ 5192a2. Industrial commission to control; business of bank; organization of bank. The industrial commission shall operate, manage and control the bank of North Dakota, locate and maintain its places of business, of which the principal place shall be within the state, and make and enforce orders, rules, regulations and by-laws for the transaction of its business. The business of the bank, in addition to other matters herein specified, may include anything that any bank may lawfully do, except as herein restricted; but this provision shall not be held in any way to limit or qualify either the powers of the industrial commission herein granted, or the functions of said bank herein defined. The industrial commission shall meet within twenty days after the passage and approval of this act to begin the organization of the bank. [Laws 1919, ch. 147, § 2.]

Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

Power of state to establish banks. 18 R. C. L. 1274 and Supps; 25 R. C. L. 394 and Supps.

§ 5192a3. Acquisition of property and property rights; per cent of capital to be invested. To accomplish the purposes of this act, the industrial commission shall acquire by purchase, lease or by exercise of the right of eminent domain, as provided by chapter 36 of the Code of Civil Procedure, Compiled Laws of 1913, all requisite property and property rights, and may construct, remodel and repair buildings; but it shall not invest more than ten per cent of the capital of the bank in furniture, fixtures, lands and buildings for office purposes. [Laws 1919, ch. 147, § 3.]

Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

§ 5192a4. Assistance to commission; manager and subordinate officers; employment of contractors, architects, etc.; compensation not to exceed appropriation; bonds of officers; employees and manager. The industrial commission shall obtain such assistance as in its judgment may be necessary for the establishment, maintenance and operation of the bank. To that end it shall appoint a manager, and may appoint such subordinate officers and employes as it may judge expedient. It may constitute such manager its general agent, in respect to the functions of said bank, but subject, nevertheless, in such agency, to the supervision, limitation and control of the commission. It shall employ such contractors, architects, builders, attorneys, cashiers, tellers, clerks, accountants, and other experts, agents and servants as in the judgment of the commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation and bonds of all such persons so engaged; provided, however, that subject to the control and regulation of the commission, the manager of the bank shall appoint and employ such deputies, cashiers, tellers, and other subordinates, and such contractors, architects, builders, attorneys, clerks, accountants and other experts, agents and servants, as he shall, in his judgment, deem are required by the interests of the bank. The total compensation of such appointees and employes, together with other expenditures for the operation and maintenance of the bank, shall remain within the appropriation and earnings lawfully available in each year for such purpose. All officers and employes of the bank engaged upon its financial functions shall, before entering upon their duties, respectively furnish good and sufficient bonds to the state in such amount and upon such conditions as the commission may require and approve; but the bond of the manager shall not be less than fifty thousand dollars. Such bond shall be filed with the secretary of state. [Laws 1919, ch. 147, § 4.]

Official bonds. 22 R. C. L. 496 et seq. and Supps.

§ 5192a5. Removal and discharge of appointees. The industrial commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this act, whether by the commission or by the manager of the bank, and any such removal may be made whenever in the judgment of the commission the public interests require it; provided, however, that all appointments and removals contemplated by this act shall be so made as the commission shall deem most fit to promote the efficiency of the public service. [Laws 1919, ch. 147, § 5.]

§ 5192a6. Opening of bank for business; capital of bank. The bank shall be opened and shall proceed to transact business whenever there shall be delivered to the industrial commission bonds in the sum of two million dollars issued by the state as may be provided by law for such purpose. The fund procured by the negotiation and sale of such bonds is hereby designated and shall be known as the capital of said bank. [Laws 1919, ch. 147, § 6.]

Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

§ 5192a7. Deposit of public funds in. All state funds, and funds of all state penal, educational and industrial institutions shall be, by the persons having

control of such funds, deposited in the bank of North Dakota. [Initiated measure, Laws 1921, page 255; Laws 1919, ch. 147, § 7.]

Right to issue bonds for state owned industries. *Green v. Frazier*, 44 N. D. 395, 176 N. W. 11.

Does not repeal powers of county commissioners to designate legal depositories, and direct placing of county funds upon time deposit. *State ex rel. Kopriva v. Larson*, 48 N. D. 1144, 189 N. W. 626.

See also *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270; *Slope County v. Douglas*, — N. D. —, 194 N. W. 385; *State ex rel. Lemke v. District Ct.*, — N. D. —, 186 N. W. 381.

Depositories, 18 C. J. pp. 580-581 §§ 45-46; *States*, 36 Cyc. 887.

Designation of depository of public funds. 22 R. C. L. 228.

§ 5192a8. Nonliability of officials and sureties after deposit. Whenever any of the public funds hereinbefore designated shall be deposited in the bank of North Dakota, as hereinbefore provided, the official having control thereof, and the sureties on the bond of every such official, shall be exempt from all liability by reason of loss of any such deposited funds while so deposited. [Laws 1919, ch. 147, § 8.]

Depositories, 18 C. J. p. 581 § 46.

Liability of officials after deposit of public funds in depository. 22 R. C. L. 228 and Supps.

§ 5192a9. Deposits to be received from any source; deposits for in other banks or agencies. The bank of North Dakota may receive deposits from any source, including the United States government and any foreign or domestic individual, corporation, association, municipality, bank or government. Funds may be deposited to the credit of the bank of North Dakota in any bank or agency approved by the industrial commission [Laws 1919, ch. 147, § 9.]

Sargent County v. State, 47 N. D. 561, 182 N. W. 270; *State ex rel Kopriva v. Larson*, 48 N. D. 1144, 189 N. W. 626.

§ 5192a10. Guaranty of deposits; exemption from taxation. All deposits in the bank of North Dakota are hereby guaranteed by the state. Such deposits shall be exempt from state county and municipal taxes of any and all kinds. [Laws 1919, ch. 147, § 10.]

Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

Constitutional Law, 12 C. J. p. 1116 § 833, p. 1128 § 846, p. 1151 § 881; *Taxation*, 37 Cyc. 729-731, 828, 874.

Bank depositors' guarantee fund. 3 R. C. L. 381 and Supps.

§ 5192a11. Available funds; bank as clearing house. Funds deposited by state banks in the Bank of North Dakota shall be deemed "available funds" within the meaning of that term as used in section 5170 of the Compiled Laws of 1913. For banks that make the Bank of North Dakota a reserve depository, it may perform the functions and render the services of a clearing house, including all facilities for providing domestic and foreign exchange, and may rediscount paper, on such terms as the industrial commission shall provide. [Laws 1919, ch. 147, § 11.]

Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

Clearing houses. 3 R. C. L. 1651 et seq. and Supps.

§ 5192a12. Interest rates; uniformity; what justifies difference in rates; minimum and maximum rates; charges for services. The industrial commission, unless otherwise limited by law, shall from time to time fix the rates of interest allowed and received in transactions of the bank. Such rates shall be as nearly uniform and constant as practicable, and shall not be fixed or changed to work any discrimination against or in favor of any person or corporation. But in respect to time deposits received by the bank, transactions may be reasonably classified as to the amounts and the duration of time involved, and a reasonable differentiation of interest rates based on such classi-

fication may be allowed. When interest is allowed on any deposits it shall not be less than one or more than six per cent. The industrial commission shall also fix reasonable charges, without unjust discrimination, for any and all services rendered by the bank. [Laws 1919, ch. 147, § 12.]

Legislative control of rate of interest. 15 R. C. L. 19 and Supps.

§ 5192a13. Remittance at par for instruments sent for collection; penalty for violation. All checks and other instruments and items of exchange payable on demand, sent by the Bank of North Dakota to any state bank or banking association in North Dakota, for collection, shall be by such state bank or banking association remitted for at par to the Bank of North Dakota. Any person or corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [Laws 1919, ch. 147, § 13.]

Banks and Banking, 7 C. J. p. 597 § 244; Constitutional Law, 12 C. J. p. 1280 § 1090.

§ 5192a14. Deposits by bank. The Bank of North Dakota may deposit funds in any bank or banking association within or without the state upon such terms and conditions as the industrial commission shall determine. [Laws 1919, ch. 147, § 14.]

§ 5192a15. Transfer of funds; loans; giving of credit; proportion of loans on real estate security; additional funds; how secured. The Bank of North Dakota may transfer funds to other departments, institutions, utilities, industries, enterprises or business projects of the state, which shall be returned with interest to the bank. It may make loans to counties, cities or political subdivisions of the state, or to state or national banks on such terms, and under such rules and regulations, as the industrial commission may determine; but it shall not make loans or give its credit to any individual, association or private corporation, except that it may make loans to any individual, association or private corporation, secured by duly recorded first mortgages on real estate in the state of North Dakota in amounts not to exceed one-half the value of the security, or secured by warehouse receipts issued by the industrial commission or by any licensed warehouse within the state, in amounts not to exceed ninety per cent of the value of the commodities evidenced thereby. It shall not, however, loan on real estate security more than thirty per cent of its capital, nor in addition thereto, more than twenty per cent of its deposits. Additional funds, that may be required for such real estate loans, shall be procured from the sale of state bonds as may be provided by law. [Laws 1919, ch. 147, § 15.]

§ 5192a16. Funds placed elsewhere; how credited. All funds transferred to other departments, institutions, utilities, industries, enterprises or projects of the state, by the Bank of North Dakota, shall be placed to the credit of such institutions, utilities, industries, enterprises or projects of the state by the state treasurer and subject to their respective order, and all such funds shall be returned with interest to the bank. [Laws 1919, Sp. Sess. ch. 46, § 1.]

§ 5192a17. Same; warrants on. The state auditor shall issue warrants against such money so transferred in the same manner as provided in the case of funds from the payment of taxes or otherwise. [Laws 1919, Sp. Sess. ch. 46, § 2.]

§ 5192a18. Application for mortgage loan; forms of; reference of; appraisal; grant or refusal of loan. The industrial commission shall prescribe the forms of application for a mortgage loan on real estate, and shall provide for appraisal of the proposed security. Until otherwise provided by the commission, when an application for a mortgage loan on real estate is made, it shall be referred to the commissioner of university and school lands, for appraisal of the proposed security. The commissioner of university and school lands.

shall thereupon promptly cause it to be appraised in the same manner as school lands are appraised, and upon completion of such appraisal shall return the application, together with the appraisal, to the bank. Thereupon the bank shall promptly determine whether to grant or refuse any part or all of such loan. [Laws 1919, ch. 147, § 16.]

§ 5192a19. Mortgage; conditions in; extension of payments. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual installments sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of real estate loan bonds issued, if any, by the state of North Dakota; second, a charge for administration and surplus, at a rate not exceeding one per cent per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and, third, such amounts to be applied on the principal as will extinguish the debt in not less than ten nor more than thirty years; provided, however, that advanced payment of one or more annual installments, for the reduction of the principle, [principal] or the payment of the entire principal, may be made at any regular installment date; and, provided further, that in case of a crop failure which reduces the mortgagor's reasonable crop income by one-half, all payments under said mortgage may, in the discretion of the industrial commission be extended for one year, upon condition that on the payment of all installments, such further annual payment shall be made as will pay the interest, with interest thereon, for the years for which no payments were made. The industrial commission shall determine whether a mortgagor is entitled to an extension of the payment of any installment, under the provisions of this section. [Laws 1919, ch. 147, § 17.]

§ 5192a20. Mortgage and obligation secured; to whom payable; recitals in; recording; satisfaction and discharge. Every such mortgage, and the note or other obligation thereby secured, shall run to "the manager of the Bank of North Dakota, his successors in office or his assigns," as payee and mortgagee, and shall contain a recital that it is executed and delivered in conformity with and upon the conditions expressed in this act, designated by its title and the date of its approval. After having been duly recorded in each county in which the lands therein described are situated, every such mortgage shall be delivered to the manager of said bank and together with said note or other obligation shall be held by the manager as a part of the assets of the bank, or shall be otherwise disposed of, as hereafter provided. If so held, payments upon the note or other obligation secured by said mortgage shall be made to the Bank of North Dakota, and whenever it shall have been fully paid, the manager shall promptly satisfy and discharge the mortgage lien of record and deliver the mortgage cancelled, with a satisfaction thereof, to the person entitled to receive it. [Laws 1919, ch. 147, § 18.]

§ 5192a21. Same; sale or assignment of; to whom payments made; extensions of payments. Every such mortgage, together with the note or other obligation thereby secured, may be sold and assigned upon the payment to the bank of the full value thereof, and upon such sale and assignment, the manager may endorse either with or without recourse. In that case payments upon said note or other obligation shall be made to the person entitled to receive them; but each such assignment shall be made subject to the provisions concerning extension of the time of payments on account of crop failures as provided in section 17 of this act (§ 5192a19, ante), and subsequent action of the industrial commission in that regard shall be binding upon the assignee of such mortgage; provided, however, that after assignment of such mortgage extensions of payments for a yearly period shall be limited in total number to not more than one for every period of five years or fraction thereof during

which such mortgage has to run after the date of assignment. [Laws 1919, ch. 147, § 19.]

§ 5192a22. Same; assignment as security; to whom payments made; satisfaction; extensions of payments. Every such mortgage, together with the note or other obligation thereby secured, may be assigned, and upon order of the industrial commission shall be assigned, to the state treasurer of the state of North Dakota as security for bonds to be issued by the state as provided by law. In case of such assignment all payments due upon said note or other obligation shall be made to the state treasurer, and the money so by him received shall be by him held or disbursed as may be provided by law. If while any such mortgage so assigned to the state treasurer is in his hands, the note or obligation thereby secured shall have been fully paid, the state treasurer shall so certify to the manager of the bank, who shall thereupon proceed to satisfy said mortgage in the same manner as though said note or other obligation had been paid directly to the bank. In case of such assignment to the state treasurer of any such mortgage, the provisions contained in section 19 of this act (§ 5192a21, ante), respecting extensions on account of crop failure, shall be effective and shall be applied. [Laws 1919, ch. 147, § 20.]

§ 5192a23. Name in which business conducted or title taken; who to sign written instruments. All business of the bank may be conducted under the name of "The Bank of North Dakota." Title to property pertaining to the operation of the bank shall be obtained and conveyed in the name of "The state of North Dakota, doing business as the Bank of North Dakota." Written instruments shall be executed in the name of the state of North Dakota, signed by any two members of the industrial commission, of whom the governor shall be one, or by the manager of the Bank of North Dakota within the scope of his authority so to do as defined by the industrial commission. [Laws 1919, ch. 147, § 21.]

Officers of state not authorized to sell bonds at discount, or pay commission reducing amount received to less than par. *Currie v. Frazier*, 48 N. D. 600, 186 N. W. 244.

§ 5192a24. Civil actions; by whom brought; how state to be designated; on whom process served; where brought; claims against state. Civil actions may be brought against the state of North Dakota on account of causes of action claimed to have arisen out of transactions connected with the operation of the Bank of North Dakota upon condition that the provisions of this section are complied with. In such actions the state shall be designated as "The state of North Dakota, doing business as the Bank of North Dakota," and the service of process therein shall be made upon the manager of said bank. Such actions may be brought in the same manner and shall be subject to the same provisions of law as other civil actions brought pursuant to the provisions of the Code of Civil Procedure. Such actions shall be brought, however, in the county where the Bank of North Dakota shall have its principal place of business, except as provided in sections 7415, 7416 and 7418, Compiled Laws of North Dakota, 1913. The provisions of section 375 and 657 of the Compiled Laws of 1913 shall not apply to claims against the state, affected by the provisions of this section. [Laws 1919, ch. 147, § 22.]

Garnishment proceedings by county to recover deposits made in Bank of North Dakota proper. *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270.

Statutory authorization of suits against state. 25 R. C. L. 416 and Supps.

§ 5192a25. Investigations; reports. The state examiner shall personally or through deputy examiners visit the Bank of North Dakota at least twice annually, and shall inspect and verify the assets in its possession and under its control, with sufficient thoroughness of investigation to ascertain with reasonable certainty whether the valuations are correctly carried on its books. He

shall investigate its methods of operation and accounting. He shall report the results of each such examination and investigation to the industrial commission as soon as practicable, and to the legislative assembly at its next ensuing session, and as provided in paragraph numbered 5, of section 5146 of the Civil Code, Compiled Laws 1913, to the state banking board. [Laws 1919, ch. 147, § 23.]

Examination of Bank of North Dakota not a part of duties of state auditor. State ex rel. Kositzky v. Waters, 43 N. D. 115, 176 N. W. 913.

Power to examine books of state bank, given to state examiner. Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

See also State ex rel. Kopriva v. Larson, 48 N. D. 1144, 189 N. W. 626.

§ 5192a26. To whom loans to be made. The Bank of North Dakota shall make real estate loans only to actual farmers who are residents of this state. [Initiated measure, Laws 1921, page 255.]

State ex rel. Kopriva v. Larson, 48 N. D. 1144, 189 N. W. 626.

§ 5192a27. Appropriation. There is hereby appropriated out of the general funds of the state, not otherwise appropriated, one hundred thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this act. This appropriation is hereby made available immediately upon the passage and approval of this act. The industrial commission shall, out of the earnings of the bank, make provision for accumulating a fund with which to replace in the general funds of the state, the amount received by the commission under this appropriation, as may be directed by the legislative assembly. [Laws 1919, ch. 147, § 24.]

CHAPTER 30.

SAVINGS BANKS.

§ 5198. Investment of fund. A savings bank incorporated hereunder shall invest its capital, its deposits, its surplus and its profits only as follows:

First. In bonds of the United States.

Second. In bonds or evidences of debt in this state or in the bonds of other states in the Union.

Third. In bonds or warrants of any county in this state, or in the bonds or warrants of any city in this state, or any special improvement district therein, or in the bonds or warrants of any village, township, school district or drainage district in this state, issued pursuant to the authority of law, but not exceeding thirty per cent of the assets of such savings bank shall be invested in such bonds or warrants.

Fourth. In notes or bonds secured by mortgage or deed of trust upon unincumbered real estate in this state, which real estate shall be worth, exclusive of all improvements, at least twice the amount loaned thereon, but in addition thereto, there may be loaned thirty per cent of an appraised value of any buildings on said real estate provided fire insurance policies are maintained and deposited as collateral to such mortgage.

Fifth. In the mortgage bonds of any railroad corporation, incorporated under the laws of any state of the United States, provided that during each of the ten fiscal years of such railroad corporation next preceding the date of such investment:

1. Such railroad corporation shall have paid the matured principal and interest of all its mortgage indebtedness.

2. Such railroad shall have paid in dividends in cash to its stockholders, an amount of at least four per cent per annum upon all its outstanding stock of every class.

Sixth. To the extent of sixty per cent of the total demand deposits, in

promissory notes due not more than one year from the date of the loan; provided that where there are pledged securities such as such corporation is by this chapter authorized to invest its funds, there may be loaned an amount not to exceed eighty per cent of the value of such securities, and provided, further, that no such loan shall be made to a person in excess of five per cent of the total demand deposits, and in no event more than fifteen per cent of the capital stock and surplus. [Laws 1917, ch. 60, § 1.]

Banks and Banking, 7 C. J. p. 852 § 862, pp. 873-874 §§ 928-929.

CHAPTER 31.

ORGANIZATION AND MANAGEMENT OF ANNUITY, SAFE DEPOSIT AND TRUST COMPANIES.

§ 5205. **Formation.** Any number of persons, not less than nine, not less than three of whom must be residents of this state, may associate themselves, and become incorporated for the purpose of transacting business as an annuity, safe deposit, surety and trust company, upon complying with the provisions of this chapter, and any company so formed or heretofore formed, and now doing business, and its successors, shall be entitled to the rights and privileges, and subject to the duties and obligations herein provided, and its existence shall be perpetual. The provisions of chapter 12 of the civil code shall be applied to and be observed by persons organizing under this chapter, except as herein otherwise provided, and except as to provisions thereof inconsistent with the provisions of this chapter. [Laws 1923, ch. 183, § 1.]

Annuities, 3 C. J. p. 222 § 54; Banks and Banking, 7 C. J. p. 832 § 792; Depositories, 18 C. J. p. 560; Principal and Surety, 32 Cyc. 303.

§ 5205a. **Emergency.** Whereas there is an apparent conflict between the language of section 4533 and section 5205 of the Compiled Laws, and therefore a doubt as to the rights and liabilities of such corporations, therefore this act is hereby declared an emergency measure, and shall take effect immediately upon its passage and approval. [Laws 1923, ch. 183, § 2.]

§ 5207. Comp. Laws, 1913.

State ex rel. Dakota Trust Co. v. Stutsman, 24 N. D. 68, 139 N. W. 83.

§ 5210. Comp. Laws, 1913.

Grunow v. Simonitseh, 21 N. D. 277, 130 N. W. 835; State ex rel. Dakota Trust Co. v. Stutsman, 24 N. D. 68, 139 N. W. 83.

CHAPTER 31A.

BANK DEPOSITS.

§ 5220a1. **Charges against; unlawful to make.** It shall be unlawful for any bank, or trust company, with which money has been deposited, to charge against the deposit any claim of such bank or trust company or any other person, or to appropriate the same to the payment of any debt to such bank or trust company or any other person, without legal process or without the consent of the depositor. [Laws 1923, ch. 139, § 1.]

Banks and Banking, 7 C. J. p. 653, § 351, p. 872, § 922.

Application upon debt due bank of deposits made by debtor in his own name of funds of third person. 13 A.L.R. 324; 31 A.L.R. 756.

Right of bank to apply special deposit to an indebtedness of depositor. L.R.A. 1918A, 80.

Application on debt due bank of deposit made for purpose of meeting certain checks or classes of checks. 24 A.L.R. 1111.

Right of set-off against deposits. 3 R. C. L. 588 et seq. and Supps.

§ 5220a2. Same; liability for. Any bank or trust company which shall so charge any claim against a deposit or in any way appropriate the same to the payment of a debt of the depositor, in violation of the terms hereof, shall be liable to the party aggrieved for any damages caused thereby to be recovered in a civil action. [Laws 1923, ch. 139, § 2.]

Banks and Banking, 7 C. J. p. 671 § 378.

Liability of bank for application of deposit to pay fiduciary's debt to bank. L.R.A.1915C, 525.

§ 5220a3. Deposits in trust; to whom paid. Whenever any deposits shall be made in any bank, savings bank, or trust company by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made. [Laws 1919, ch. 111, § 1.]

Banks and Banking, 7 C. J. p. 865 § 909, p. 869 § 917; Trusts, 39 Cyc. 67; Constitutional Law, 12 C. J. p. 963 § 512, p. 1219 § 994.

Transfer of bank deposits from trust to private account, where there is an antecedent debt of trustee. 12 A.L.R. 1053.

Payment of deposit directly to beneficiary without order of trustee or fiduciary in whose name it was made. 2 A.L.R. 1557.

Deposits in trust in savings bank. 3 R. C. L. 715 et seq. and Supps.

§ 5220a4. Deposits in two names; to whom paid. When a deposit has been made or shall hereafter be made in any bank, savings bank, or trust company, transacting business in this state in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank, savings bank or trust company, for any payment so made. [Laws 1925, ch. 93, § 1.]

Banks and Banking, 7 C. J. p. 676 § 394.

Joint deposits. 3 R. C. L. 527 and Supps.

CHAPTER 31B.

DEPOSITORS' GUARANTY FUND.

Explanatory note. Laws 1917, ch. 126, first enacting a guaranty law with its amendments by Laws 1919, ch. 110 and Laws 1921, ch. 21 was amended and re-enacted by Laws 1923, ch. 200 constituting this chapter. The earlier law (Laws 1917, ch. 126) contained the following repealing clause, § 29, not found in the later law:

That part of sections 371, 1475 and 3317 of the Compiled Laws of North Dakota for the year 1913, and any and all other provisions of law requiring the giving of personal or surety bonds for deposits of public funds in so far as same applies to banks belonging to the depositors guaranty fund, and all acts and parts of acts in so far as they conflict with the provisions of this act are hereby expressly repealed.

Supreme court may exercise original jurisdiction in matter involving state guaranty fund. State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

No vested rights of depositors disturbed by this chapter. Wirtz v. Nestos, — N. D. —, 200 N. W. 524.

§ 5220b1. Guaranty fund commission; depositors' guaranty fund commission; established; compensation; expense. There is hereby established a depositors' guaranty fund commission of the state of North Dakota to be composed of five (5) members, viz.: The governor of the state of North Dakota, the manager of the Bank of North Dakota, and three members to be appointed by the governor of the state. All appointments to membership of said com-

mission, whether to fill a vacancy or otherwise, shall be made by the governor of the state of North Dakota from a list of names of nine men furnished by the banks directly affected by the provisions of this act. All members of this commission shall be residents of the state of North Dakota and all members except the governor shall have at least five years' experience in the management of some bank or banks located within the state of North Dakota. The present appointive members shall serve out the term for which they were appointed and each succeeding appointment except to fill a vacancy caused by death, resignation or removal of a member shall be for a period of three years. The governor shall be the chairman of said commission, and the attorney general shall be ex-officio the attorney for the commission, and the state treasurer shall be its treasurer, and the secretary shall be appointed by the commission, and the commission shall have power to fix the compensation of such secretary to be paid from the depositors' guaranty fund, which shall not in any case exceed the sum of \$2,000.00 per annum. The state examiner may be appointed as such secretary. The members of the commission, other than the governor, shall receive for their services five (\$5.00) dollars per day for the time actually served and their actual expenses incurred in the performance of their duties, the same to be paid out of the general fund of the state. Said commission shall have the supervision and control of the depositors' guaranty fund and shall have power to adopt all necessary rules and regulations, not inconsistent with law, for the management and administration of said fund. [Laws 1923, ch. 200, § 1; Laws 1921, ch. 21, § 1; Laws 1919, ch. 110; Laws 1917, ch. 126, § 1.]

Guaranty fund commission, agency of state, to execute policy adopted in dealing with insolvency of banks. *Wirtz v. Nestos*, — N. D. —, 200 N. W. 524.

Banks and Banking, 7 C. J. pp. 484-486 § 15.

Constitutionality of bank guaranty law. 32 L.R.A.(N.S.) 1065.

Depositors' guaranty fund. 3 R. C. L. 381 and Supps.

§ 5220b2. Commissioners; qualifications; oaths and filing thereof. The members of the depositors' guaranty fund commission, other than the governor, shall take and subscribe the oath of office prescribed by the constitution, and shall take oath to keep secret all the facts and information obtained in the performance of their duties in like manner as is provided for the state examiner in the state banking laws, and subject to like penalties, and each shall be bonded to the state of North Dakota under the state bonding act as elected state officers, in the amount of ten thousand (\$10,000.00) dollars. The secretary and all other persons appointed shall take the oath herein prescribed, and be bonded under the state bonding act, in amount fixed by the commission, in no event less than ten thousand (\$10,000.00) dollars. The oath of office of each of such commissioners and persons appointed by them, shall be filed with the secretary of state. [Laws 1923, ch. 200, § 2; Laws 1917, ch. 126, § 2.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

Oath of office. 22 R. C. L. 448.

Official bonds. 22 R. C. L. 496 et seq. and Supps.

§ 5220b3. Depositors' guaranty fund commission; regular meeting; dates fixed; special meeting; how called; where held. The depositors' guaranty fund commission created by the provisions of this act shall hold at least four meetings during each calendar year at stated intervals as follows, to wit: On the second Tuesday in January, April, July and October, provided that other meetings of the commission, may be convened upon written request by any two members of the commission, served upon the chairman of such commission, who shall upon receipt of such request give notice to the secretary of the date when a meeting shall be held in accordance with such request, and the secretary shall in turn give notice thereof to all members of the commission of the date of such meetings so to be held, as hereinafter provided; and provided

further, that whenever a condition exists affecting the general banking business within the state, or when there is sufficient matter in the office of the secretary entitled to receive consideration and disposition by the depositors' guaranty fund commission, as contemplated, herein, or when in the opinion of the secretary it is advisable to convene such commission for counsel and direction on contingencies that may arise that would tend to prevent best results from being obtained hereunder as contemplated herein, it shall be within his power to convene the commission and to that end forthwith give notice of the date of such meeting to all members of the commission. All meetings of the depositors' guaranty fund commission shall be held at the capitol of the state, except that meetings may be held elsewhere within the state by consent of the majority of the members of the commission. [Laws 1923, ch. 200, § 3; Laws 1917, ch. 126, § 3.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

§ 5220b4. Same; specific duties. It shall be the specific duty of the depositors' guaranty fund commission to pass upon the qualifications of each and every bank for admission under the depositors' guaranty fund and their actions shall be final, both as to immediate admission or what shall be further required of any bank in order to place it in a condition satisfactory to the commission so that it may be admitted later. When the conditions of any bank heretofore admitted under the depositors' guaranty fund becomes such as to cause the state examiner to doubt the advisability of permitting it to continue in business, it shall be within his power to require the advice and opinion of the commission and for that purpose a meeting of the commission may be called.

[At] Any regular or called meeting of the depositors' guaranty fund commission as herein provided, at which there is not a full attendance of the membership, it shall be optional with a quorum whether or not any business shall be transacted, and such quorum may adjourn from time to time until such time as there shall be a full attendance. [Laws 1923, ch. 200, § 4; Laws 1917, ch. 126, § 4.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

§ 5220b5. Guaranty fund; assessment. For the purpose of providing a depositors' guaranty fund for the protection of depositors in banks, every institution engaged in the business of banking under the laws of this state, shall be subject to assessment to be levied, collected, administered, kept and applied as hereinafter provided.

The guaranty fund commission shall appoint two persons skilled and experienced in bank accounting to be known and designated as inspectors, who shall take and subscribe the oath of office prescribed by the constitution, and shall take oath to keep secret all facts and information obtained in the performance of their duties, in like manner as is provided for the state examiner in the state banking law, and subject to like penalties. Which two inspectors shall be paid out of the funds appropriated for the conduct of the state examiner's office, the same salaries that are paid to deputy state examiners.

Provided, however, if the guaranty fund commission is unable to procure the services of inspectors, who, in their judgment, possess the requisite skill and ability as bank accountants, it may pay to either or both of such inspectors, from the funds of the depositors' guaranty fund, such additional compensation, as in its judgment, is necessary, not in any case exceeding four thousand (\$4,000.00) dollars per year for any such inspector.

If at any time the amount of work involved in the performance of the duties of the guaranty fund commission, as aforesaid, shall be such as to require, in its judgment, more than two inspectors, it shall have authority to appoint not to exceed two assistant inspectors who shall take like oath, and who shall be

paid a salary of not to exceed two hundred (\$200.00) dollars per month; which payment shall be made out of the monies of the depositors' guaranty fund.

Every inspector or assistant inspector who makes an examination of the affairs of a bank, shall make a full report of the result of his examination, with comments upon the condition of the bank examined, to the secretary of the commission and the state examiner, who may accept and adopt the examination and report of any such inspector or assistant inspector, in lieu of an examination by one of his deputies; in which case the guaranty fund commission shall pay over to the state examiner, the charge made for such examination, to the amount that would be legally chargeable for such examination, if made by the state examiner's office, less the expense of the inspector in connection with such examination; and the amount so collected by the state examiner shall be accounted for and covered into the same fund as collections made for the examination of banks by the state examiner.

It is the purpose and intention of this act that the work of the inspectors made available to the state examiner, shall be of the same value to him as the examining work of at least two deputy state examiners, and that the examining force of the state examiner's department may be kept correspondingly smaller. [Laws 1923, ch. 200, § 5; Laws 1917, ch. 126, § 5.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

Assessment of banks to create depositors' guaranty fund. 3 R. C. L. 381 and Supps.

§ 5220b6. Rules and regulations; expenses of examinations; payment of; remitting charges; retaining unremitted charges. The guaranty fund commission may from time to time establish rules and regulations as to the payment by banks of the expense of making examinations by its inspectors, but no charge shall be made against any bank for such examination in excess of the amount of ten dollars (\$10.00) per day for the services of an inspector, together with his actual traveling and hotel expenses, and it shall have authority to remit all or any part of the per diem and expense charges against any bank, having at all times due regard to whether the affairs of such bank were such as to have warranted an examination; except that where an examination is adopted by the state examiner, a charge must be made equal to that allowed by law for an examination of such bank by the state examiner. Any charges made for examinations not adopted by the state examiner and not rebated, as aforesaid, shall be kept and retained by the guaranty fund commission for the payment of the salaries and expenses of the inspectors, and any deficiency in such salaries and expenses, after applying such fees, shall be paid out of the depositors' guaranty fund. [Laws 1923, ch. 200, § 6.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

Regulation of banks within police power. 6 R. C. L. 220 and Supps.

§ 5220b7. Commission to inform as to financial condition of banks. Upon the taking effect of this act, the commission shall take the necessary steps to become informed, and to thereafter keep informed as to the financial condition and management of all banks that have been admitted under the depositor's guaranty fund, for the purpose of determining whether the interests of said guaranty fund or of the depositors in any of the banks protected thereby, are endangered or likely to be endangered by the further guaranteeing of the deposits of any bank. [Laws 1923, ch. 200, § 7.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

Power of legislature to provide for inspection of banks. 3 R. C. L. 383 and Supps.

§ 5220b8. Access to records and files; taking charge of assets; examination of bank officers, etc.; reducing testimony to writing; examination; when to be taken. For the purpose of acquiring information as to the condition of any such banks, the commission, by its members or its inspectors, as provided for

in this act, shall have full access to all the records and files of the banking department of the state; and it shall also, by its members or its said inspectors, have full power and authority to enter into any bank admitted under said fund, at any time, and take charge of its assets, papers, documents and records, for the purpose of examination and investigation, during such time as shall be necessary for the purpose of auditing its affairs, and ascertaining its condition and its methods of conducting business; and either the individual members of the commission or the inspectors of the commission shall have power and authority to call and put under oath, and examine any officer, stockholder or employee, creditor or debtor of any bank, in connection with the examination of its affairs, or to obtain explanation of anything connected with its business, records or management; and in case of the refusal of any such person to appear for the purposes of examination, any judge, clerk of court, or justice of the peace, within the jurisdiction of whom such bank is located, shall upon request of such commissioner or inspector, issue a subpoena for such person, commanding him to appear at a time and place stated, and to submit to such examination, and answer questions and sign his testimony, if reduced to writing, and if any person so subpoenaed shall fail to appear or to obey such order, the judge of the court from which such subpoena is issued, or the justice issuing the same, shall have authority and jurisdiction to punish such person for contempt. The testimony so taken may be, by the commissioner or inspector, reduced, or caused to be reduced, to writing, and at his direction shall be subscribed by the person examined.

Whenever any member of the guaranty fund commission shall acquire information leading him to believe that the condition of any bank is such that an immediate examination of its affairs should be made, he shall have authority to immediately order an inspector or assistant inspector to enter upon an examination of the same, and if he deem it necessary, he may call upon the state examiner to furnish a deputy examiner to work with such inspector, and the two officers shall as far as practicable co-operate in the examination of such bank. [Laws 1923, ch. 200, § 8.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

Power of legislature to provide for inspection of banks. 3 R. C. L. 383 and Supps.

§ 5220b9. Order to hold deposits as special; report; appointment of receiver.

Whenever the commission shall acquire information leading it to believe that any bank admitted under such fund is being irregularly or inefficiently, or dishonestly conducted, or is insolvent, as that term is defined by the banking laws, it shall be its duty to investigate the same as promptly as possible as in section 8 hereof provided; and at any time during the progress of such investigation if it appears that such bank is probably insolvent, such commissioner or inspector shall have authority to make an order requiring all deposits received during such examination to be set aside and held intact as "special deposits," which shall only be used to reimburse the depositor; and if at the close of such examination the commissioner or inspector shall find such bank to be insolvent within the meaning of the banking laws, he shall have authority to extend such order for such further period as shall be necessary to enable the commission to meet and take action with reference to the affairs of such bank; but such meeting and action must be taken within thirty days from the time of extending such order. Upon completing such examination, such commissioner or inspector shall immediately prepare a report of the result thereof, and submit the same to the commission and the state examiner.

If from such report it shall appear to the commission that the bank is insolvent within the meaning of the banking laws, it shall have authority to immediately institute a proceeding in the district court of the county in which such bank is located, (or in any other court that may be by any law then in force, given jurisdiction of such proceeding) to liquidate such bank as an

insolvent corporation, and procure the appointment of a receiver to wind up its affairs, as provided for by article 3 of chapter 27 of the Code of Civil Procedure, and the general equitable jurisdiction of courts of equity to appoint receivers and wind up the affairs of insolvent corporations; or if by any law then in existence the exclusive right to institute such proceedings shall be vested in any particular officer or board, the commission shall certify the facts to such officer or board, as the case may be, who must thereupon institute such proceedings.

In lieu of instituting such proceedings, the commission may, in its discretion, permit such bank, within a time to be prescribed by it, to comply with such conditions as the commission shall deem necessary to make it a solvent institution, but as a condition of granting such time, such bank must, by a resolution of its directors, endorsed on its minutes, consent to the continuing of the order aforesaid limiting the right to receive deposits, and to such continued supervision of its affairs as the commission shall prescribe. The granting of such time to said bank to remedy its condition shall not abridge or limit the right of the commission to institute such court proceedings, at any time it shall appear to its satisfaction that such bank is hopelessly insolvent, or unable to comply with the conditions prescribed.

Provided, however, the pendency of any proceedings for the liquidation of any such bank shall not be a bar to its reorganization or continuance as a banking institution, but at any time before the final disposition of such proceedings, such bank may make application to the guaranty fund commission for leave to reorganize or remedy its condition, and be readmitted under the guaranty fund, and the commission may thereupon prescribe the conditions as to assets, payment of liabilities, and the character and competency of the managing officers to be placed in charge of the affairs of such bank upon which it may be readmitted to said guaranty fund, which condition shall be submitted to the court having jurisdiction, and if it approves thereof, it may make an order to that effect, and thereupon and upon such bank complying with the said conditions to the satisfaction of the guaranty fund commission, it shall make an order readmitting the said bank, and the liquidation proceedings shall be thereupon discontinued on such terms as the court shall direct; but no deposits shall be received by such reorganized bank until final approval of the court is had, and the said proceedings actually dismissed. All expenses incident to such proceedings incurred by the commission shall be presented to and audited by the state auditing board, and be paid out of the general funds of the state, and there is hereby appropriated for the purpose of meeting such expenses, the sum of one thousand dollars per year, or so much thereof as shall be necessary. [Laws 1923, ch. 200, § 9.]

Banks and Banking, 7 C. J. p. 484 § 15, p. 630 § 306, p. 643 § 331, p. 749 § 544, pp. 730-733 §§ 484-491, p. 490 §§ 28-29, pp. 722-724 §§ 469-480.

Winding up insolvent banks. 3 R. C. L. 641 et seq. and Supps.

§ 5220b10. Supervision of liquidation of insolvent banks by depositors' guaranty fund commission. The depositors' guaranty fund commission shall supervise the liquidation of insolvent banks and whenever in its judgment the proper supervision thereof so requires, it may appoint and at pleasure remove a supervisor of receivers who shall perform such duties in the supervision of receivers of insolvent banking associations as the commission may direct and shall receive such compensation and allowance for expenses as the commission may prescribe, the same to be paid from the depositors' guaranty fund in the same manner as other expenses of the commission are paid. [Laws 1921, ch. 23, § 1.]

Explanatory note. See §§ 5191b1-5191b19, ante.

Banks and Banking, 7 C. J. p. 484 § 15, p. 724 § 480.

§ 5220b11. Filing statements; assessments. On June 30th of each year, every state bank engaged in the business of banking in this state shall make

and file with the depositors' guaranty fund commission, a statement in writing, verified by the oath of its president, vice president or cashier, showing the average daily deposits in its bank for the preceding twelve (12) months.

Immediately after the date fixed for the making and filing of such statements, the depositor's guaranty fund commission shall levy assessments against the assets of each of said banks as follows:

One-twentieth of one per cent on the average daily deposits as shown by the statement of such average daily deposits to be made and filed by the provisions of this section.

For each and every year thereafter one-twentieth of one per cent of the average daily deposits as shown by the statement required to be made and filed under the provisions of this act in each year, until the total amount of money in the guaranty fund reaches two per cent of the average daily deposits; provided, however, that said depositors' guaranty fund commission shall have power to make and levy additional assessments of one-twentieth of one per cent, but not to exceed four such additional assessments shall be made in any one year.

Due and legal notice of such assessment or assessments shall be deemed to have been given when such notice as shall be prepared by the secretary of the commission has been placed in an envelope, securely sealed, and postage prepaid, directed to each of said banks and deposited, in the United States mail, and said banks shall thereupon set apart, keep and maintain in their said banks the amounts thus levied against them and the amounts shall be and constitute what shall be designated as the depositors' guaranty fund, payable to the depositors' guaranty fund commission on demand, for the uses, and purposes provided. Provided that when the depositors' guaranty fund reaches the total sum of two per cent of the average daily deposits, said assessments shall cease until such time as the guaranty fund is depleted below one and one-half per cent of the average daily deposits, when the necessary assessment may be again levied at one-twentieth of one per cent per annum until said fund again reaches two per cent of the average daily deposits.

The guaranty as provided for in this act shall not apply to a bank's obligation as endorser upon bills re-discounted nor to bills payable, nor to money borrowed from its correspondents or others, nor deposits otherwise secured; nor deposits upon which compensation in any manner or form or by whatever device, has been promised or paid in excess of the rate of interest as limited in this act. All other deposits for which money or its equivalent, and for which full value has been received by the bank wherein such deposit is made, shall be guaranteed by this act. Each guaranteed bank shall certify under oath to the depositors' guaranty fund commission at the date of statements as hereinbefore provided, the amount of money it has on deposit not eligible to guaranty under the provisions of this act, and in assessing such bank this amount shall be deducted from the total deposits. [Laws 1923, ch. 200, § 10; Laws 1917, ch. 126, § 7.]

McQuerry v. State, — N. D. —, 195 N. W. 432; *Dyer v. Hall*, — N. D. —, 199 N. W. 754.

Banks and Banking, 7 C. J. pp. 484-486 § 15.

Assessment on banks to create depositors' guaranty fund. 3 R. C. L. 381 and Supps.

§ 5220b12. Interest on deposits. No bank transacting a banking business under this act shall pay interest on deposits, directly or indirectly at a greater rate than four per cent per annum, unless authorized by the depositors' guaranty fund commission to pay a greater rate which in no case shall exceed six per cent per annum, and said depositors' guaranty fund commission is hereby authorized and empowered to grant permission to pay such higher rate; provided, that the rate so granted shall be uniform within any county.

Any officer, director or employee of any bank violating the provisions of this

section, directly or indirectly, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the state penitentiary for a term of not less than one year nor more than three years or both, in the discretion of the court. [Laws 1923, ch. 200, § 11; Laws 1917, ch. 126, § 8.]

Holder of certificate of deposit, drawing excessive interest not within protection of guaranty fund. *McQuerry v. State*, — N. D. —, 195 N. W. 432.

Banks and Banking, 7 C. J. p. 651 § 349, p. 574 § 193.

§ 5220b13. False statements; penalty. Any person making oath to any of the statements herein required, knowing the same to [be] false, shall be deemed guilty of a felony and be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the state penitentiary for a term of not more than five years or both, in the discretion of the court. [Laws 1923, ch. 200, § 12; Laws 1917, ch. 126, § 9.]

Banks and Banking, 7 C. J. p. 574 § 194.

§ 5220b14. Voluntary liquidation or change to a national bank. If any bank desires to go into voluntary liquidation or change to a national bank before the assessment provided for in section ten becomes due and payable, the provisions of this act shall not relieve said bank from the payment of any assessments then due from it to the depositors' guaranty fund nor from any liability to become due on account of losses in banks which are closed at the time such bank applies to liquidate or change into a national bank. [Laws 1923, ch. 200, § 13; Laws 1917, ch. 126, § 10.]

Banks and Banking, 7 C. J. pp. 484-486 § 15, p. 721 § 467, p. 760 § 583.

§ 5220b15. New banks and reorganized national banks. Any bank organized under the state law, subsequent to the taking effect of this act, and admitted by the commission to participation under the depositors' guaranty fund, shall pay into such fund an amount equal to three per cent of its capital stock, which amount shall constitute a credit fund subject to adjustment on the basis of said bank's average daily deposits as shown by the first annual statement required by section 10 of this article (§ 5220b11, ante). And any national bank that has reorganized as a state bank, shall likewise before engaging in business, set apart and credit to the depositors' guaranty fund such an amount as will place them on an equal footing as respects such fund, with other state banks.

Immediately after being passed upon favorably by the depositors' guaranty fund commission, the secretary shall notify such new banks and the state examiner of such admission, which notification shall be in writing, in the form of a certificate, signed by the chairman and attested by the secretary of the commission. Such certificates shall be by the bank receiving the same framed and kept at all times displayed in a conspicuous place in the lobby of the bank.

The depositors' guaranty fund commission is authorized and empowered to make an adjustment of the rates of assessment to be paid by any bank which engages in the banking business subsequent to the passage, approval and taking effect of this act, which shall have been admitted hereunder and shall require such bank to contribute to the depositors' guaranty fund, a just and equitable sum, and for that purpose shall adjust assessments of such bank so that the first two assessments together with the credit fund of three per cent of the capital stock paid by said bank when it begins business, shall at least equal one-half of one per cent of the average daily deposits of said bank as shown by the first annual statement required by section ten of this article.

Provided, however, that said three per cent will not be required of the new banks formed by the reorganization or consolidation of banks that have previously complied with the terms of this act with reference to the payment of assessments. [Laws 1923, ch. 200, § 14; Laws 1917, ch. 126, § 11.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

§ 5220b16. Assessment; failure to credit. Whenever any bank, after due notice from the secretary of the depositors' guaranty fund commission shall fail to pay over or credit on its books to the depositors' guaranty fund any assessment as herein provided, for a period of twenty days, such bank shall be subject to a penalty of ten (\$10.00) dollars per day for each day it so refuses or fails to pay over or credit to such depositors' guaranty fund such assessment and penalty, and at the expiration of thirty days from the date of notice of assessment herein provided if said assessment and penalty still remains unpaid, the bank so delinquent may be deemed insolvent, and in the discretion of the commission may be liquidated and its business wound up as provided for by the state banking laws for the liquidating of insolvent banks. [Laws 1923, ch. 200, § 15; Laws 1917, ch. 126, § 13.]

Banks and Banking, 7 C. J. pp. 484-486 § 15, p. 722 § 470, p. 727 § 482.

Assessment on banks to create depositors' guaranty fund. 3 R. C. L. 381 and Supps.

§ 5220b17. Depositors' guaranty fund; first lien; exception. Whenever any bank doing business in this state under the provisions of this act shall suspend payment or become insolvent, the amount of money standing to the credit of the depositors' guaranty fund on deposit in such bank shall be a first lien upon the assets of such institution; save and except funds deposited in such institution and belonging to the estate of any insolvent bank, deposited therein by the receiver or other person officially in charge, which shall have preference over all other claims. [Laws 1923, ch. 200, § 16; Laws 1917, ch. 126, § 14.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

§ 5220b18. Deposits; payment; approval or rejection of liability; issuance of certificates of indebtedness. When any bank doing business under the provisions of this act suspends or becomes insolvent and shall have closed, the commission shall, without unreasonable delay, cause each deposit in such closed bank to be examined, audited and shall determine such as may be qualified for guarantee under this act and certify the acceptance or rejection of each deposit to the secretary of the commission, who shall give notice, by registered mail, to the persons whose deposits have been rejected, at their last known post office address, or to each thereof, in care of the receiver of such closed bank. The action of the commission in certifying acceptance or rejection as herein provided shall be final unless, within ninety days from date of mailing notices of rejection, written demand for hearing is served upon the secretary of the commission. [Laws 1923, ch. 200, § 17; Laws 1917, ch. 126, § 15.]

Discretion of commission, in passing on depositors' claims, cannot be controlled or directed by courts. *Wirtz v. Nestos*, — N. D. —, 200 N. W. 524.

Banks and Banking, 7 C. J. pp. 484-486 § 15, pp. 748-749 §§ 542-544.

§ 5220b19. Rules and regulations; proof of claims of depositors. The commission shall make rules and regulations and shall prescribe the manner by which proof of claims of depositors for allowance of claims guaranteed under this act shall be made, and shall designate the form and manner of verification of such proof of claim. [Laws 1923, ch. 200, § 18.]

Banks and Banking, 7 C. J. pp. 484-486 § 15, p. 743 § 523.

§ 5220b20. Hearings on rejected claims. The commission may provide for hearing upon rejected claims, either before the commission or any member thereof, or a referee to be appointed by the commission, at the state capitol, or elsewhere within the state upon majority vote of the commission. [Laws 1923, ch. 200, § 19.]

§ 5220b21. Oath; stenographic report; testimony; determination. At any hearing where testimony is taken the commission or its referee shall have authority to administer oaths and may require a stenographic report to be

taken and transcribed, or the testimony reduced to writing and subscribed by the witness. The commission shall after hearing upon such rejected claims enter their order determining whether such rejected deposits shall be finally rejected or allowed as guaranteed. [Laws 1923, ch. 200, § 20.]

§ 5220b22. Certificate of indebtedness; notice. The secretary of the commission shall issue a certificate of indebtedness upon the treasurer to the person entitled thereto for the amount of all such accepted deposits.

If there be not sufficient funds available in the fund to pay such certificate of indebtedness, the treasurer shall endorse the same "presented for payment" and date and sign such endorsement, and such certificate shall thereafter be payable out of money in the guaranty fund, by order of the commission, pro rata, upon all outstanding certificates of indebtedness. Notice of the amount of each dividend to be paid upon such certificate, and the date when such payment is to be made, shall be published in a newspaper in the place where the closed bank was located. If no newspaper is published at the place where such closed bank was located, then such notice shall be published in an official newspaper of the county wherein such bank was located. Notice shall be published in like manner of the date upon which payment of any balance due on such certificate of indebtedness will be made. [Laws 1923, ch. 200, § 21.]

§ 5220b23. Subrogation. To the extent of the deposits accepted and allowed as guaranteed, the depositors' guaranty fund commission, for the use and benefit of said fund, shall be subrogated to all the rights of such guaranteed depositors thus accepted, to participate in the assets of such closed bank, and the same shall be enforced and collected by the secretary of the commission accordingly; and from time to time as collected shall be distributed pro rata as payment upon the certificates of indebtedness issued to the guaranteed depositors of the closed bank from which such payment had been received, until full payment is made to the holder of such certificate. Any surplus remaining after payment in full to holders of such certificates shall be turned into the depositors' guaranty fund and be thereafter held and distributed as herein otherwise provided.

All monies received shall be deposited in the solvent banks subject to the provisions of the depositors' guaranty fund proportionate as to the several deposits to the assessment levied against each of said banks. [Laws 1923, ch. 200, § 22; Laws 1917, ch. 126, § 16.]

Banks and Banking, 7 C. J. pp. 484-486 § 15.

§ 5220b24. Reports. The receiver or other official in charge of any suspended or insolvent bank, possession of which has been taken under the provisions of this act, shall make to the depositors' guaranty fund commission not less than one report quarterly, according to such form as may be prescribed, such report to be verified by his oath. [Laws 1923, ch. 200, § 23; Laws 1917, ch. 126, § 17.]

Power of legislature to provide for inspection of banks. 3 R. C. L. 383 and Supps.

§ 5220b25. Notices not otherwise provided for. Whenever notice is required by the provisions of this act, and such notice is not otherwise provided for as to form or manner of service thereof, the same may be served in the manner now provided for the service of summons in civil action, or by registered mail, and an affidavit of such mailing of such notice by the person giving or serving same, shall be prima facie evidence of the service of such notice. [Laws 1923, ch. 200, § 24; Laws 1917, ch. 126, § 18.]

Service of notice. 20 R. C. L. 356 and Supps.

§ 5220b26. Forms; approval. The depositors' guaranty fund commission shall prescribe all such forms as may be useful, or necessary in carrying out the provisions of this act. [Laws 1923, ch. 200, § 25; Laws 1917, ch. 126, § 20.]

§ 5220b27. Punishment; where not otherwise provided. Where no other punishment is provided herein, any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty (\$50) dollars nor more than three hundred (\$300) dollars, or by imprisonment in the county jail for not less than thirty nor more than ninety days, or both, in the discretion of the court. [Laws 1923, ch. 200, § 26; Laws 1917, ch. 126, § 21.]

Banks and Banking, 7 C. J. p. 574 § 193.

§ 5220b28. Saving clause. Nothing in this act contained repealing any act for the regulation or conduct of banking, shall be construed, to release any person from punishment for any acts heretofore committed violating said act or acts nor affect in any manner any existing indictment or prosecution by reason of such repeal; and for that purpose such acts shall continue in force and effect notwithstanding such repeal. [Laws 1923, ch. 200, § 27; Laws 1917, ch. 126, § 22.]

§ 5220b29. Federal guaranty law. Whenever by act of Congress or by decision of the federal court, or departmental construction of the national banking act, National Banking Associations located and doing business within this state are permitted to avail their depositors of the protection of the depositors' guaranty fund, established by the law of this state for the re-payment of deposits in closed banks, such association, after examination at its expense by the commission, as in this act provided for state banks and, upon its approval as to its financial condition by the commission, may participate in the assets and benefits of the depositors' guaranty fund upon terms and conditions in harmony with the banking law of this state to be fixed by the said depositors' guaranty fund commission, provided that in the event national banking associations shall be required by federal enactment to pay assessments to any depositors' guaranty fund of the Federal government and thereby the depositors in such association in this state shall be guaranteed by virtue of the Federal laws, the association having availed themselves of the benefits of this act, may withdraw therefrom and have paid to them the unused portion of all assessments levied upon and paid by such association. [Laws 1923, ch. 200, § 28; Laws 1917, ch. 126, § 24.]

§ 5220b30. Unappropriated assessments refunded; when. If any bank organized under the laws of this state, having paid any assessment or assessments to the depositors' guaranty fund shall liquidate and go out of business, or shall desire to organize as a national bank and withdraw from the protection of the depositors' guaranty fund for its depositors the portion of such assessment or assessments, which shall not have been used under the provisions of this act shall be refunded to any bank by the depositors' guaranty fund commission. Provided, that no such bank shall be released from its proper proportion of all outstanding certificates of indebtedness of the depositors' guaranty fund, issued to the depositors of failed banks under the provisions of this act, nor until it shall have received permission in writing so to do from the depositors' guaranty fund commission of this state and after an examination of its condition. [Laws 1923, ch. 200, § 29; Laws 1917, ch. 126, § 25.]

Banks and Banking, 7 C. J. pp. 484-485 § 15.

§ 5220b31. May resume business. Such bank or trust company may upon re-payment of any money advanced by the depositors' guaranty fund to such bank or trust company, with the consent of the depositors' guaranty fund commission resume business upon such conditions as may be approved by said commission. [Laws 1923, ch. 200, § 30; Laws 1917, ch. 126, § 26.]

§ 5220b32. Defining banks and banking for the purpose of this act. For the purpose of this act every corporation, except national banks whose business, in whole or in part, consists of the taking of deposits or buying and selling

exchange shall be held to be and is hereby declared to be a bank, and as thus defined shall be subject to the provisions of this act, provided further, that trust companies doing a general banking business as defined in this section separate and apart from the writing of surety bonds and other general business, and building and loan associations receiving savings deposits, shall be declared to be a bank and shall also be subject to the provisions of this act. [Laws 1923, ch. 200, § 31; Laws 1917, ch. 126, § 27.]

Banks and Banking, 7 C. J. p. 484 § 15, pp. 473-474 §§ 1-3.

§ 5220b33. Organizing. Any banks organized and authorized to do business under the provisions of the state banking laws on and after the passage, approval and taking effect of this act shall sell the capital stock thereof at three (\$3.00) dollars per share above par and the amount received as a result of such advance shall be credited on the books of such bank to the depositors' guaranty fund as hereinbefore provided. [Laws 1923, ch. 200, § 32; Laws 1917, ch. 126, § 28.]

Banks and Banking, 7 C. J. p. 484 § 15.

§ 5220b34. Right to make investigation and report. The depositors' guaranty fund commission shall have the right and authority to examine, by any member or inspector, the affairs of closed banks and investigate the conduct of the receivership thereof and make report thereon to the commission. [Laws 1923, ch. 200, § 33.]

§ 5220b35. Appropriation to meet expenses. There is hereby appropriated out of the depositors' guaranty fund twenty thousand dollars (\$20,000.00) per year, or so much thereof as shall be necessary to meet the expenses of the guaranty fund commission herein provided for, and any amount of such appropriation not so used, shall be at the end of each year, covered into the said depositors' guaranty fund.

The expenses of the guaranty fund commission herein provided for shall be presented to the state auditing board for allowance, as claims against the state are presented, and when allowed, shall be paid as other claims against the state are paid. [Laws 1923, ch. 200, § 34.]

Explanatory note. Regular appropriation for Guaranty Fund Commission, see ante, § 653j3 subdiv. 23. The following appropriation had been made by Laws 1918, Sp. Sess., ch. 1, § 1.

§ 5220b36. Appropriation to reimburse fund. There is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, the sum of \$19,450.00, or so much thereof as may be necessary to reimburse the depositors guaranty fund for moneys withdrawn therefrom under authority of section 34 of chapter 200 of the Session Laws of 1923, (§ 5220b35), ante, to-wit:

Per Diem (3 Commissioners)	\$1,350.00
Clerkhire	3,900.00
Office Supplies	400.00
Furniture and Fixtures	600.00
Printing	1,600.00
Miscellaneous—Telegraph, Telephone	1,200.00
Travel Expense—Commissioners	3,800.00
Travel Expense—Inspectors	3,500.00
Salaries for Inspectors (2)	3,000.00
Bonds for Commissioners and Other Employees	100.00
Total	\$19,450.00

[Laws 1925, ch. 18, § 1.]

Explanatory note. Appropriation for commission, see § 653j3, subdiv. 23, ante.

§ 5220b37. Meaning of terms. The term "special deposit" used in this act

shall be construed to mean, a deposit received in either cash, check, draft, or other common medium of exchange, but to be kept separate and apart from the general funds of the bank receiving the same; and to be kept on hand in the bank in cash, and not be considered as a part of its cash reserve; and not to be devoted to any purpose other than returning it on demand to the depositor; or permitting it to be withdrawn on order of the depositor, which order may be in the form of a check or other writing; and no part of such deposit shall be used, or the possession thereof parted with by the bank, except the checks, drafts, and other common mediums of exchange included in such deposits, shall be collected and converted into money as in the ordinary course of banking business, and the money so obtained, held in said deposit in lieu of such medium of exchange, and so long as the requirement of receiving special deposits continues, the full amount thereof must be kept on hand by the bank, except as paid out to, or on the order of the depositor; or deposited in a bank within the state, as a special deposit therein, as may be designated by the commission or its inspector and it shall be a special trust fund not subject to claims of creditors of the bank.

Whenever the term "commissioner" is used in this act, it shall be deemed to mean a member of the guaranty fund commission; and whenever the word "commission" is used, it shall be deemed to mean the guaranty fund commission.

Whenever the term "fund" is used in this act, it shall be deemed to mean the depositors' guaranty fund. [Laws 1923, ch. 200, § 35.]

Banks and Banking, 7 C. J. p. 630 § 306.

§ 5220b38. Penalty. Any officer of any bank who shall receive any general deposit, while an order is in force, as hereinbefore provided, as to the taking of special deposits, or who shall, while such order is in force, after the receiving of any such special deposits, mingle the same with the general funds of the bank or pay out, or use, or part with the possession of the same, except as in this act provided, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than one thousand (\$1,000.00) dollars, or by imprisonment in the county jail for a term of not to exceed one year, or by both such fine and imprisonment, or by being confined in the penitentiary for not less than one, or more than five years; and in addition thereto, such officer shall be civilly liable to any depositor whose deposit shall be thus unlawfully diverted. [Laws 1923, ch. 200, § 36.]

Banks and Banking, 7 C. J. p. 562 § 168, p. 580 § 204.

Liability of officers of bank receiving deposits, when bank is insolvent. 3 R. C. L. 474 and Supps.

Criminal liability of officers receiving deposits, when bank insolvent. 3 R. C. L. 490 et seq. and Supps.

§ 5220b39. Remainder of act not affected by declaring any part unconstitutional. If any section, provision, clause, sentence or part of this act shall be declared violative of any "constitutional" provision, the act shall be deemed and held to have been enacted independent of the part so declared unconstitutional, and any operative part thereof that may remain shall be nevertheless given full force and effect, to the end that the ultimate purpose of the act shall be as far as possible accomplished; and if that part of the act which permits the guaranty fund commission to resort to the depositors' guaranty fund to pay any part of the expenses incident to the performance of its duties as herein provided for, shall be declared invalid, it shall nevertheless be lawful for the guaranty fund commission to employ the inspectors herein provided for, and pay their salaries and expenses, and to pay any other expenses herein provided for, out of their own funds, or out of the funds of individuals or banking corporations voluntarily contributed for that purpose; and the official character of such inspectors and their powers and authority shall neverthe-

less be, in all things, the same as though they were fully paid and compensated out of the funds sought to be appropriated for that purpose. [Laws 1923, ch. 200, § 37.]

Statutes, 36 Cyc. 976.

Partial unconstitutionality of statutes. 6 R. C. L. 121 et seq. and Supps.

§ 5220b40. Temporary powers of commission. The depositors' guaranty fund commission shall have the power and authority to employ any of the funds under its control for the purpose of paying off the claims of bills payable holders in closed banks whenever in its judgment and sound discretion the security behind such bills payable is sufficient to pay the same in full, and leave a substantial amount of security of the kind and character that could reasonably be expected to be collected upon and liquidated within one year from the expiration of the time limit of this section.

The commission is empowered to deposit funds in banks operating under this act, temporarily in aid of open banks, in such amounts, and upon such terms and conditions, and upon such security as it may determine and designate. And such banks shall be required to conduct their affairs in accordance with and under the direction of the commission until such temporary aid has been withdrawn. It shall require the consent of four members of the commission before funds can be employed as provided for in this section.

This section of this act shall continue in force and effect until July 1st, 1927, unless sooner repealed, but at that time it shall expire and cease to be operative without any repeal and the powers and authorities conferred therein shall terminate without in any way limiting any other provisions of the act. [Laws 1923, ch. 200, § 38.]

Banks and Banking, 7 C. J. p. 484 § 15.

§ 5220b41. Forbidding certain advertising. Any officer, director, stockholder, agent or employee, of a bank whose deposits are guaranteed under the provisions of this act, who shall state or represent in any advertisement, pamphlet, book, sign, or other manner, in writing or printing, that the deposits of such bank are guaranteed by the state of North Dakota shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars. [Laws 1923, ch. 200, § 39.]

CHAPTER 32.

SUPERVISION OF INVESTMENT COMPANIES.

§§ 5221-5235. Repealed by Laws 1915, ch. 91, § 19. See note following § 5235a27, post.

CHAPTER 32A.

SECURITIES COMMISSION.

Explanatory note. Laws 1923, ch. 182, constituting this article, repealed in § 27 (§ 5235a27, post), Laws 1915, ch. 91, entitled "Blue Sky Law" but the earlier was made the basis of the present law to a very great extent, as an examination of the corresponding sections will show. Laws 1923, ch. 182, however, added several new sections, § 1 of which created the State Securities Commission which under the new law performs duties and exercises authority devolving on the State Banking Board and the state examiner under the earlier law.

Equity Co-op. Packing Co. v. Hall, 42 N. D. 523, 173 N. W. 796.

§ 5235a1. State securities commission created. There is hereby created a commission to be known as the state securities commission, hereafter referred

to as the "commission" whose duty it shall be to administer and provide for the enforcement of all provisions of this act, which shall consist of the governor, attorney general and secretary of state. There shall be appointed by the commission an executive officer who shall also act as ex-officio secretary of the commission and who shall serve for a term of two years unless sooner removed by the commission and shall devote his entire time and attention to the duties of his office and shall receive a salary of two thousand eight hundred (\$2,800.00) dollars per annum, payable monthly. He shall at the time of his appointment, subscribe and file the usual oath and furnish a bond in the sum of ten thousand (\$10,000.00) dollars, to be approved and filed as are the bonds of the other state officers. In the absence or disability of any of the members of the commission the duly appointed deputy or designated assistant of such officer shall act in his stead upon such commission. Each member shall be authorized to swear witnesses and administer oaths in any matter coming before him or said commission. The commission shall have the power to employ such assistance as examiners, accountants or investigators as may be necessary to carry out the provisions of this act. [Laws 1923, ch. 182, § 1.]

Licenses, 37 C. J. pp. 270-271 §§ 164-165.

Constitutionality of blue sky laws. L.R.A.1917F, 524.

Public service commissioner's power with respect to issuance of bonds by street railway companies. 5 A.L.R. 66.

Blue sky laws. 15 A.L.R. 262; 24 A.L.R. 523; 27 A.L.R. 1169; 30 A.L.R. 1331.

Oath of office of public officers. 22 R. C. L. 448.

Official bonds. 22 R. C. L. 496 et seq. and Supps.

§ 5235a2. Meaning of terms. The term "securities" as used in this act shall be taken to mean stock certificates, shares, bonds, debentures, certificates of participation, contracts, service contracts, preorganization certificates and subscriptions, certificates evidencing shares of or interest in trust estates or associations, profit sharing agreements or certificates or any certificate, contract or instrument whatsoever representing or constituting evidence of, or secured by, title to, or interest in, or any lien or charge upon, the capital or any property or assets of the issuer thereof, or any oil, gas or mining lease; and interests, units or shares in any such lease or leases; contracts or bonds for the sale and conveyance of land on deferred payments or installment plan, or other instruments in the nature thereof by whatsoever name known or called. The term "speculative securities" as used in this act shall be taken to mean and include (1) All securities into the specified par value of which the element of chance, speculative profit, or possible loss equal or predominate over the elements of reasonable certainty, safety, and investment; (2) All securities the value of which materially depends on proposed or promised future promotion or development rather than on present tangible assets and conditions; (3) Any securities based in whole or material part on assets consisting of patents, formulae, good-will, promotion, or intangible assets; (4) Securities made or issued in furtherance or promotion of any enterprise or scheme for the sale of unimproved or undeveloped land on any deferred payments or installment plan when the principal value of such securities depends on the future performance of any stipulation by the promoters of such enterprise to furnish irrigation or transportation facilities, or other value enhancing utility or improvement. The term "speculative enterprise" as used in this act shall be taken to mean any business undertaking, project, venture or activity for the promotion or furtherance of which "speculative securities" as herein defined are made, issued, sold, or offered for sale. [Laws 1923, ch. 182, § 2; Laws 1915, ch. 91, § 1.]

Licenses, 37 C. J. pp. 274-276 §§ 168-169.

§ 5235a3. Prerequisites to sales of securities. It shall be hereafter unlawful for any person, co-partnership, association or corporation, hereinafter called the investment company, either as principal, or through agents, to sell, or

offer for sale, or by means of any advertisement, circulars, or prospectus, or by any other form of public offering, to attempt to promote the sale of any speculative securities in this state, unless there first shall have been filed with the securities commission: (1) A copy of the securities so to be promoted; (2) A statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company; (3) If such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon, if any; (4) A full statement of facts showing the gross and net earnings, actual or estimated, of any person, or company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or liens; (5) All knowledge or information in the possession of such investment company relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same; (6) A copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed hereunder; (7) The names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, including a statement giving the qualifications, occupations and business experience of each of such agents for a period of five years prior to the filing, the names and addresses of each employer, the period of employment, and reason for resignation or discharge, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall have been paid to the commission a registration fee of three (\$3.00) dollars for each such agent. The payment of such fee shall be payment in full of all fees for registration of such agent from January 1st to January 1st of the following year; (8) The name and address of such promoter, including the names and addresses of all partners, if the investment company be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per centum, or more, of the capital stock, if the promoter be a corporation or association; (9) A statement showing in detail the plan on which the business or enterprise is to be transacted; (10) The articles of copartnership or association, and all other papers pertaining to its organization, if the securities be insured or guaranteed by a co-partnership or unincorporated association; (11) A copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; (12) A filing fee of twenty-five (\$25.00) dollars. [Laws 1924, ch. 182, § 3; Laws 1915, ch. 91, § 2.]

Agreement for buyers' certificate, "speculative security" within meaning of this chapter. *State ex rel. Rossen v. Welch*, 42 N. D. 44, 172 N. W. 234.

See also *Equity Co-op. Packing Co. v. Hall*, 42 N. D. 523, 173 N. W. 796; *Citizens' State Bank v. Skeffington*, — N. D. —, 196 N. W. 953; *Farmers Security Bank v. Nelson*, 46 N. D. 106, 179 N. W. 917.

Licenses, 37 C. J. p. 270 § 164, pp. 273-274 §§ 166-167, p. 276 § 170.

§ 5235a4. Prerequisites to sales by foreign corporations. Every foreign corporation before selling or offering for sale any speculative securities, shall also file its written consent, irrevocable, that actions may be commenced against it in the proper courts of any county in this state in which a cause of action may arise, by the service of process on the secretary of state, and stipulating and agreeing that such service of process on the secretary of state shall be taken and held in all courts to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other state, and such instrument shall be authenticated by the seal of said foreign

corporation, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees, or managers of the corporation authorizing the said secretary and president to execute the same. [Laws 1924, ch. 182, § 4; Laws 1915, ch. 91, § 3.]

Licenses, 37 C. J. p. 273 § 166.

Stipulation by foreign corporation that service upon secretary of state shall be good as pre-requisite to doing business in state. 12 R. C. L. 58 and Supps.

§ 5235a5. Commission; duties; examination, etc.; report; escrow agreement; hearing; findings; notice. It shall be the duty of the commission as soon as is practical, to examine the statement and documents so filed and if said commission shall deem it advisable, they shall make, or have made, a detailed inspection, examination, audit and investigation of the affairs of the makers or guarantors of such securities which said inspection, examination, audit and investigation shall be at the applicant's expense. As a part of the aforesaid inspection, examination, audit and investigation, the commission may cause an appraisal to be made of the property of the maker or guarantor, including the value of patents, formulae, good-will promotion, and intangible assets and shall furnish a full and complete statement or report of his inspection and investigation aforesaid to the securities commission. If the statement shall disclose that any of such securities shall have been or shall be intended to be issued for any patent right, copyright, trademark, process or good-will, or for promotion fees or expenses, or for other intangible assets, the amount and nature thereof, shall be fully set forth, and securities issued in payment of such patent right, copyright, trademark, process or good-will, or for promotion fees or expenses, or for other intangible assets, shall be delivered in escrow to such bank or trust company as shall be designated by the commission under an escrow agreement that the owners of such securities shall in case of dissolution or insolvency not participate in the assets of the corporation until after the owners of all other securities have been paid in full. Such escrow agreement shall remain in full force until the securities of the issuer thereof are on a dividend paying basis. The state securities commission shall, within ten days thereafter, examine the statements or report, and give the promoter a hearing if he so desires. If the securities commission finds no legal objection to the enterprise, or securities, it shall direct the secretary to acknowledge compliance with section 3 of this act. But if, from the statements, papers and documents on file, and the investigations and report of the secretary, or from other evidence submitted, it shall appear, and the state securities commission shall find: (1) That the makers and guarantors of said securities are insolvent, or that the applicant's plan for business is dishonest, or fraudulent; (2) Or that the applicant's literature or advertising is misleading and calculated to deceive purchasers or investors; (3) Or that the securities offered or to be offered are issued or are to be issued in payment for property, patents, formulae, good-will or promotion and intangible assets, in excess of the reasonable value thereof; (4) Or that the enterprise of the applicant is unlawful or against public policy; (5) Or is a mere scheme of a promoter or promoters to get rich quick at the expense of the purchasers of the aforesaid securities, the said commission shall reduce its said findings to writing and attest the same by the signature of the chairman and secretary thereof. Notice of such finding, or findings, shall immediately be given to the applicant by registered mail. And it shall thereafter be unlawful for the promoter or any agent of said company or promoter to sell, offer for sale, or by means of any advertisement, circular, or prospectus, or by any other form of public offering to attempt to promote the sale of any such speculative security or securities in this state. [Laws 1923, ch. 182, § 5; Laws 1915, ch. 91, § 4.]

Licenses, 37 C. J. p. 271 § 165.

§ 5235a6. Investigation; adverse finding. The state securities commission

shall at any time have the authority and jurisdiction to investigate the North of any speculative enterprise, the securities of which are being sold or offered for sale in this state, and after giving the company or promoter a hearing, may if the evidence warrants, make any of the adverse findings enumerated in section 5 of this act, and it shall thereafter be unlawful for any person, co-partnership, association or corporation to sell, offer for sale, or by means of any advertisement, circular, or prospectus or by any other form of public offering to attempt to promote the sale of the securities of such speculative enterprise in this state. [Laws 1924, ch. 182, § 6; Laws 1915, ch. 91, § 5.]

Licenses, 37 C. J. p. 271 § 165.

§ 5235a7. Action by dissatisfied person; time limit for; procedure; appeals; findings; force of. Any person, co-partnership, association or corporation being dissatisfied with any finding or findings of the state securities commission, made in accordance with the provisions of this act, may within thirty days from the making thereof, commence an action in any court of competent jurisdiction against said commission as defendant, to vacate and set aside said finding or findings on the ground that the said findings are unjust or unreasonable. The rules of pleading and procedure in such action shall be the same as are provided by law for the trial of equitable actions in the district courts of this state and on the hearing the judge of said court may set aside, modify, or confirm said findings as the evidence and the rules or equity may require. Appeals may be taken from the decision of the district court to the supreme court by either party in the same manner as is provided by law in other civil actions. Pending any such action, the said findings of said commission shall be prima facie evidence that they are just and reasonable and that the facts found are true, and pending any such action the said findings of the commission shall remain in full force and effect. If no action be brought to set aside said findings within thirty days, the same shall become final and binding. [Laws 1923, ch. 182, § 7; Laws 1915, ch. 91, § 6.]

Licenses, 37 C. J. p. 271 § 165.

Enjoining enforcement of blue sky law. 24 A.L.R. 535; 27 A.L.R. 1177.

§ 5235a8. Amendments; new plan of business; filing statement of. No amendment of the charter, articles of incorporation, constitution or by-laws of any such corporation or the articles of association or by-laws of any unincorporated association subject to this act, shall become operative until a copy of the same has been filed with the commission as provided in regard to the original filing of charters, articles of incorporation, or association, constitution and by-laws, and it shall be unlawful for any such person, copartnership, association or corporation to transact business on any other plan than that set forth in the statement required to be filed by section 3 of this act, or to make, issue, sell or offer for sale any "security" or "securities" required to be filed by section 3 of this act, until a written statement showing in full detail the proposed new plan of transacting business and a copy of the proposed new "security" or "securities" shall have been filed with the commission, in like manner as provided in regard to the original plan of business and proposed "security" or "securities." [Laws 1923, ch. 182, § 8; Laws 1915, ch. 91, § 7.]

Licenses, 37 C. J. pp. 270-271 §§ 164-165.

§ 5235a9. To what securities inapplicable. The provisions of this act shall not apply to (a) Securities of the United States; or any foreign government; or of any state or territory; or of any county, city, township, district or other public taxing sub-division of any state or territory of the United States or any foreign government. (b) Securities of public or quasi-public corporations, the issues of which are regulated by a state officer of the state of North Dakota, or by a state officer or board of similar authority of any state or territory of the United States; or securities senior thereto. (c) Securities of state or national banks or trust companies, or building and loan associations author-

corporati^on, the state banking board to do business in this state. (d) Securities of any domestic corporation organized without capital stock, charitable or reformatory purposes. [Laws 1923, ch. 182, § 9; Laws 1915, ch. 91, § 8.] Licenses, 37 C. J. p. 276 § 169.

§ 5235a10. Requirements from persons issuing or guaranteeing securities. The general accounts of every person, co-partnership, association or corporation, issuing or guaranteeing any securities subject to the provisions of this act, shall be kept in a business-like and intelligent manner and in sufficient detail so that the commission can ascertain at any time the financial condition of such person, co-partnership, association or corporation, and the books of account and affairs of any such person, co-partnership, association or corporation, shall be subject to examination by the commission or upon their direction by their assistants, accountants, or examiners, at any time said securities commission shall deem it advisable, and in the same manner as is now provided for the examination of state banks; and such person, co-partnership, association or corporation shall pay a fee for each of such examinations, of not to exceed fifteen (\$15.00) dollars for each day or fraction thereof plus the actual traveling and hotel expenses of said examiner, assistant, accountant, that he is absent from the capitol of the state for the purpose of making such examination. And it is provided further, that every person, co-partnership, association or corporation making or guaranteeing any securities subject to the provisions of this act, shall file at the close of business December 31st and June 30th of each year, and at such other times as may be required by the commission, a statement certified by the oath of some person having actual knowledge of the fact therein stated, setting forth, in such form as may be prescribed by said commission the financial condition, amount of property and liabilities of such person, co-partnership, association or corporation and such other information as said securities commission may require. Each statement shall be accompanied by a filing fee of five (\$5.00) dollars. It shall be unlawful for any person, co-partnership, association, or corporation subject to the provisions of this act, failing or refusing to comply with the provisions of this section within ten days after compliance is required, to thereafter sell or offer for sale in this state any speculative stock which said person, partnership, association or corporation is selling or offering for sale in this state. [Laws 1923, ch. 182, § 10; Laws 1915, ch. 91, § 9.]

Licenses, 37 C. J. pp. 273-274 §§ 166-167.

§ 5235a11. Dealers; who are. Any person, firm, co-partnership, corporation or association whether domestic or foreign, not the issuer, who shall in this state sell or offer for sale any of the stocks, bonds or other securities issued by any foreign or domestic investment company, except the securities specifically exempted in this act, or who shall by advertisement or otherwise profess to engage in the business of selling or offering for sale such securities, shall be deemed to be a "dealer" in such securities within the meaning of this act, and no dealer within the meaning of this act shall sell or offer for sale any such securities or profess the business of selling or offering for sale such securities unless and until he shall have filed a list of the same in the office of the North Dakota securities commission as in this act provided. The term "dealer" shall not include an owner not issuer, of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature, nor one who in a trust capacity created by law lawfully sells any securities embraced within such trust. [Laws 1923, ch. 182, § 11.]

Licenses, 37 C. J. p. 274 § 167.

§ 5235a12. Same; information to be furnished by; deposits by; fees; agents; nonresident dealers; appointment of agent by; license to. Any dealer desiring to sell or offer for sale within this state any stocks, bonds or other securities

not exempted under the terms of this act, shall first register with the North Dakota securities commission and shall furnish said commission, upon oath, in such form as the commission shall prescribe, the following information, to-wit: the dealer's name, residence and business address, the general character of the securities to be dealt in, the place or places where the business is to be conducted within this state, and where the business in this state is not [to] be conducted by the dealer in person, then the names and addresses of all the persons in charge thereof. Every such dealer shall deposit with the state treasurer a guarantee fund consisting of such bonds and other evidences of indebtedness, and in such amount as the securities commission may require, such securities to be approved by the state treasurer and held in trust by him for the faithful performance and payment of the obligations of such dealer and his or its agents, and as security for their creditors. Said dealer shall pay to the commission a fee of fifty (\$50.00) dollars and shall furnish said commission with such other information in addition to that above specified as said commission shall deem necessary in order to thoroughly acquaint such commission with the character of the business of said dealer. All authorized agents of any dealer shall be registered with the commission and the name of any agent shall be stricken from the register by the commission upon the written request of the dealer and additional agents may be registered by the commission upon like request of the dealer; Provided, That no agent shall act as such until his name and address shall be registered with the commission. If the dealer shall be a non-resident of this state or a corporation other than a domestic corporation, he shall at the time he registers with the commission, file with the commission a written duly authenticated appointment of the secretary of state of this state as his or its agent in North Dakota upon whom process or pleadings may be served for and on behalf of the dealer, which appointment shall be irrevocable. Upon compliance by such dealer with the provisions of this act, the said commission shall issue to such dealer a license under the seal of said commission and signed by the secretary thereof, which said license shall be good until revoked by said commission for good cause upon notice to such dealer and a hearing duly had. [Laws 1923, ch. 182, § 12.]

Licenses, 37 C. J. pp. 270-274 §§ 164-167.

§ 5235a13. Approval as prerequisite to sale or subscription; one plan for transacting business; advertisements, prospectus, forbidden. It shall be unlawful for any investment company or dealer, or representative thereof, either directly or indirectly, to sell or cause to be sold, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatever in this state, any stocks, bonds or other securities except as expressly exempted herein, unless and until said commission has approved thereof and issued its certificate in accordance with the provisions of this act, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statements and papers required to be filed by virtue of the provisions of this act or the rules of the commission. It shall be unlawful for any investment company or dealer or its or his agents, to issue, circulate or deliver any advertisement, pamphlet, circular, prospectus, or other document in regard to its stocks, bonds or other securities in the state of North Dakota differing in any way from the copy filed with said commission as provided by this act. It shall be unlawful for any newspaper published in the state of North Dakota to advertise the sale of any stocks, bonds or securities which have not been approved by said commission or which are not exempt under the provisions of this act, and it shall be unlawful for any newspaper published in the state of North Dakota to advertise the sale or offer of the sale of stocks, bonds or other securities, by any dealer, domestic or foreign, who has not registered with the securities commission as provided for in this act. [Laws 1923, ch. 182, § 13.]

Licenses, 37 C. J. p. 270 § 164 p. 276 § 170.

§ 5235a14. **Full compliance with law prerequisite.** No dealer within the meaning of this act shall sell or offer for sale within this state any of the stocks, bonds or other securities of any investment company unless such investment company shall have fully complied with all the provisions of this act, nor until said dealer shall have registered with the commission, under the terms of this act; Provided, however, That should any dealer desire to sell or offer for sale within this state the stocks, bonds or other securities of an investment company, which has not itself complied with the provisions of this act, said dealer shall make application to the said commission for the license as hereinbefore provided for applications by investment companies and shall pay the fee required to be paid by section 12 of this act. [Laws 1923, ch. 182, § 14.]

Licenses, 37 C. J. p. 274 § 167.

§ 5235a15. **Investigations; compelling attendance; punishment for disobedience.** The state securities commission shall have power upon reasonable notice either upon their own initiative or upon complaint of any responsible person, to make or have made such special inspection or investigation as they may deem necessary, in connection with the promotion, sale, disposal, or offering for sale or disposal in this state, of any certificates, shares, stocks, bonds, securities, contracts, or contracts or bonds for deeds to determine whether the same constitute a violation of this act or any other statute of this state by any individual, co-partnership, corporation, or association, promoting, offering, selling or pledging the same, and in their discretion may require that the capital to be obtained by such sales, be held intact until the completion of the sale of securities, or so much or such portion of the issue to be sold as may in the opinion of the commission prevent loss of such capital or fraud upon the purchasers of such securities and for such purpose take bond to the people of the state of North Dakota for the use and benefit of such purchasers with sufficient sureties, or may accept other safe-guards in lieu thereof; and may require financial statements and reports of the issuer so often as circumstances appear to warrant; and the commission shall have the power to issue subpoenas and process compelling the attendance of any person and the production of any papers or books for the purpose of such investigation and examination, and shall have power to administer an oath to any person whose testimony may be required on such examination or investigation; and any person who shall refuse to obey any such subpoena or make answer to any competent and material question propounded to him by said commission shall upon conviction in any court of competent jurisdiction be deemed guilty of a misdemeanor, and fined in any sum not exceeding five hundred (\$500.00) dollars or be punished by confinement in the county jail for not more than ninety days or both by such fine and imprisonment. Upon the conclusion of any such investigation, the commission may make findings of fact touching the matter or matters under investigation, and such findings shall be prima facie evidence of the truth of the matters therein found by the commission in any action, either civil or criminal, instituted under any of the laws or statutes of this state against the person, persons, partnership, corporation, or association. The notice herein provided for may be given by registered letter mailed to the last known address of person or persons, or corporations to be investigated and the commission's certificate shall be sufficient evidence of such notice and the mailing thereof. [Laws 1923, ch. 182, § 15; Laws 1915, ch. 91, § 10.]

Licenses, 37 C. J. p. 271 § 165, p. 278 § 172.

§ 5235a16. **Evidences of indebtedness; when void; violation of law in assisting in violation; penalty.** Every evidence of indebtedness or other contract or obligation incurred, made or given for stock, securities or other obligations sold in violation of any of the provisions of this chapter, are void in the hands of any but a bona fide holder in due course, as defined by the negotiable instruments law, and no action shall be maintained in any court of this state

for the enforcement of any such contract or obligation. Every person, firm or corporation aiding or assisting any investment company or dealer or representative, agent or salesman, either directly or indirectly, taking subscriptions for or negotiating for the sale of any stocks, bonds, investment contracts, service contracts, purchase contracts, membership certificates or other securities, except such as are lawfully permitted to be sold within this state, under the provisions of this chapter, shall be guilty of a violation of this act in the same manner and to the same degree as his or its principal, and shall be subject to the penalties provided by this act. [Laws 1923, ch. 182, § 16.]

Licenses, 37 C. J. pp. 277-278 §§ 171-172.

§ 5235a17. Publicity of information obtained. All information obtained by the commission with reference to any securities and all records of the commission relating thereto shall be open to examination by the public, and it shall be the duty of the commission to preserve such information and to so classify and arrange the same as to facilitate examination by any person affected by matters therein contained, except that the commission may, in its discretion, withhold information relating to the private affairs of persons or corporations when in its judgment the same shall not be required for public welfare, or any information relative to any matter that may be at issue in any court, unless upon an order of court. [Laws 1923, ch. 182, § 17.]

Licenses, 37 C. J. p. 271 § 165.

§ 5235a18. Seal. The commission shall adopt a seal with the words "North Dakota Securities Commission" and such design as the commission may prescribe, engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission certified by the secretary thereof and authenticated by the seal of said North Dakota securities commission shall be received in evidence in all courts and with like effect as the originals. [Laws 1923, ch. 182, § 18.]

Copies of public documents as evidence. 10 R. C. L. 1101, et seq. and Supps.

§ 5235a19. Filing false statement, etc.; penalty. Any person who shall knowingly make or file or cause to be made or filed with the state securities commission any statement, document, circular, advertisement or prospectus, required to be filed by this act, which is false in any material respect or matter, shall be deemed guilty of a felony, and on conviction in any court of competent jurisdiction punished by a fine of not less than one hundred dollars (\$100.00), or more than five thousand dollars (\$5,000.00), or by imprisonment in the state penitentiary for not less than one nor more than five years, or both such fine and imprisonment. [Laws 1923, ch. 182, § 19; Laws 1915, ch. 91, § 11.]

Licenses, 37 C. J. p. 270 § 164.

§ 5235a20. Penalties. Any person, partnership, association or corporation who shall commit in this state any act declared unlawful by sections 3, 5, 8, 10 of this act shall be deemed guilty of a felony and on conviction in any court of competent jurisdiction be punished by a fine of not less than one hundred nor more than five thousand dollars, or by confinement in the North Dakota state penitentiary for a term of not less than one nor more than seven years. [Laws 1923, ch. 182, § 20; Laws 1915, ch. 91, § 12.]

Licenses, 37 C. J. p. 278 § 172.

§ 5235a21. Right to sell securities owned. This act shall not apply to the owner of any speculative security who is not the maker or issuer thereof, who shall acquire and sell the same for his own account in the usual and ordinary course of business and not for the direct or indirect promotion of any enterprise or scheme within the purview of this act, providing, that such ownership is in good faith. Repeated or successive sales of any such speculative security or securities shall be prima facie evidence that the claims of ownership is not

bona fide, but is a mere shift or devise to evade the provisions of this act. [Laws 1923, ch. 182, § 21; Laws 1915, ch. 91, § 13.]

Licenses, 37 C. J. p. 274 § 167, p. 278 § 172.

§ 5235a22. **Fees; payment of expenses.** All fees herein provided for shall be collected by the securities commission and by them shall be turned into the state treasury, and shall be kept in a special fund for the payment of salaries and the actual and necessary expenses herein provided. All money actually and necessarily paid out by the commission for traveling or incidental expenses on duties performed under this act, shall be audited as other claims against the state and paid out of the special fund herein created. [Laws 1923, ch. 182, § 22; Laws 1915, ch. 91, § 14.]

§ 5235a23. **Investigation of mineral land whose development proposed.** In any case wherein the value of the securities or contracts herein before enumerated are in any way dependent upon the present or proposed development of land or mines, oil or gas wells, the boards of the Agricultural College or State University shall, on the request of the securities commission, cause such investigation thereof as the securities commission may desire to be made by experts from the appropriate departments of the State Agricultural College or State University, or both, as the case may be. [Laws 1923, ch. 182, § 23; Laws 1915, ch. 91, § 15.]

Licenses, 37 C. J. p. 271 § 165.

§ 5235a24. **False statements; penalty.** Any person who shall knowingly or wilfully subscribe to, or make, or cause to be made any false statements or false entry in any book of account of any person, copartnership, association, or corporation, subject to the provisions of this act, or exhibit any false paper with intention of deceiving any person authorized to examine into the affairs of such person, copartnership, association, or corporation, or shall make or publish any false statement of the financial condition of any person, copartnership, association or corporation subject to the provisions of this act, or shall knowingly make any false statements materially affecting the value of the stocks, bonds, or other securities offered for sale by any such person, copartnership, association or corporation, shall be deemed guilty of a felony and upon conviction thereof, shall be fined not less than one hundred (\$100.00) dollars nor more than five thousand (\$5,000.00) dollars, or shall be imprisoned not less than one year nor more than ten years in the state penitentiary. [Laws 1923, ch. 182, § 24; Laws 1915, ch. 91, § 16.]

Licenses, 37 C. J. pp. 270-271 §§ 164-165, p. 278 § 172.

§ 5235a25. **Persons holding permits under statutes repealed.** Persons, partnerships, associations or corporations holding permits under the statutes hereby repealed shall be deemed to have complied with this act. [Laws 1923, ch. 182, § 25; Laws 1915, ch. 91, § 17.]

§ 5235a26. **Remainder of act not affected by holding part unconstitutional.** Should the courts declare any section or clause of this act unconstitutional, then such decision shall affect only the section or clause so declared to be unconstitutional, and shall not affect any other section or part of this act. [Laws 1923, ch. 182, § 26; Laws 1915, ch. 91, § 18.]

Statutes, 36 Cyc. 576.

Partial unconstitutionality of statutes. 6 R. C. L. 121 et seq. and Supps.

§ 5235a27. **Repeal.** Chapter 91 of the Session Laws of 1915 and all acts or parts of acts in conflict therewith are hereby repealed. [Laws 1923, ch. 182, § 27.]

Explanatory note. Section 19 of the earlier law (Laws 1915, ch. 91) had repealed chapter 32 of the Civil Code of the Compiled Laws of 1913 (§§ 5221-5235).

CHAPTER 33.

EXISTING CORPORATIONS ELECTING TO CONTINUE UNDER THIS CHAPTER.

§ 5236. This section should be read in connection with § 4516a1, ante.

CHAPTER 34.

CONDITIONS PRECEDENT TO DOING BUSINESS BY CORPORATIONS.

ARTICLE 1.—FOREIGN CORPORATIONS.

§ 5238. **Foreign corporations can do business in this state, when.** No foreign corporation, association or joint stock company, except an insurance company, shall sell or otherwise dispose of its capital stock or transact any business within this state, or acquire, hold or dispose of property real or personal within this state until such corporation shall have filed in the office of the secretary of state a copy of its articles of incorporation, and amendments if any, together with a certificate to the effect that the charter of the corporation has not been cancelled and that it is engaged in active business under its charter, both of which copy of articles and certificate shall be certified to by the secretary of state of the state in which such corporation was incorporated or by the officer authorized to issue charter to such corporation (or if incorporated in a foreign country, then by the officer authorized to issue corporation charter) and shall have complied with the provisions of this chapter; provided, that the provisions of this chapter shall not apply to corporations created for religious or charitable purposes solely nor to the holding and disposing of such real estate as may be acquired only by foreclosure or otherwise, in liquidation of mortgages or other securities by corporations which may not have complied with the provisions of this article. [Laws 1915, ch. 96, § 1.]

Letting contract for public work, to corporation not doing business in state, is not transacting business in state. *Will v. Bismarek*, 36 N. D. 570, 163 N. W. 550.

Single or isolated transaction not "doing business." *Brioschi-Minuti Co. v. Elson-Williams Constr. Co.*, 41 N. D. 628, 172 N. W. 239.

Excise tax on capital stock of foreign corporations not applicable to those engaged in interstate commerce. *Farwell, O. K. & Co. v. Wallace*, 45 N. D. 173, 177 N. W. 103.

General solicitation of business by foreign corporation not single or isolated transaction. *Dahl Implement & Lumber Co. v. Campbell*, 45 N. D. 239, 178 N. W. 197.

Regulation of business transacted by foreign corporations, applicable only to intrastate business. *Dahl Implement & Lumber Co. v. Campbell*, 45 N. D. 239, 178 N. W. 197.

Corporations, 14a C. J. p. 1244 § 3948, pp. 1270-1292 §§ 3976-3999.

Status of foreign corporation as affected by fact that its entire business is done outside state of its creation. *L.R.A.1917E*, 893.

Distinction between domesticating foreign corporations and licensing to do domestic business. 18 A.L.R. 131.

Mode of proving right to do business within state. 2 A.L.R. 1235.

Right to revoke license of foreign corporation for bringing suit in or removing suit to Federal court. *L.R.A.1915F*, 1187; 21 A.L.R. 188.

Leasing of chattels as doing business within state. 35 A.L.R. 917.

Soliciting subscriptions to or selling corporate stock of foreign corporation as doing business within state. 35 A.L.R. 625.

Fact that stock of foreign corporation seeking to do business within state has no par value as affecting its admission. 19 A.L.R. 132; 36 A.L.R. 795.

Applicability to corporations not organized for profit of statutes prescribing

conditions under which foreign corporations may do business within state. 37 A.L.R. 1283.

Lease of its property as affecting liability of foreign corporation to franchise tax or tax upon privilege of doing business within the state. L.R.A.1917B 1073.

Purchase of supplies by foreign mining or manufacturing corporation as doing business within state. L.R.A.1917E, 1157.

Soliciting trade as doing business within the state. L.R.A.1916E, 236; 6 B. R. C. 801.

Effect of agreement by foreign corporation to install article within the state to bring it within statute regulating foreign corporations. L.R.A.1917C, 1014; 11 A.L.R. 614.

When may a foreign corporation which has entered into contract for the local handling of its product be considered as doing business within the state. L.R.A.1916F, 334.

What constitutes doing business in state by foreign corporations. 12 R. C. L. 68 et seq. and Supps.

Filing of articles of incorporation by foreign corporation as pre-requisite of right to do business in state. 12 R. C. L. 56 and Supps.

§ 5238a1. Curing defects in title to real property. Any corporation organized otherwise than under the laws of this state, having acquired, or attempted to acquire, or to convey legal title by deed, or lease to any real property in this state, before complying with the terms of section 5238 Compiled Laws of 1913, and which has therefore, and before the passage and approval of this act, complied with said section, shall be and is hereby relieved from any disability provided in said section or prohibition therein contained, so far as said statute relates to the acquisition and holding of the property so acquired, or attempted to be acquired, and the title so acquired, or attempted to be acquired, is hereby confirmed. [Laws 1921, ch. 45.]

Corporations, 14a C. J. p. 1032 § 4007.

Law governing right to take title to real property in another state. L.R.A. 1916A, 1039.

Validation of irregular organization of corporation. 7 R. C. L. 30 and Supps.

§ 5238a2. Action to be brought by one claiming title invalid. Any person claiming that the legal title of any corporation or of any person claiming by, through, or under such corporation, to any real property acquired, or attempted to be acquired, is invalid by reason of the failure of any corporation coming within the terms of subsection 1 of this act (§ 5238a1, ante), to comply with the section above referred to, shall commence an action to recover the property, or to declare the legal title of said corporation void, or interpose a defense on such grounds, within one year from the passage and approval of this act, and in case of failure to do so his right of action or defense, based upon the failure to comply with said section by any such corporation, shall be deemed to have expired; provided that this subsection shall not affect any action now pending. [Laws 1921, ch. 45.]

Corporations, 14a C. J. p. 559 § 2499 p. 1292 § 4000.

Right of foreign corporation to avail itself of statute of limitations. L.R.A. 1915C, 544.

Who may take advantage of statute rendering foreign corporation incapable of taking title to real estate. 33 L.R.A.(N.S.) 355.

§ 5239. Comp. Laws, 1913.

Excise tax on capital stock of foreign corporations not applicable to those engaged in interstate commerce. *Farwell, O. K. & Co. v. Wallace*, 45 N. D. 173, 177 N. W. 103.

See also *Will v. Bismarek*, 36 N. D. 570, 163 N. W. 550.

§ 5240. Comp. Laws, 1913.

Letting contract for public work to corporation not doing business in state, is not transacting business in state. *Will v. Bismarek*, 36 N. D. 570, 163 N. W. 550.

Excise tax on capital stock of foreign corporations not applicable to those en-

gaged in interstate commerce. *Farwell, O. K. & Co. v. Wallace*, 45 N. D. 173, 177 N. W. 103.

Sale of goods located in another state, followed by delivery and transportation to this state, transaction is one in interstate commerce. *Dahl Implement & Lumber Co. v. Campbell*, 45 N. D. 239, 178 N. W. 197.

See also *Brioschi-Minuti Co. v. Elson-Williams Constr. Co.*, 41 N. D. 628, 172 N. W. 239.

§ 5241. *Comp. Laws*, 1913.

Dahl Implement & Lumber Co. v. Campbell, 45 N. D. 239, 178 N. W. 197.

§ 5242. *Comp. Laws*, 1913.

Obtaining license after entering into contract, renders it valid. *Will v. Bismarck*, 36 N. D. 570, 163 N. W. 550.

State has no power to impose burdens on interstate commerce. *Dahl Implement & Lumber Co. v. Campbell*, 45 N. D. 239, 178 N. W. 197.

See also *Brioschi-Minuti Co. v. Elson-Williams Constr. Co.* 41 N. D. 628, 172 N. W. 239; *Farwell, O. K. & Co. v. Wallace*, 45 N. D. 173, 177 N. W. 103.

CHAPTER 35.

NATURE OF PROPERTY.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

§§ 5248-5253. *Comp. Laws*, 1913.

Sox v. Miracle, 35 N. D. 458, 160 N. W. 716.

CHAPTER 36.

OWNERSHIP.

ARTICLE 4. RESTRAINTS UPON ALIENATION, §§ 5287-5289.

7. TERMINATION OF OWNERSHIP, § 5298.

ARTICLE 4.—RESTRAINTS UPON ALIENATION.

§ 5287. *Comp. Laws*, 1913.

Devise, without any devise over in case devisee should refuse to accept same, and not being made subject to condition precedent, does not suspend power of alienation. *Re Gray*, 27 N. D. 417, L.R.A.1917A, 611, 146 N. W. 722.

§ 5288. *Comp. Laws*, 1913.

Re Gray, 27 N. D. 417, L.R.A.1917A, 611, 146 N. W. 72.

§ 5289. *Comp. Laws*, 1913.

Piper v. Taylor, 48 N. D. 967, 188 N. W. 171.

ARTICLE 7.—TERMINATION OF OWNERSHIP.

§ 5298. *Comp. Laws*, 1913.

Devise of future executory interest in real estate not rendered void by specific devise to first taker with power of disposition. *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732.

CHAPTER 38.

REAL OR IMMOVABLE PROPERTY.

ARTICLE 2.—ESTATES IN GENERAL.

§ 5304. *Comp. Laws*, 1913.

Servant, who occupies real property incidental to and as part of his employment, has no estate therein, and is not in possession thereof as against his master. *Davis v. Long*, 45 N. D. 581, 14 A.L.R. 796, 178 N. W. 936.

CHAPTER 39.

RIGHTS OF OWNERS.

- ARTICLE 1. INCIDENTS OF OWNERSHIP, §§ 5341-5343.
 2. BOUNDARIES, §§ 5352, 5354.

ARTICLE 1.—INCIDENTS OF OWNERSHIP.

§ 5341. *Comp. Laws, 1913.*

As to right of riparian owner to have natural stream to continue to flow through or by his land. *McDonough v. Russell-Miller Mill. Co.* 38 N. D. 465, 165 N. W. 504.
 Runway or draw, naturally serving to drain off surface waters of tributary watershed, periodically caused by snow and rain, not a watercourse. *Froemke v. Parker*, 41 N. D. 408, 171 N. W. 284.

See also *Henderson v. Hines*, 48 N. D. 152, 183 N. W. 531.

§ 5341a. *Comp. Laws, 1913.*

Henderson v. Hines, 48 N. D. 152, 183 N. W. 531.

§ 5343. *Comp. Laws, 1913.*

Minneapolis Iron Store Co. v. Branum, 36 N. D. 355, L.R.A.1917E, 298, 162 N. W. 543.

ARTICLE 2.—BOUNDARIES.

§ 5352. *Comp. Laws, 1913.*

Test as to whether inland lake is public water is whether it is navigable in fact. *Roberts v. Taylor*, 47 N. D. 146, 181 N. W. 622.

§ 5354. *Comp. Laws, 1913.*

Malmstad v. McHenry Teleph. Co. 29 N. D. 21, 149 N. W. 690.

CHAPTER 40.

USES AND TRUSTS.

§ 5360. *Comp. Laws, 1913.*

Devise of land held not to create a use which the statute of uses would execute. *Brett v. St. Paul Trust Co.* — N. D. —, 193 N. W. 317.
 See also *Brugman v. Charlson*, 44 N. D. 114, 4 A.L.R. 400, 171 N. W. 882.

§ 5362. *Comp. Laws, 1913.*

Brugman v. Charlson, 44 N. D. 114, 4 A.L.R. 400, 171 N. W. 882.

§ 5363. *Comp. Laws, 1913.*

Devise of land held not to create a use which the statute of uses would execute. *Brett v. St. Paul Trust Co.* — N. D. —, 193 N. W. 317.

§ 5364. **Requisites of trusts.** No trust in relation to real property is valid unless created or declared:

1. By a written instrument subscribed by the trustee or by his agent there-to authorized in writing.
2. By the instrument under which the trustee claims the estate affected; or,
3. By operation of law. [R. C. 1905, § 4821; Civ. C. 1877, § 279; R. C. 1899, § 3385.]

Phrase "created or declared by operation of law," includes constructive trusts. *Arnston v. First National Bank*, 39 N. D. 408, L.R.A.1918F, 1038, 167 N. W. 760.

An express trust relation in real property cannot be created by parol. *Brugman v. Charlson*, 44 N. D. 114, 4 A.L.R. 400, 171 N. W. 882.

Deed from father to son upon parol understanding that he should receive the

proceeds during his life, and thereafter the son should divide the land among the children, created a constructive trust, and not an express trust. *Hughes v. Fargo Loan Agency*, 46 N. D. 26, 178 N. W. 993.

Intention on part of owner of a house to provide a home for his sister, and to give it to her, was held not to have created an express trust. *McWilliams v. Britton*, 48 N. D. 975, 188 N. W. 44.

Devise held to create an express trust. *Brett v. St. Paul Trust Co.* — N. D. —, 193 N. W. 317.

See also *Brown v. Steckler*, 40 N. D. 113, 1 A.L.R. 753, 168 N. W. 670; *Roberge v. Roberge*, 46 N. D. 402, 180 N. W. 15.

§ 5365. Comp. Laws, 1913.

A trust is presumed in favor of one paying for land transferred to another. *Kernkamp v. Schulz*, 44 N. D. 20, 176 N. W. 108.

Where husband bought and paid for land, but took title thereto in wife's name, it was held that a resulting trust arose in his favor. *Roberge v. Roberge*, 46 N. D. 402, 180 N. W. 15.

See also *Bernauer v. McCaull-Webster Elevator Co.* 41 N. D. 561, 171 N. W. 282.

§ 5366. Comp. Laws, 1913.

Section protects creditors and purchasers against unrecorded conveyances and secret trusts, upon property of their debtors. *Arnston v. First Nat'l Bank*, 39 N. D. 408, L.R.A.1918F, 160, 167 N. W. 760.

§ 5367. **For what trusts may be created.** Express trusts may be created for any of the following purposes:

1. To sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person or for any shorter term, subject to the rules of chapter 38 of this code; or,

4. To receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by the same chapter. [R. C. 1905, § 4824; Civ. C. 1877, § 282; R. C. 1899, § 3388.]

Devise held to create an express trust. *Brett v. St. Paul Trust Co.* — N. D. —, 193 N. W. 317.

§ 5369. Comp. Laws, 1913.

Brown v. Steckler, 40 N. D. 113, 1 A.L.R. 753, 168 N. W. 670.

§§ 5373, 5377. Comp. Laws, 1913.

Brett v. St. Paul Trust Co. — N. D. —, 193 N. W. 317.

CHAPTER 41.

POWERS.

§ 5398. Comp. Laws, 1913.

Steinwand v. Brown, 38 N. D. 602, 166 N. W. 129.

§ 5409. **Binding conditions.** With the exceptions contained in the preceding sections the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of a district court to supply a defective execution in the cases provided in sections 5418 and 5442. [R. C. 1905, § 4866; Civ. C. 1877, § 324; R. C. 1899, § 3430.]

§ 5412. Comp. Laws, 1913.

Sale of mortgaged property by virtue of unauthorized exercise of power of sale in mortgage, held void. *D. S. B. Johnston Land Co. v. Mitchell*, 29 N. D. 510, 151 N. W. 23.

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CHAPTER 42.

PERSONAL OR MOVABLE PROPERTY.

ARTICLE 2.—THINGS IN ACTION.

§ 5445. Comp. Laws, 1913.

Beulah Coal Min. Co. v. Heihn, 46 N. D. 646, 180 N. W. 787; Dixon-Reo Co. v. Horton Motor Co. — N. D. —, 191 N. W. 780.

§ 5446. Comp. Laws, 1913.

Cause of action for breach of covenant of seisin, assignable. Beulah Coal Min. Co. v. Heihn, 46 N. D. 646, 180 N. W. 787.

Action for damages for pollution of stream not abated by death. McDonough v. Russell-Miller Mill. Co. 47 N. D. 237, 182 N. W. 251.

See also Dixon-Reo Co. v. Horton Motor Co. — N. D. —, 191 N. W. 780.

CHAPTER 44.

OTHER KINDS OF PERSONAL PROPERTY.

§§ 5465, 5466. Comp. Laws, 1913.

MacFadden v. Jenkins, 40 N. D. 422, 169 N. W. 151; Langer v. Fargo Mercantile Co. 48 N. D. 545, 186 N. W. 104.

CHAPTER 45.

ACQUISITION OF PROPERTY.

ARTICLE 2. OCCUPANCY, §§ 5469–5471.

3. ACCESSION TO REAL PROPERTY, §§ 5473–5476.

ARTICLE 2.—OCCUPANCY.

§§ 5469, 5470. Comp. Laws, 1913.

Facts held to be insufficient to establish right to an easement over railway bed, by adverse possession. Lincoln v. Great Northern R. Co. 26 N. D. 504, 144 N. W. 713.

§ 5471. Comp. Laws, 1913.

Facts held to be insufficient to establish right to an easement over railway bed, by adverse possession. Lincoln v. Great Northern R. Co. 26 N. D. 504, 144 N. W. 713.

Cutting of hay upon wild, prairie land and payment of taxes, insufficient to establish title under adverse possession. Page v. Smith, 33 N. D. 369, 157 N. W. 477.

Parol gift, and delivery of land patent, does not constitute color of title enabling donee to obtain protection of the statute. Urbanec v. Urbanec, 43 N. D. 127, 174 N. W. 880.

Adverse tenant to claim against cotenants must show adverse and hostile possession constituting ouster of cotenants. Stoll v. Gottbreht, 45 N. D. 158, 176 N. W. 932.

See also Great Northern R. Co. v. Steinke, 48 N. D. 112, 183 N. W. 1013.

ARTICLE 3.—ACCESSION TO REAL PROPERTY.

§ 5473. Comp. Laws, 1913.

Additions to riparian land, which accumulate through process of accretion or reliction, become part of the original tract. Roberts v. Taylor, 47 N. D. 146, 181 N. W. 622.

See also Brignall v. Hannah, 34 N. D. 174, 157 N. W. 1042.

- § 5475. Comp. Laws, 1913.
Roberts v. Taylor, 47 N. D. 146, 181 N. W. 622.
- § 5476. Comp. Laws, 1913.
Brignall v. Hannah, 34 N. D. 174, 157 N. W. 1042.

CHAPTER 46.

TRANSFER.

- ARTICLE 1. DEFINITION OF TRANSFER, § 5489.
3. MODE OF TRANSFER, §§ 5495-5500.

ARTICLE 1.—DEFINITION OF TRANSFER.

- § 5489. Comp. Laws, 1913.
Coykendall v. Kellogg, — N. D. —, 198 N. W. 472.

ARTICLE 3.—MODE OF TRANSFER.

- § 5495. Comp. Laws, 1913.
Deed, to pass title must be delivered. Brugman v. Charlson, 44 N. D. 114, 4 A.L.R. 400, 171 N. W. 882.
See also Anderson v. Overby, 46 N. D. 631, 180 N. W. 708.
- § 5496. Comp. Laws, 1913.
Anderson v. Overby, 46 N. D. 613, 180 N. W. 708.
- § 5497. Comp. Laws, 1913.
Fact that grantee did not record deed, or take possession until after death of grantor, and that grantee secretly intended to give land back, does render delivery conditional. Cole v. Way, 46 N. D. 558, 179 N. W. 921.
See also Anderson v. Overby, 46 N. D. 613, 180 N. W. 708; Kittel v. Straus, 47 N. D. 88, 181 N. W. 628.
- § 5499. Comp. Laws, 1913.
Brugman v. Charlson, 44 N. D. 114, 4 A.L.R. 400, 171 N. W. 882.
- § 5500. Comp. Laws, 1913.
Grantee asserting title held to have burden of proving constructive delivery. Magoffin v. Watros, 45 N. D. 406, 178 N. W. 134.

CHAPTER 47.

TRANSFER OF REAL PROPERTY.

- ARTICLE 1. MODE OF TRANSFER, §§ 5511-5517.
2. TRANSFERS SUBJECT TO COAL DEPOSITS, §§ 5518-5519a.
3. EFFECT OF TRANSFER, §§ 5529, 5531.

ARTICLE 1.—MODE OF TRANSFER.

- § 5511. Comp. Laws, 1913.
Brugman v. Charlson, 44 N. D. 114, 4 A.L.R. 400, 171 N. W. 882.
- §§ 5512, 5513. Comp. Laws, 1913.
First National Bank v. Casselton Realty & Invest. Co. 44 N. D. 353, 29 A.L.R. 911, 175 N. W. 720.
- § 5515. Comp. Laws, 1913.
First Nat. Bank v. Casselton Realty & Invest. Co. 44 N. D. 353, 29 A.L.R. 911, 175 N. W. 720.

§ 5517. This section was re-enacted by Laws 1917, ch. 132, but has been transferred to § 5608a, as it more properly belongs under the chapter relating to homesteads.

ARTICLE 2.—TRANSFERS SUBJECT TO COAL DEPOSITS.

§ 5518. Comp. Laws, 1913.

Beulah Coal Min. Co. v. Heihn, 46 N. D. 646, 180 N. W. 787; Piper v. Taylor, 48 N. D. 967, 188 N. W. 171.

§ 5519. Comp. Laws, 1913.

Beulah Coal Min. Co. v. Heihn, 46 N. D. 646, 180 N. W. 787.

§ 5519a. **Transfers of real property deeded before enactment of §§ 5518, 5519.** All real property deeded or transferred prior to the enactment of sections 5518 and 5519 of the Compiled Laws of North Dakota for the year 1913, and in which transfers the grantor reserved the rights to the coal or other mineral deposits, may be deeded and transferred hereafter with such similar reservations without complying with the provisions of sections 5518 and 5519 of the Compiled Laws of North Dakota for the year 1913, and any such secondary transfers since the enactment of said sections containing such reservations are hereby declared to be legal and valid transfers of such property. [Laws 1923, ch. 269, § 1.]

Mines and Minerals, 27 Cyc. 681-688.

ARTICLE 3.—EFFECT OF TRANSFER.

§ 5529. Comp. Laws, 1913.

Eynon v. Thompson, 48 N. D. 390, 184 N. W. 878.

§ 5531. Comp. Laws, 1913.

Murray Bros. & Ward Land Co. v. Buttles, 32 N. D. 565, 156 N. W. 207.

CHAPTER 48.

TRANSFERS OF PERSONAL PROPERTY.

ARTICLE 2. WHAT OPERATES AS A TRANSFER, §§ 5535, 5536.

3. GIFTS, §§ 5538, 5539.

ARTICLE 2.—WHAT OPERATES AS A TRANSFER.

§ 5535. Comp. Laws, 1913.

Order or bargain between parties for goods, passes no right of property therein. Sunshine Cloak & Suit Co. v. Roquette Bros. 30 N. D. 143, L.R.A.1916E, 932, 152 N. W. 359.

§ 5536. **When transfer by executory agreement operative.** Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery and offered it to the buyer, with intent to transfer the title thereto in the manner prescribed by the second subdivision of article 4 of chapter 54 (§§ 5800-5820 Compiled Laws of 1913). [R. C. 1905, § 4991; Civ. C. 1877, § 637; R. C. 1899, § 3553.]

Order or bargain between parties for goods, passes no right of property therein. Sunshine Cloak & Suit Co. v. Roquette Bros. 30 N. D. 143, L.R.A.1916E, 932, 152 N. W. 359.

Delivery and acceptance of property, and vesting of title thereto, and payment of price, concurrent acts; title does not vest until delivery and acceptance. Hart-Parr Co. v. Finley, 31 N. D. 130, L.R.A.1915E, 851, 153 N. W. 137.

See also Des Laes Western Oil Co. v. Northern Tool Co. 46 N. D. 340, 179 N. W. 697.

ARTICLE 3.—GIFTS.

§ 5538. Comp. Laws, 1913.

Verbal gift, unaccompanied by transfer of possession or by delivery, actual or symbolical, invalid. *Ramsdell v. Warner*, 48 N. D. 96, 183 N. W. 281.

§ 5539. Comp. Laws, 1913.

Verbal gift, unaccompanied by transfer of possession or by delivery, actual, or symbolical, invalid. *Ramsdell v. Warner*, 48 N. D. 96, 183 N. W. 281.

See also *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.

CHAPTER 48A.

INSTRUMENTS AFFECTING REAL AND PERSONAL PROPERTY.

§ 5545a1. **Instrument executed to trustee, etc., surplusage in.** All instruments relating to real and personal property which have heretofore or which shall hereafter be executed by or to any person as trustee, guardian, executor, administrator, or in any other representative capacity, and which shall fail to clearly identify the beneficiary by name and the nature of the trust, the qualifying words in such instrument shall be treated as surplusage and as description only of the person by whom or to whom such instrument was executed. [Laws 1917, ch. 239, § 1.]

Deeds, 18 C. J. p. 275, § 240; Trusts, 39 Cyc. 53-60, 364.

§ 5545a2. **Correcting inadequate description of beneficiary.** All instruments affecting real and personal property in this state heretofore executed by or to any person purporting to be in a representative capacity, which shall fail to clearly identify the beneficiary and the nature of the trust, the person by or to whom such instrument was executed may within six months after the taking effect of this act, file and have recorded in the office of the register of deeds of the county in which such instrument was recorded, a statement in writing, referring to any such instrument by date, name of the parties, when and where recorded, the nature of the instrument, a description of the property affected thereby, and fully and clearly by name identify the beneficiary and the nature of the trust, and which statement shall be acknowledged so as to entitle the same to record. [Laws 1917, ch. 239, § 2.]

CHAPTER 49.

RECORDING TRANSFERS.

- ARTICLE 1. WHAT MAY BE RECORDED, §§ 5546-5549.
3. MODE OF RECORDING, §§ 5557, 5558.
4. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS, §§ 5569-5575a4.
5. EFFECT OF RECORDING OR THE WANT THEREOF, §§ 5594-5598.
6. VALIDATING RECORD OF MORTGAGES, §§ 5598a1, 5598a2.

ARTICLE 1.—WHAT MAY BE RECORDED.

§ 5546. Comp. Laws, 1913.

Rolette County Bank v. Hanlyn, 48 N. D. 72, 183 N. W. 260.

§ 5546a. **Mortgage not containing address of mortgagee.** No mortgage shall be received for record by any register of deeds in this state which does not contain the postoffice address of the mortgagee, and which does not in full describe the indebtedness secured by the said mortgage as to the amount, rate of interest, when and where due. No assignment of mortgage shall be

received for record which does not contain the postoffice address of the assignee. [Laws 1917, ch. 108, § 1.]

American State Bank v. Dayton, 48 N. D. 353, 184 N. W. 665.
Records, 34 Cyc. 588.

§ 5548. **Prerequisites to record.** Before an instrument can be recorded unless it belongs to a class provided for in either section 5546 or 5586 its execution must be acknowledged by the person executing the same, or if executed by a corporation, by the person authorized to execute it by sections 5512 and 5513, or proved by a subscribing witness, or as provided in sections 5571 and 5572, and the acknowledgment or proof certified in the manner prescribed by article 4 of this chapter. [R. C. 1905, § 5002; Civ. C. 1877, § 648; R. C. 1895, § 3564.]

First Nat. Bank v. Casselton Realty & Invest. Co. 44 N. D. 353, 29 A.L.R. 911, 175 N. W. 720.

§ 5549. Comp. Laws, 1913.

Farmers' Equity Exch. v. Blum, 39 N. D. 86, 166 N. W. 822.

ARTICLE 3.—MODE OF RECORDING.

§ 5557. Comp. Laws, 1913.

Hanson v. Johnson, 42 N. D. 431, 177 N. W. 452.

§ 5558. Comp. Laws, 1913.

If an instrument is recorded by being entered in reception book, or spread at length on record, it will be constructive notice to subsequent purchasers for value, though recording fee is not paid at time of recording. Hanson v. Johnson, 42 N. D. 431, 177 N. W. 452.

ARTICLE 4.—PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 5569. **How proof made, when not acknowledged.** Proof of the execution of an instrument, when not acknowledged may be made either:

1. By the party executing it, or either of them; or,
2. By a subscribing witness; or,
3. By other witnesses in cases mentioned in sections 5571 and 5572. [R. C. 1905, § 5017; Civ. C. 1877, § 662; R. C. 1899, § 3579.]

Section intended to be applicable to proof before registers of deeds of unacknowledged instruments; general rules of evidence applicable to proof of deeds and leases. McGilvra v. Minneapolis, St. P. & S. Ste. M. R. Co. 35 N. D. 275, 159 N. W. 854.

See also Farmers Equity Exch. v. Blum, 39 N. D. 86, 166 N. W. 822.

§ 5570. Comp. Laws, 1913.

Farmers' Equity Exch. v. Blum, 39 N. D. 86, 166 N. W. 822.

§§ 5571, 5572. Comp. Laws, 1913.

Section intended to be applicable to proof before registers of deeds of unacknowledged instruments; general rules of evidence applicable to proof of deeds and leases. McGilvra v. Minneapolis, St. P. & S. Ste. M. R. Co. 35 N. D. 275, 159 N. W. 854.

See also Farmers' Equity Exch. v. Blum, 39 N. D. 86, 166 N. W. 822.

§ 5574. Comp. Laws, 1913.

First Nat. Bank v. Casselton Realty & Invest. Co. 44 N. D. 353, 29 A.L.R. 911, 175 N. W. 720.

§ 5575a1. **Execution, acknowledgment, filing and recording legalized.** The execution, acknowledgment, filing and recording of all deeds, mortgages and other instruments in writing affecting the title to real property in this state, in good faith made, taken or certified to prior to the first day of January, 1916, and which have been filed or recorded in the proper counties of this state, be, and the same are hereby declared to be legal and valid for all purposes, anything in the laws of the state of North Dakota, or of any other state, territory or county at the time of such execution, acknowledgment, witness-

ing, filing or recording, to the contrary notwithstanding. [Laws 1917, ch. 107, § 1; Laws 1915, ch. 118, § 1.]

Deeds, 18 C. J. p. 189, § 79, p. 248, § 188; Acknowledgments, 1 C. J. pp. 875-880, §§ 240-250.

Curing of defects in acknowledgments. 1 R. C. L. 289 et seq.

§ 5575a2. Acts of executors, administrators, deputies, officers or attorneys-in-fact legalized. The acts of all properly appointed and constituted executors, administrators, officers of corporations, deputy public officials and attorneys-in-fact, done in good faith, in the execution and acknowledgment of such instruments, are hereby declared to be legal and valid for all purposes, notwithstanding the fact that such executor, administrator, officer, deputy, officer or attorney-in-fact may not have signed the same in the form provided by law in force at that time or that the same was not sealed or stamped as required by laws in force at the time of such execution, and notwithstanding the fact that the certificate of acknowledgment thereon may not be in the form required or sealed as required by any laws in force at the time of making the same [Laws 1917, ch. 107, § 2; Laws 1915, ch. 118, § 2.]

Deeds, 18 C. J. p. 189, § 79; Acknowledgments, 1 C. J. pp. 875-880, §§ 240-250.

§ 5575a3. Acknowledgments legalized. The acts of all notaries public or other officers, done in good faith in taking or certifying to the acknowledgment of such instruments, whether such officers were qualified or otherwise by law at the time to do so or not, are hereby declared legal and valid for all purposes. [Laws 1917, ch. 107, § 3; Laws 1915, ch. 118, § 3.]

Acknowledgments, 1 C. J. pp. 875-880, §§ 240-250; Deeds, 18 C. J. p. 189, § 79, p. 248, § 188.

Constitutionality of statutes curing defective acknowledgments of conveyances of real property. 31 L.R.A.(N.S.) 1076.

Curing of defects in acknowledgments. 1 R. C. L. 289 et seq.

§ 5575a4. Good faith presumed. Good faith shall be presumed on the part of all persons and officers in the execution, acknowledgment, filing and recording of such instruments and it shall be prima facie presumed that such officer acted within the scope of his authority. [Laws 1917, ch. 107, § 4; Laws 1915, ch. 118, § 4.]

Deeds, 18 C. J. p. 410, §§ 483-485, pp. 419-420, §§ 497-498; Acknowledgments, 1 C. J. pp. 893-894, §§ 275-276, p. 895, § 279.

Presumption of good faith. 10 R. C. L. 875 and Supps.

ARTICLE 5.—EFFECT OF RECORDING OR THE WANT THEREOF.

§ 5594. Comp. Laws, 1913.

Mortgage of equitable interest constitutes "conveyance" within the meaning of the statute. *Simonson v. Wenzel*, 27 N. D. 638, L.R.A.1918C, 780, 147 N. W. 804.

Recording of mortgage of equitable interest in property, constructive notice to assignee of mortgagor, who took assignment with knowledge of mortgagor's equities. *Simonson v. Wenzel*, 27 N. D. 638, L.R.A.1918C, 780, 147 N. W. 804.

Attaching creditor acquiring lien, prior to recorded transfer of land attached, is purchaser in good faith and for a valuable consideration. *Mott v. Holbrook*, 28 N. D. 251, 148 N. W. 1061.

Attaching creditor, purchaser in good faith. *Buttz v. James*, 33 N. D. 162, 156 N. W. 547.

Unrecorded deed, void as against a judgment obtained against one in whose name the title to real property appears of record. *McCoy v. Davis*, 38 N. D. 328, 164 N. W. 951.

Attachment proceeding to be valid as against holder of unrecorded mortgage must be against the holder of the record title. *Crosson v. Kartowitz*, 43 N. D. 466, 175 N. W. 868.

Attaching creditors lien attaches only to interest of defendant in the land, at time of attachment, the record title, at that time being in another person. *Young v. Salzer Lumber Co.* — N. D. —, 204 N. W. 8.

See also *F. A. Patrick & Co. v. Knapp*, 27 N. D. 100, 145 N. W. 598; *Eynon v. Thompson*, 48 N. D. 390, 184 N. W. 878; *Sox v. Miracle*, 35 N. D. 458, 160 N. W. 716; *Arntson v. First Nat. Bank*, 39 N. D. 408, L.R.A.1918F, 1038, 167 N. W. 760; *Hanson v. Johnson*, 42 N. D. 431, 177 N. W. 452; *First Nat. Bank v. Casselton Realty & Invest. Co.* 44 N. D. 353, 29 A.L.R. 911, 175 N. W. 720; *Rolette County Bank v. Hanlyn*, 48 N. D. 72, 183 N. W. 260.

§ 5595. Comp. Laws, 1913.

Sox v. Miracle, 35 N. D. 458, 160 N. W. 716; *Hanson v. Johnson*, 42 N. D. 431, 177 N. W. 452; *Rolette County Bank v. Hanlyn*, 48 N. D. 72, 183 N. W. 260; *Eynon v. Thompson*, 48 N. D. 390, 184 N. W. 878; *Simonson v. Wenzel*, 27 N. D. 638, L.R.A.1918C, 780, 147 N. W. 804.

§ 5596. Comp. Laws, 1913.

Eynon v. Thompson, 48 N. D. 390, 184 N. W. 878.

§ 5597. Comp. Laws, 1913.

Section permits introduction in evidence of record of recorded contract, without accounting for nonproduction of original. *Farmers Equity Exch. v. Blum*, 39 N. D. 86, 166 N. W. 822.

As to statutory presumption of due execution of mortgage. *Fendrich v. Buffalo Pitts Co.* 46 N. D. 201, 180 N. W. 707.

See also *Eynon v. Thompson*, 48 N. D. 390, 184 N. W. 878.

§ 5598. Comp. Laws, 1913.

McCoy v. Davis, 38 N. D. 328, 164 N. W. 951; *Eynon v. Thompson*, 48 N. D. 390, 184 N. W. 878; *Simonson v. Wenzel*, 27 N. D. 638, L.R.A.1918C, 780, 147 N. W. 804.

ARTICLE 6.—VALIDATING RECORD OF MORTGAGES.

Explanatory note. Validating execution, acknowledgment, filing and recording of deeds or mortgages prior to Jan. 1, 1916, see ante, § 5575a1.

§ 5598a1. **Validation of record.** Any record of a mortgage or assignment of mortgage that has been actually made in the office of the register of deeds of any county of the state between July 1st, 1917, and January 1st, 1923, is hereby validated and declared to be fully operative as constructive notice notwithstanding such mortgage or assignment of mortgage shall have failed to contain any or all of the matters directed to be contained therein by chapter 108 of the Session Laws of 1917 (§ 5546a, ante), if said mortgages or assignments shall have been otherwise entitled to record. [Laws 1923, ch. 252, § 1.]

§ 5598a2. **Emergency.** Whereas, many of the forms of mortgages and assignments in general use at the time of taking effect of chapter 108 of the Session Laws of 1917 (§ 5546a, ante), did not contain appropriate blanks for the insertion of the information provided in such act to appear in mortgages and assignments, and many such instruments were therefore executed and recorded, defective in the particulars before stated, and titles are thereby being made uncertain; this act shall take effect immediately upon its approval by the governor. [Laws 1923, ch. 252, § 2.]

CHAPTER 50.

UNLAWFUL TRANSFERS.

§ 5599. Comp. Laws, 1913.

Fraudulent intent, question of fact for jury. *Veum v. Stefferud*, — N. D. —, 196 N. W. 104.

See also *Finch, Van Slyke & McConville v. Styer*, — N. D. —, 199 N. W. 444.

CHAPTER 50A.

TORRENS ACT; REGISTRATION OF LAND AND THE TITLE THERETO.

§ 5604a1. **What real estate may be registered.** Real estate situated in any county in the state may be registered under the provisions of this chapter in the manner herein provided. [Laws 1917, ch. 235, § 1.]

Records, 34 Cyc. 597.

Constitutionality of provisions of Torrens Law for constructive notice. 11 A.L.R. 772.

Constitutionality of provisions of Torrens Law as to prima facie effect of the examiner's reports. 19 A.L.R. 62.

The Torren's Law. L.R.A.1916D, 14.

§ 5604a2. **Effect of registration.** Registered land shall be subject to the same burdens and incidents which attach by law to unregistered land. This chapter shall not operate to relieve registered land, or the owners thereof from any rights, duties or obligations incident to, or growing out of the marriage relation or from liability to attachment on mesne process, or levy on execution, or from liability to any lien or charge of any description whatever, created or established by law upon the land, or the buildings situated thereon, or the interest of the owner of such land or buildings. It shall not operate to change the laws of descent or the rights of partition between co-tenants, or the right to take the land by eminent domain. It shall not operate to relieve such land from liability to be taken or recovered by any assignee or receiver under any provision of law relative thereto, and shall not operate to change or affect any other rights, burdens, liabilities or obligations created by law and applicable to unregistered land except as otherwise expressly provided herein. No title to registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession. [Laws 1917, ch. 235, § 2.]

Records, 34 Cyc. 605.

Effect of registration of title. 23 R. C. L. 277 and Supps.

§ 5604a3. **Who may apply for registration.** An application for registration may be made by any of the following persons:

First, the person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second, the person or persons who singly or collectively have the power of disposing of the land.

Third, infants and other persons under disability, by their guardian, duly appointed by the proper probate court in this state.

Fourth, a corporation, by its proper officers or by an agent duly authorized by the board of directors.

Fifth; any executor or administrator duly appointed by the proper probate court in this state. The person in whose behalf the application is made shall be named as applicant. [Laws 1917, ch. 235, § 3.]

Records, 34 Cyc. 601-602.

§ 5604a4. **Adjudication of validity; when dispensed with; nature of estate registerable.** No land, the title to which is derived from any tax or local assessment sale, shall be registered until such title has been adjudged to be valid by a court of competent jurisdiction, and a certified copy of the decree duly recorded with the register of deeds; provided, however, that any person may make the application when for at least fifteen years the land has been in the adverse possession of the applicant or those through whom he claims title.

No lesser estate than a fee simple, and no mortgage, lien or other charge upon land, shall be registered, unless the estate in fee simple therein is registered; but the fact that the estate or interest of the applicant is subject to any out-

standing lesser estate or to a mortgage, or other charge or lien, shall not prevent its registration. [Laws 1917, ch. 235, § 4.]

Records, 34 Cyc. 597-601.

Titles subject to registration. 23 R. C. L. 276 and Supps.

§ 5604a5. Application; requisites. The application shall be in writing, and shall be signed and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent, except an officer of a corporation, the authority of such agent shall be executed and acknowledged in the manner required in the execution and acknowledgment of a deed, and shall be recorded with the register of deeds for the county wherein the land is situated, before the filing of the application. If the application is made by a corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant shall assent thereto in writing by duly acknowledged endorsement thereon, or by a separate instrument duly acknowledged and filed with the application. [Laws 1917, ch. 235, § 5.]

Records, 34 Cyc. 600.

Petition for registration. 23 R. C. L. 279 and Supps.

§ 5604a6. Same; what to be set out in. The application shall set forth substantially:

First, the full name, age and residence of the applicant. If the application is made by any person acting in behalf of another, the application shall likewise state the full name and residence of the person so acting, and the capacity in which he acts.

Second, whether the applicant is or is not married, and if married the full name of the husband or wife. It shall also state that the applicant is under no disability and whether the applicant has ever been divorced, and if so, when, where and by what court the divorce was granted.

Third, a correct description of the land, together with the assessed valuation thereof, exclusive of improvements, according to the last official assessment.

Fourth, the estate or interest of the applicant in the land, and whether or not it is subject to an estate of homestead.

Fifth, the names of all persons or parties except the applicant, who appear of record, or who are known to the applicant to have or to claim any right, title, estate, lien or interest in the land.

Sixth, whether the land is occupied or unoccupied. If occupied by any other person than the applicant, it shall state the full name and address of such occupant, and the nature of the estate, interest, lien or charge which such occupant or occupants have, or claim to have, in the land.

Seventh, whether the land is subject to any lien or incumbrance, recorded or unrecorded, together with the character and the amount of the same and the name and postoffice address of each holder thereof. If recorded, it shall state the place, book and page of record.

Eighth, whether any person, other than the applicant, has or claims to have any estate or interest in the land, either in law or equity in possession, remainder, reversion or expectancy, together with the full name and address of every such person and the nature and character of such estate or interest.

Ninth, if the application is on behalf of a minor, it shall state the age of such minor, and that a duly certified copy of the letters of guardianship has been recorded with the register of deeds in the county wherein the land is situated.

Tenth, when the place of residence of any person whose residence is required to be given is unknown to the applicant, it may be so stated in the application, and also that after due and diligent search the applicant has been unable to ascertain the same.

Eleventh, if it is desired to fix and establish the boundary lines of the land,

the full names and postoffice addresses of all owners of adjoining lands which are in any manner effected thereby shall be fully stated; otherwise the decree shall not have the effect to fix or determine the boundary line.

Any person having or claiming any right, title, interest or estate in land or any lien or charge upon or against the same, may assent in writing to the registration thereof, and the person thus assenting need not be named as a defendant in the registration proceeding, or, if already named as a defendant therein, need not be served with a summons therein. Such assent shall be executed and acknowledged in the manner now required by law for the execution and acknowledgment of a deed, and shall be filed with the clerk of the court. [Laws 1917, ch. 235, § 6.]

Records, 34 Cyc. 600.

Petition for registration. 23 R. C. L. 279 and Supps.

§ 5604a7. Same; by nonresident. If the applicant is not a resident of the state of North Dakota, he shall file for record with the register of deeds a written agreement, duly executed and acknowledged, appointing an agent residing in the state. He shall state therein the full name and postoffice address of such agent, and shall therein agree that the service of any legal process in proceedings under or growing out of any application shall be of the same legal effect when made on said agent as if made on the applicant within the state. If the agent so appointed dies or removes from the state, the applicant shall at once appoint another agent in like manner, and, if he fails to do so, the court may in its discretion dismiss the application. In any subsequent application made by the same applicant, he may refer to such written authority so recorded, provided the same is sufficiently comprehensive to include such subsequent application. [Laws 1917, ch. 235, § 7.]

Records, 34 Cyc. 600.

§ 5604a8. Same; what may be included in one application. Any number of adjoining tracts of land in the same county and owned by the same person and in the same right, or any number of tracts of land in the same county having the same chain of title, and belonging to the same person, may be included in one application. [Laws 1917, ch. 235, § 8.]

Records, 34 Cyc. 600.

§ 5604a9. Same; amendments of. Amendments to the application, including joinder, substitution or discontinuance as to parties, may be allowed by the court at any time upon terms that are just and reasonable, but all amendments shall be in writing and signed and verified like the original application. [Laws 1917, ch. 235, § 9.]

Records, 34 Cyc. 600.

§ 5604a10. Same; to whom addressed; jurisdiction of; adjudication. The application for registration shall be addressed to the district court and for the county wherein the land described therein is situated. The district court shall have original exclusive jurisdiction thereof, and all proceedings thereunder, and shall have full power to inquire into the title of said land, and any right, title, interest or estate therein, and any lien, charge or incumbrance thereon. By its decree, it shall adjudge and determine the title to said land, the nature, character, extent and amount of all liens and incumbrances thereon, the priority as between the same, and shall remove all clouds from the title. The district court shall have full power and authority to make all necessary orders, judgments and decrees and for these purposes the courts shall be always open. [Laws 1917, ch. 235, § 10.]

Records, 34 Cyc. 600, 603.

Jurisdiction of courts in registration cases. 23 R. C. L. 279.

§ 5604a11. Same; filing of; title of; orders; judgments, etc.; filing of; abstract of title; survey. The application shall be filed with the clerk of the

district court, who shall docket the same in a book to be known as the "land registration docket." The application shall be entitled (here insert name of applicant), applicant to have registered the title to (here insert the description of land), applicant, against (here insert the names of all persons named in the application and in the order of the court directing the issuing of the summons as being in possession of the land, or having any lien, incumbrance, right, title, interest or estate therein), also "all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein," defendants. All orders judgments and decrees of the court in said proceeding shall be minuted in such docket. All final orders or decrees shall be recorded by the clerk and proper reference made thereto in such docket. At the time of the filing of the application with the clerk a copy thereof duly certified by him shall be filed for record with the register of deeds, and shall have the force and effect of a *lis pendens*. The applicant shall file with the clerk, as soon after the filing of the application as is practicable, an abstract of title to the land described in the application, satisfactory to the examiner. If required so to do by the examiner, the applicant shall likewise cause the land to be surveyed by some competent surveyor, and file with the clerk a plat of the land duly certified by such surveyor. [Laws 1917, ch. 235, § 11.]

Records, 34 Cyc. 600.

Procedure for registration of title. 23 R. C. L. 279 and Supps.

§ 5604a12. Examiners of title; appointment; term; compensation. The judges of the district court shall appoint one or more competent attorneys in each county within their respective districts to be examiners of titles and legal advisors to the registrar in said county. The examiners of titles shall hold office subject to the will and discretion of the district court by which they are appointed. Their compensation shall be fixed and determined by the said court and shall be paid in the same manner as the compensation of other county employees is paid. [Laws 1917, ch. 235, § 12.]

Records, 34 Cyc. 601.

Appointment of examiners of titles. 23 R. C. L. 280 and Supps.

§ 5604a13. Same; duties; report by; adverse report. Immediately after the filing of the abstract of title the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine the title to the land described in the application, and into the truth of all matters set forth therein. He shall ascertain whether or not the land is occupied, and, if occupied, he shall ascertain the nature thereof, and by what right the occupation is held. He shall also ascertain whether or not any judgments or decrees exist, which may be a lien upon the land. He shall search all public records, and fully investigate all facts pertaining to the title which may be brought to his notice, and shall file in the case a full report thereof together with his opinion upon the title. The court shall not be bound by any report of the examiner of titles, but may require further or other proof. An examiner of titles shall have full power to administer oaths and examine witnesses concerning any matter involved in his investigation of titles. In such manners [matters] he shall possess the same authority as is vested by law in referees appointed by the district court.

Whenever in the opinion of the examiner, the state has any interest in or lien upon the land, he shall state the nature and character thereof in his report, and in such cases the state shall be joined as a party, and named in the summons as a party thereto, in order that its interest, estate and lien may be defined or preserved.

The clerk shall give notice to the applicant of the filing of such report. If the report of the examiner is adverse to the applicant, he shall have a reasonable time in which to proceed further or to withdraw his application.

This election shall be made in writing and filed with the clerk.

Examiners shall, upon the request of the registrar, advise him upon any act or duty pertaining to the conduct of his office, or prepare the form of any memorial to be made or entered by the registrar. [Laws 1917, ch. 235, § 13.]
Records, 34 Cyc. 601.

§ 5604a14. **Summons; parties.** If in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a certified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall by its order direct that a summons be issued therein. This order shall contain the name and address so far as known, of every person who is to be joined as a party to said proceeding, including all persons named in the application or found by the report of the examiner to be in possession of the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or against the same, together with the name and addresses of all other persons or parties whom the court in said order may direct to be joined therein. The parties thus named in the order of the court shall be and shall be known as defendants. While the cause is pending before the examiner of titles, or at any time before final decree, and whenever after initial registration a tract of land is subdivided the court may require the land to be surveyed by a competent surveyor, appointed by the court, who shall file a plat of such land, duly certified, with the registrar. [Laws 1917, ch. 235, § 14.]
Records, 34 Cyc. 600.

Parties to proceeding for registration of title. 23 R. C. L. 280 and Supps.

§ 5604a15. **Summons; by whom subscribed; service; mailing; proof of; form of.** The summons shall be subscribed by the clerk and shall be directed to the defendants, and shall require them to appear and answer the application of the applicant, within twenty (20) days after the service of the summons, exclusive of the day of such service. It shall be served in the manner provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall transmit the same to the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in said proceeding, and represent the state therein. It shall be served on all persons who are not residents of the state and upon "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," by publishing the same in a newspaper printed and published in the county wherein the application is filed, once each week for three consecutive weeks. The clerk shall also, within twenty days after the first publication of the summons, send a copy thereof by mail to all defendants who are not residents of the state, and whose place of address is known to applicant, or stated in the application, or in the order directing the issuance of the summons. The certificate of the clerk that he has mailed the summons, as herein provided, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner, and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service shall be made in the same manner as in civil actions. The summons shall be substantially in the following form, namely:

SUMMONS IN APPLICATION FOR REGISTRATION OF LAND.

State of North Dakota, }
County of } ss:

The District Court Judicial District.

In the matter of the application of (name of applicant) to register the title to

the following described real estate situated in county, North Dakota, namely: (Description of land.)

Applicant.

vs.

(Names of Defendants), and "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein."

Defendants.

"The State of North Dakota to the above named defendants:

"You are hereby summoned and required to answer the application of the applicant in the above entitled proceeding and to file your answer to the said application in the office of the clerk of said court, in said county, within thirty (30) days after the service of this summons upon you, exclusive of the day of such service, and, if you fail to answer the said application within the time aforesaid, the application in this proceeding will apply to the court for the relief demanded therein.

"Witness clerk of said court, and the seal thereof, at in said county, this day of A. D. 19..

(Seal)

..... "Clerk."

When the summons has been served as herein provided, the court shall be deemed to have acquired jurisdiction of the subject matter of the proceeding, and of all persons whatsoever, who have, or may have, any right, title, interest or estate in the real estate described in the application, or any lien or charge whatsoever upon or against the same.

By the phrase in the summons "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," all the world are made parties defendant, and shall be bound and concluded by the decree. [Laws 1917, ch. 235, § 15.]

Records, 34 Cyc. 600.

§ 5604a16. Answer; who may file; contents of. Any person claiming any right, title, estate or interest in or lien upon the land, whether named in the summons or not; may file an answer therein, within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the right, title, estate, interest or lien claimed by the party filing the same, and shall be signed and verified by the defendant, or by some person in his behalf. [Laws 1917, ch. 235, § 16.]

Records, 34 Cyc. 601.

§ 5604a17. Guardian ad litem; appointment of; compensation of. Upon the petition of the applicant, or of any person interested in the proceedings, the court shall appoint a disinterested person to act as guardian ad litem for minors, and other persons under disability, and for all persons not in being, who may appear to have any interest or lien upon land. The compensation of the guardian shall be determined by the court, and paid by the applicant as part of the expenses of the proceeding. [Laws 1917, ch. 235, § 17.]

Records, 34 Cyc. 601; Infants, 31 C. J. p. 1128, § 276, p. 1134, § 283, p. 1139, §§ 291-292, pp. 1144-1147, §§ 307-310.

§ 5604a18. Decree in absence of appearance. If no person appears and answers within the time named in the summons, or allowed by the court, the court may, at once, upon the motion of the applicant, no reason to the contrary appearing, and upon satisfactory proof of the applicant's right thereto,

make and file its order and decree confirming the title of the applicant and ordering the registration thereof. [Laws 1917, ch. 235, § 18.]

Records, 34 Cyc. 600, 603.

§ 5604a19. Answer; reference; report; further hearing. When an answer is filed, the case shall be tried by the court in like manner as an ordinary civil action. The court may refer the case, or in any part thereof to one of the examiners, as referee, to hear the parties and their evidence, and make report thereon to the court. Any report of an examiner shall have the same weight as that of a referee appointed by the district court. After the filing of such report, the court may order such other or further hearing of the cause before the court, or before the examiner, and may require such other or further proof by either or any of the parties to the cause as it shall deem proper. [Laws 1917, ch. 235, § 19.]

§ 5604a20. Dismissal of application. If the court shall find after hearing that the applicant has not a title proper for registration, an order shall be entered dismissing the application which may be without prejudice.

The applicant may upon motion dismiss the application at any time before the final decree is entered upon such terms as shall be fixed by the court. [Laws 1917, ch. 235, § 20.]

Records, 34 Cyc. 597, 603.

§ 5604a21. Decree confirming title; effect; conclusiveness. If, after hearing, the court finds that the applicant has a title proper for registration, whether as stated in his application or otherwise, it shall make and file its decree therein, confirming the title of the applicant and ordering the registration thereof. Provided that no final decree of registration shall be entered until proof is made by certificate from the proper officer that all taxes and levies assessed on said land, and then due or delinquent have been paid in full. Except as herein otherwise provided, every decree of registration shall bind the land described therein, and shall forever quiet the title thereto, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the summons, or included in the phrase "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," and such decree shall not be opened, vacated or set aside by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for opening, vacating, setting aside or reversing judgments and decrees, except as herein especially provided.

The decree shall forever determine, bind and conclude all the right, title, interest, estate or lien in the land described therein of the husband or wife of any defendant acquired or growing out of the marriage relation in like manner as if such husband or wife had been expressly named in said decree. [Laws 1917, ch. 235, § 21.]

Records, 34 Cyc. 605.

Decree of confirmation and registration of title. 23 R. C. L. 279 and Supps.

§ 5604a22. Decree; dating; contents; certified copy. Every decree of registration shall bear the date, hour and minute of its entry and shall be signed by the judge of the district court. It shall state the age of the owner of the land, and whether married, or unmarried, and, if married, the name of the husband or wife; if the owner of the land is under disability, it shall state the nature thereof. It shall contain an accurate description of the land as finally determined by the court, and shall set forth the estate of the owner and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other facts properly to be determined by the court.

Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof with the registrar. [Laws 1917, ch. 235, § 22.]

Records, 34 Cyc. 603.

§ 5604a23. Agreement that land shall remain registered. The obtaining of a decree of registration, and the receiving of a certificate of title, shall be deemed as an agreement running with the land, and binding upon the applicant, and his successors in the title, that the land shall be and forever remain registered land, and subject to the provisions of this act, and to all acts amendatory thereof. All dealings with the land, or any estate or interest therein, and all liens, incumbrances and charges upon the same, after the land has been registered, shall be expressly subject to the terms and provisions of this chapter. [Laws 1917, ch. 235, § 23.]

Records, 34 Cyc. 603.

§ 5604a24. Certificate of title; rights of holder. Every person receiving a certificate of title pursuant to a decree of registration, and every subsequent purchaser of registered land, who receives a certificate of title in good faith and for a valuable consideration, shall hold the same free from all incumbrances, and adverse claims, excepting only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the office of the registrar, and also excepting any of the following rights or incumbrances subsisting against the same, if any, namely:

1. Liens, claims or rights, arising or existing under the laws or the Constitution of the United States, which the state cannot require to appear on record.
2. The lien of any tax or special assessment of which the land has not been sold at the date of the certificate of title.
3. Any lease for a period not exceeding three years, when there is actual occupation of the premises thereunder.
4. All rights in public highways upon the land.
5. Such right of appeal, or right to appear and contest the application as is allowed by this chapter. [Laws 1917, ch. 235, § 24.]

Possession of third person as affecting one's character as a bona fide purchaser within the provisions of the Torrens Law which protect bona fide purchasers of title registered under the act. 23 A.L.R. 979.

Records, 34 Cyc. 605.

Certificates of title. 23 R. C. L. 276 and Supps.

§ 5604a25. Petition by one not made party; time allowed for; answer; review; de novo trial. Any person having any right, title, or interest in or lien upon the land upon whom the summons has not been personally served, and who had no notice or knowledge of the filing of the application or of the pendency of such proceeding prior to the entry of the decree therein, may at any time within ninety (90) days after the entry of such decree and not afterwards, file his duly certified petition setting forth such facts and praying for leave to file his answer therein. If the court is satisfied of the truth of the matters set forth in such verified petition, it shall make an order permitting such petitioner to answer the application. Upon the filing of such answer, and upon not less than ten (10) days' notice to the applicant, and to such other persons or parties as the court may order, and in such manner, as it may direct, the court shall proceed to review the case, and, if satisfied that its decision or decree ought to be opened, it shall so order. Thereupon the court shall proceed to hear and try the case DE NOVO, and to make such further order, decision or decree therein as shall be according to equity. [Laws 1917, ch. 235, § 25.]

Records, 34 Cyc. 604-606.

Opening decree of registration. 23 R. C. L. 281 and Supps.

§ 5604a26. Appearance by one acquiring interest after application. Any person who shall acquire any right, title, interest or estate in the land subsequent to the filing of the copy of the application for registration with the

register of deeds, and prior to the entry of the decree in the registration proceeding, shall at once appear and answer as a party defendant in such proceeding, and the right, title, interest, estate or lien of such person shall be subject to the order or decree of the court. [Laws 1917, ch. 235, § 26.]

Records, 34 Cyc. 601, 605.

§ 5604a27. Limitation of action to avoid decree or certificate of title; who may bring action. No decree of registration heretofore entered, and no original certificate of title heretofore issued pursuant thereto, shall be adjudged invalid or set aside unless the action in which the validity of such decree of registration, or original certificate of title issued pursuant thereto, is called in question, be commenced, or the defense alleging the invalidity thereof be interposed within six (6) months from the date when this law takes effect. No decree of registration hereafter entered, and no original certificate of title hereafter issued pursuant thereto, shall be adjudged invalid or set aside, unless the action in which the validity of such decree, or of the original certificate of title issued pursuant thereto, is called in question, be commenced, or the defense alleging the invalidity thereof interposed, within six (6) months from the date of such decree.

No action or proceeding, either at law or in equity for the recovery of any right, title, interest or estate in registered land adverse to the title established and adjudicated by any original decree of registration heretofore entered shall be maintained unless such action is commenced within six months from the date when this law takes effect, and no action or proceeding for the recovery of any right, title, interest or estate in registered land adverse to the title established by any original decree of registration hereafter entered shall be maintained, unless such action is commenced within six months from the date of such original decree.

No action or proceeding for the enforcement or foreclosure of any lien or charge upon or against registered land, which existed at the date when any original decree of registration was heretofore entered and which was not recognized and established by such decree, shall be maintained, unless such action or proceeding is commenced within six months from the date when this law takes effect. No action or proceeding for the enforcement or foreclosure of any lien or charge upon or against registered land, in existence at the date of any original decree or registration hereafter entered, and which is not recognized and established by such decree, shall be maintained, unless such action or proceeding is commenced within six months from the date of such original decree.

No such action or proceeding shall be commenced by any person who is bound by the decree. Nothing herein shall apply to any action or proceeding now pending in the courts of this state or affect any rights already barred when this law takes effect. [Laws 1917, ch. 235, § 27.]

Records, 34 Cyc. 605; Constitutional Law, 12 C. J. pp. 978-980, § 574.

Limitation of time to avoid decree of registration. 23 R. C. L. 281 and Supps.

§ 5604a28. Appeal. An appeal may be taken to the supreme court from any order or judgment of the district court under this act as follows:

First. From any final decree within six months from the date thereof. Upon appeal from such decree, the supreme court may review any intermediate order involving the merits or necessarily affecting the decree.

Second. From any order granting or denying an application to open, vacate or set aside such decree, within thirty days from the date of the filing of such order.

Third. From any order granting or refusing a new trial, or from any order involving the merits of the proceeding, or some part thereof within thirty days from the filing of such order.

All appeals from any order or decree in any proceeding under this chapter

shall be taken upon such notice, terms and conditions as are now provided by law for the taking of appeals in civil actions. [Laws 1917, ch. 235, § 28.]

Records, 34 Cyc. 603.

Appeal from decree of registration. 23 R. C. L. 281 and Supps.

§ 5604a29. Registrars of titles; registers of deeds as. Registers of deeds shall be the registrars of titles in their respective counties. [Laws 1917, ch. 235, § 29.]

Registers of Deeds, 34 Cyc. 1020.

§ 5604a30. Same; bond of. Before entering upon the duties of his office, the registrar of titles shall execute a bond to the state for such amount and with such sureties as may be determined by the board of county commissioners. Such bond shall be approved by the district court, and filed in the office of the secretary of state, and shall be conditioned for the faithful discharge of his duties. A copy of said bond shall be filed and entered upon the records of the court. [Laws 1917, ch. 235, § 30.]

Registers of Deeds, 34 Cyc. 1018.

Official bonds. 22 R. C. L. 496 et seq. and Supps.

§ 5604a31. Same; control of court over; seal of. The registrar of titles shall be at all times under the control of the court, which may adopt such rules governing the conduct of his office as it may deem wise. Every registrar of titles shall have an official seal. [Laws 1917, ch. 235, § 31.]

Registers of Deeds, 34 Cyc. 1020.

Official seals. 24 R. C. L. 693.

§ 5604a32. Same; appointment of deputies; liability for acts of deputy; employment of clerks. The registrar of titles may, in his discretion, appoint one or more deputy registrars of titles, who may also be deputy registers of deeds, to act in his stead. Deputy registrars shall act in the name of the registrar, and their acts shall be his acts. The registrar shall be liable for any neglect or omission of a deputy, to the same extent as for his own neglect or omission. The registrar may, with the consent of the board of county commissioners, employ such clerks as may be required to properly perform the duties of his office. [Laws 1917, ch. 235, § 32.]

Officers, 29 Cyc. 1395, 1445.

Appointment of deputies. 22 R. C. L. 582 and Supps.

Liability for acts of deputies. 22 R. C. L. 586 and Supps.

§ 5604a33. Registration of titles; certificate of title; what is; separate page for each. Immediately upon the filing of the decree of registration with the registrar, he shall proceed to register the title pursuant to the terms of the decree in the manner herein provided.

He shall keep a book known as the "register of titles," wherein he shall enter all first and subsequent certificates of title by binding or entering them therein, in the order of their numbers, beginning with number one. The entering of the certificate of title in the register of titles shall constitute the act of registration. The term "certificate of title" shall be deemed to include all memorials and notations thereon, and each certificate of title shall contain proper blanks for the entry of the memorials and notations thereon. Each certificate shall constitute a separate page of such book, and all memorials and notations that may be entered by the registrar shall be entered by him upon the page whereon the latest certificate of title relating to the land affected is entered. [Laws 1917, ch. 235, § 33.]

Registers of Deeds, 34 Cyc. 1020; Records, 34 Cyc. 587-590, 597.

Certificate of title. 23 R. C. L. 276 and Supps.

§ 5604a34. Certificate of title; contents; form. The certificate of title shall contain the name and residence of the owner, a description of the land, and of the estate of the owner therein, and shall by memorial contain a description

of all encumbrances, liens and interest to which the estate of the owner is subject. It shall state his age, and if under disability the nature thereof. It shall also state whether or not the owner is married, and, if married, the name of the husband or wife. In case the land is held in trust or subject to any condition or limitation, it shall state the nature and character thereof. It shall be substantially in the following form:

CERTIFICATE OF TITLE.

No.....

First Certificate of Title, pursuant to the order of the District Court, Judicial District, County of..... and State of North Dakota, dated 19...

REGISTRATION.

State of North Dakota, }
County of } ss.

This is to certify that of the of County of and State of is now the owner of an estate, to-wit: or and in the following described land, situated in the county of and State of North Dakota, to-wit:

Subject to the incumbrances, liens and interest noted by memorial underwritten or indorsed hereon; and subject to the following rights or incumbrances subsisting, as provided in the thirty-fourth section of "An act concerning the registration of land and the title thereto" of the Session Laws of the State of North Dakota, for the year 1917, namely:

- 1. Liens, claims or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record.
2. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.
3. Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.
4. All public highways embraced in the description of the lands included in the certificates shall be deemed to be excluded.
5. Such right of appeal or right to appear and contest the application as is allowed by law.

That the said is of the age of years, is married and is under..... disability. In Witness whereof, I have hereunto subscribed my name and affixed the seal of my office, this day of 19....

Register of Titles,

In and for the County of and State of North Dakota.

All certificates issued subsequent to the first certificate of title shall be in like form except that they shall be entitled "Transfer from number (here give the number of the next previous certificate relating to the same land)," and shall also contain the words, "originally registered (date, volume, and page of registration)." [Laws 1917, ch. 235, § 34.]

Records, 34 Cyc. 597-605.

Certificate of title. 23 R. C. L. 276 and Supps.

§ 5604a35. Same; admissibility in, and conclusiveness as, evidence; documents admissible as evidence. The original certificate of title in the register of titles, any copy thereof duly certified by the registrar, or by his deputy, and authenticated by his seal, and likewise the owner's duplicate certificate of title shall be received in evidence in all the courts of this state, and shall after the expiration of the time herein limited to bring action or to contest the title of the

registered owner be conclusive evidence of all matters and things contained therein. In case of variance between the owner's duplicate certificate and the original certificate of title, the original certificate shall prevail.

Deeds, mortgages, leases, or other conveyances of real estate, or letters of attorney authorizing the same, and all instruments in any manner affecting the title to registered land, together with any notations, indorsements or memorials upon the same made by the registrar of titles, as required by law, heretofore or hereafter filed with the registrar, shall be received in evidence in all the courts of this state, without further or other proof, and shall be prima facie evidence of the contents thereof. Duly authenticated copies of said instruments, or any of them, may likewise be received in evidence in any court of this state with like force and effect, as the original instruments. [Laws 1917, ch. 235, § 35.]

Records, 34 Cyc. 605; Evidence, 22 C. J. p. 801, § 914, pp. 819-821.

Certificate of title as evidence. 23 R. C. L. 277 and Supps.

Copies of instruments as evidence. 10 R. C. L. 1101 et seq. and Supps.

§ 5604a36. Tract indexes; alphabetical indexes; what entered in; grantors' and grantees' books; what entered in. The registrar shall likewise keep tract indexes, in which he shall enter an accurate description of all registered land, together with the names of the respective owners thereof and a reference to the volume and page of the register of titles in which the same is registered. He shall also keep alphabetical indexes in which he shall enter in alphabetical order the names of all owners of registered land, and the names of all persons having any interest in or lien upon the same, with reference to the volume and page of the register of titles in which the certificate of title is entered as follows:

The register shall keep two books to be known as the grantors' and grantees' books, respectively:

The registrar shall enter in each of said books in the order and manner aforesaid, and as soon as the same are received, all instruments affecting the title to land which are filed with him, and shall enter as far as may be the particulars of said instruments in the appropriate column of said books. The pages of each of the said books, shall be lettered in alphabetical order, a convenient number of consecutive pages being allotted to each letter of the alphabet, and each entry shall be made in the grantor's reception book under the initial letter of the grantor's surname, and in the grantee's book, under the initial letter of the grantee's surname, and all the entries under each letter shall appear in the order as to time in which the instruments were filed. [Laws 1917, ch. 235, § 36.]

Records, 34 Cyc. 586; Registers of Deeds, 34 Cyc. 1020.

§ 5604a37. Instruments affecting title; consecutive numbering of; retention of; right to inspect; duplicates; certified copies. Every instrument affecting the title to land filed with the registrar shall be numbered by him consecutively, and he shall indorse upon the same the number thereof, together with the date, hour and minute when the same is filed, and a reference to its proper certificate of title. Every such instrument shall be retained by him and shall be regarded as registered from the time of filing. When the memorial of any instrument is made upon any certificate, the date, number and time of filing thereof shall likewise be endorsed upon such certificate. All records and papers relating to registered land in the office of the registrar, shall be open to the inspection of the public at such times and under such conditions as the court may prescribe. Duplicates of all instruments, voluntary or involuntary, filed and registered with the registrar, may be presented with the originals and shall thereupon be attested and sealed by him, and endorsed with the file number, and other memoranda on the originals, and returned to the person presenting the same. The registrar shall furnish certified copies of the instruments filed and registered in his office, upon payment of a fee of 10 cents per folio, for each folio contained in such instrument.

The court shall adopt general forms of memorials and notations to be used

by the registrar in registering the common forms of conveyance and other instruments. [Laws 1917, ch. 235, § 37.]

Records, 34 Cyc. 587-590, 592; Registers of Deeds, 34 Cyc. 1020.

§ 5604a38. Notices; service of; mailing of. All notices required by this law, after the original registration, either by the registrar or by the court, shall be served on the persons to be notified in the following manner: The notice shall be served upon a resident of the state in the manner now provided by law for the service of a summons in a civil action, and the same proof of such service shall be made. It shall be served upon a person who is not a resident of the state by sending the same by mail to such person at his postoffice address, as stated in the certificate or in any registered instrument on file with the registrar. The certificate of the registrar or clerk that any notice has been mailed as aforesaid shall be conclusive proof of the service of such notice, but the court may, in any case, order different or other service thereof by publication, or otherwise. [Laws 1917, ch. 235, § 38.]

Records, 34 Cyc. 600.

Service of notice. 20 R. C. L. 356 and Supps.

§ 5604a39. Duplicate certificate of title; receipt for. At the time the original certificate of title is entered, the registrar shall make a duplicate thereof, endorsing across the face of such duplicate the words, "Owner's Duplicate Certificate," and shall deliver the same to the owner or his authorized attorney. The registrar shall, in every case, whenever it is practicable so to do, take from such owner a receipt for such duplicate certificate, which shall be signed by the owner in person. Such receipt, when signed and delivered in the office of the registrar, shall be witnessed by him or his deputy. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as a deed. Such receipt shall be prima facie evidence of the genuineness of such signature. [Laws 1917, ch. 235, § 39.]

Records, 34 Cyc. 600.

§ 5604a40. Two or more owners; duplicate certificates in case of. Where two or more persons are owners of registered land, either as tenants in common or otherwise, one owner's duplicate certificate may be issued for the entire interest in the land or separate duplicate certificates may be issued to each owner for his undivided interest therein. [Laws 1917, ch. 235, § 40.]

Records, 34 Cyc. 600.

§ 5604a41. Single duplicate certificate for several tracts. The owner of registered land holding one duplicate certificate for two or more distinct parcels of land may surrender the same, and thereupon the registrar may issue to him one or more duplicate certificates therefor. An owner of registered land holding separate duplicate certificates for several parcels of land may surrender the same, and thereupon the registrar may issue to such owner a single duplicate certificate for all of said parcels, or may issue two or more certificates including in each certificate as many parcels as such owner may desire. [Laws 1917, ch. 235, § 41.]

§ 5604a42. Relation back of certificate. The certificate of title, when entered in the register of titles, shall relate back to and take effect as of the date of the decree of registration. [Laws 1917, ch. 235, § 42.]

§ 5604a43. New duplicate certificate; issuance of. If any duplicate certificate is lost or destroyed or cannot be produced, a duly verified statement, setting forth the facts relating thereto, may be filed with the registrar by the registered owner, or other person in interest. Upon such application, after due notice and hearing, the court may direct the registrar to issue a new duplicate certificate, containing a memorandum of the fact that it is issued in place of a lost duplicate certificate, which shall be entitled to like faith and credit as the original duplicate. [Laws 1917, ch. 235, § 43.]

§ 5604a44. Same; withholding of owner's old duplicate; annulment of mortgage's or lessee's duplicate; nonproduction of. If the registrar of titles is requested to enter a new certificate in pursuance of an instrument which purports to be executed by the registered owner, or by reason of any instrument of proceeding which divests the title of the registered owner against his consent, and the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the registrar of titles shall not enter a new certificate, until authorized so to do by order of the district court. The person who claims to be entitled thereto may make application therefor to the district court, and after due notice and hearing, the court may order the registered owner or any person withholding the duplicate certificate to surrender it, and direct the entry of a new certificate upon such surrender. If the person withholding the duplicate certificate is not amendable [amenable] to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered up, the court may by decree annul it, and order a new certificate of title to be entered.

If an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when the mortgage or lease is discharged, assigned or extinguished, the same proceedings may be had to obtain registration as in the case of the non-production of an owner's duplicate. [Laws 1917, ch. 235, § 44.]

§ 5604a45. Lots and blocks; subdividing into. The owner of registered land may plat the same and subdivide it into lots and blocks in like manner as in case of unregistered land. All laws with reference to the subdivision and platting of unregistered land shall apply with like force and effect to registered land, excepting only that the surveyor's plat thereof shall be filed with the registrar. [Laws 1917, ch. 235, § 45.]

§ 5604a46. Voluntary conveyance; effect of. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same as fully as if it had not been registered. He may use any form of deed, mortgage, lease or other voluntary instrument sufficient in law for the purpose intended. No voluntary instrument of conveyance purporting to convey or affect registered land except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or effect [affect] the land, but shall operate only as a contract between the parties, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land. [Laws 1917, ch. 235, § 46.]

Records, 34 Cyc. 605.

§ 5604a47. Conveyance, lien, etc.; effect of. Every conveyance, lien, attachment, order, decree or judgment, or other instrument or proceeding, which would effect the title to unregistered land under existing laws, if recorded, or filed with the register of deeds, shall, in like manner, effect the title to registered land if filed and registered with the registrar in the county where the real estate is situated, and shall be notice to all persons from the time of such registering or filing. [Laws 1917, ch. 235, § 47.]

Records, 34 Cyc. 605, 614-615.

§ 5604a48. No new certificate on transfer; how estates less than fee simple registered. No new certificate shall be issued upon any transfer of registered land which does not divest the title in fee simple of said land, or some part thereof. All interest in registered land, less than an estate in fee simple, shall be registered by filing with the registrar the instrument which creates, transfers or claims such interest, and by brief memorandum or memorial thereof made and signed by the registrar upon the certificate of title. A similar memorandum shall also be made on the owner's duplicate. The cancellation of

such interest shall be registered in the same manner. [Laws 1917, ch. 235, § 48.]

Records, 34 Cyc. 600, 605.

§ 5604a49. Postoffice address of grantee; indorsing change of address.

Every deed or other voluntary instrument which is presented for registration shall contain or have endorsed upon it the full name and postoffice address of the grantee, or other person, who acquires or claims an interest under such instrument. Any change in the postoffice address of such person shall be endorsed by the registrar upon the original instrument upon receiving a duly verified statement of such change. All names and addresses shall also be entered upon the certificates of title. [Laws 1917, ch. 235, § 49.]

Records, 34 Cyc. 588.

§ 5604a50. No new certificate without presenting owner's duplicate; owner's remedies in case of fraud.

No new certificate of title shall be entered or issued, and no memorial shall be made upon any certificate of title in pursuance of any deed or other voluntary instrument, unless the owner's duplicate is presented therewith, except in cases provided for, in this law or upon the order of the court. Whenever such order is made, a memorial thereof shall be entered, or a new certificate issued as directed thereby. Whenever any voluntary instrument is presented for registration, the production of the owner's duplicate certificate shall authorize the registrar to enter a new certificate or to make a memorial of registration in accordance with such instrument, and the new certificate or memorial shall be binding upon the registered owner, and upon all persons claiming under him in favor of every purchaser for value and in good faith. In all cases of registration which are procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice however to the rights of any innocent holder for value of a certificate of title. [Laws 1917, ch. 235, § 50.]

Records, 34 Cyc. 605.

§ 5604a51. Procedure on transfer of land; canceling original and duplicate certificates; new certificate conveyance of part of tract.

An owner of registered land who desires to convey the same, or any portion thereof, in fee, shall execute a deed of conveyance, and file the same, together with the owner's duplicate certificate, with the registrar. The registrar shall require an affidavit by the grantee, or some person in his behalf, which affidavit shall set forth the name, age and residence of the grantee, and whether the grantee is or is not married, and if married, the name of the husband or wife. The owner's duplicate certificate and the original certificate of title shall be marked "Cancelled" by the registrar, who shall thereupon enter in the register a new certificate of title to the grantee and shall prepare and deliver to such grantee a new owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate, except so far as they may be simultaneously released or discharged. The deed of conveyance shall be filed and endorsed with the number and place of registration of the certificate. If a deed in fee is for a part only of the land described in the certificate of title, the registrar shall enter a new certificate of title and issue an owner's duplicate certificate to the grantor for that portion of the land not conveyed. [Laws 1917, ch. 235, § 51.]

Records, 34 Cyc. 600, 605.

§ 5604a52. Taxes and assessments; showing payment; merger or subordination of; certified copy of decree.

All laws requiring deeds, plats or other instruments affecting unregistered land to bear the endorsement of the proper city or county officials showing that all taxes and assessments upon the same have been paid, shall be operative as to registered land, and all such laws shall be complied with before any deed, plat or other instrument affecting registered land shall be filed with the registrar.

Whenever, by the terms of any decree of registration, any tax or local assessment lien, or the title based upon the same, is either subordinated to the title adjudicated thereby or merged therein, all such liens and titles shall be described in detail in the decree, and from and after the entry thereof such titles and liens shall be considered as having in law been paid. A certified copy of the decree shall be filed with the county auditor and city treasurer in all counties where local assessments are paid to such officials; and the county auditor and city treasurer shall thereafter treat the liens and titles described in such decree as having in law been paid, and shall make upon the books and records of their respective offices proper entries to that effect. If any deed, plat or other instruments affecting such land is thereafter presented to the county auditor or to the city treasurer, upon which it is the duty of such officers to make any official endorsements they shall regard all the titles and liens described in such decree as having been legally paid and satisfied, and shall make their official endorsement upon such deed, plat or other instrument without reference or regard thereto. [Laws 1917, ch. 235, § 52.]

Records, 34 Cyc. 603.

§ 5604a53. Mortgage; assignment, extension, etc.; registration. The owner of registered land may mortgage the same by deed or other instrument sufficient in law for the purpose, and such mortgage or other instrument may be assigned, extended, discharged or released, either in whole or in part, or otherwise dealt with by the mortgagee by any form of deed or instrument sufficient (in law) for that purpose. But such deed, mortgage or other instrument and all instruments assigning, extending, discharging, releasing or otherwise dealing with the same, shall be registered, and shall take effect upon the title only from the time of registration. [Laws 1917, ch. 235, § 53.]

Records, 34 Cyc. 605; Mortgages, 27 Cyc. 1155-1160, 1294-1296.

§ 5604a54. Registration of mortgage; how made. The registration of a mortgage shall be made in the following manner:

The owner's duplicate certificate shall be presented to the registrar, together with the mortgage deed, or other instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial for the purport of the instrument registered, the exact time of filing and the file number of same. He shall also note upon the registered instrument the time of filing and a reference to the volume and page where it is registered. The registrar shall also at the request of the mortgagee, make and deliver to him a duplicate certificate of title like the owner's duplicate certificate except that the words "Mortgagee's Duplicate" shall be written or printed diagonally across its face in large letters. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the original certificate of title. [Laws 1917, ch. 235, § 54.]

Records, 34 Cyc. 600, 605; Mortgages, 27 Cyc. 1155-1160, 1294-1296.

§ 5604a55. Mortgage; assignment, extension, etc.; presenting duplicate to registrar. When a mortgage, upon which a mortgagee's duplicate has been issued, is assigned, extended, or otherwise dealt with, the mortgagee's duplicate shall be presented to the registrar, together with the instrument shall be made upon the mortgagee's duplicate and upon the original certificate of title [sic]. When the mortgage is discharged or otherwise extinguished the mortgagee's duplicate shall be surrendered and stamped "Cancelled." In case only a part of the mortgage upon the land is intended to be released or discharged, a memorial of such partial release shall be entered. The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. [Laws 1917, ch. 235, § 55.]

§ 5604a56. Notice of pendency. Mortgages upon registered land may be foreclosed in the same manner as mortgages upon unregistered land. It shall

be sufficient to authorize the foreclosure thereof, by advertisement, if such mortgage and all assignments thereof shall have been registered, and a memorial thereof duly entered upon the certificate of title; provided, further, that when a mortgage upon registered land is foreclosed by advertisement, the notice of foreclosure shall state the date of the mortgage, when and where registered, and the fact of registration. All laws relating to the foreclosing of mortgages upon unregistered land shall apply to mortgages upon registered land, or any estate or interest therein, except as herein provided, and except that a notice of pendency of any suit or proceeding to enforce or foreclose the mortgage or other charge upon the land shall be filed with the registrar and a memorial thereof entered on the register at the time of or prior to the commencement to such action or proceeding. A notice so filed and registered shall be notice to the registrar and to all persons thereafter dealing with the land or any part thereof. When a mortgagee's duplicate certificate has been issued it shall be presented to the registrar at the time of filing and a memorial thereof entered therein. In all such foreclosures all certificates and affidavits permitted or required by law to be recorded with the register of deeds shall be filed with the registrar and registered by him. [Laws 1917, ch. 235, § 56.]

Records, 34 Cyc. 605; *Lis Pendens*, 38 C. J. pp. 10-11, §§ 8-10, p. 19, § 19.

Foreclosure of mortgages, 19 R. C. L. 519 et seq.

§ 5604a57. Registration of lien or charge on registered land; application for.

Any person who has by action or other proceeding to enforce or foreclose a mortgage, lien or other charge upon registered land, become the owner in fee of the land or any part thereof may have his title registered. He shall apply by duly verified petition to the court for a new certificate of title to such land, and the court shall thereupon, after due notice to all parties in interest and upon such hearing as the court shall direct, make an order or decree for the issuance of a new certificate of title to the person entitled thereto, and the registrar shall thereupon enter a new certificate of title to the land, or of the part thereof to which the applicant is entitled, and issue an owner's duplicate as in the case of voluntary conveyance. [Laws 1917, ch. 235, § 57.]

Records, 34 Cyc. 600, 605.

§ 5604a58. Judgment or decree affecting. A judgment or decree affecting registered land shall be registered upon the presentation of a certified copy thereof to the registrar, who shall enter a memorial thereof upon the original certificate of title, and upon the owner's duplicate, and upon any outstanding mortgagee's or lessee's duplicate, if practicable so to do. When the registered owner of such land is by such judgment or decree divested of his estate in fee therein, or any part thereof, the prevailing party shall be entitled to a new certificate of title for the land, or so much thereof as may be described in the judgment and decree, and the registrar shall enter such new certificate of title and issue a new owner's duplicate certificate as in the case of a voluntary conveyance; provided, however, that no such new certificate shall be entered except upon application to the court and upon filing with the registrar of an order of the court directing the entry of such new certificate. [Laws 1917, ch. 235, § 58.]

Judgments, 34 C. J. p. 572, § 880, p. 576, § 885; Records, 34 Cyc. 605.

§ 5604a59. Registration of leases of registered land. Leases of registered land for a term of three years or more shall be registered in lieu of recording the same. All the provisions of this law relating to the registration of mortgages shall apply to the registration of leases so far as the same are applicable thereto. [Laws 1917, ch. 235, § 59.]

Landlord and Tenant, 35 C. J. pp. 1156-1158, §§ 423-425; Records, 34 Cyc. 605.

§ 5604a60. Filing trust instrument with registrar; entering memorial on certificate of title and owner's duplicate; certified copy; power to sell in in-

strument; effect of registration. If a deed or other instrument is filed with the registrar for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest therein without the transfer thereof, the particulars of the trust, condition, limitation or other equitable interest need not be entered upon the certificate of title, but a memorial thereof may be entered by the words "in trust" or "upon condition" or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate. If the instrument which creates or declares a trust or other equitable interest has already been recorded in any public office of this state, a certified copy thereof may be filed with the registrar and registered by him in lieu of the original. If the instrument which creates or declares a trust or other equitable interest contains an express power to sell, mortgage or otherwise deal with the land, such power shall be stated in the certificate of title by the words, "with power to sell" or "power to mortgage" and by apt words of description in case of other powers. No instrument which transfers, mortgages, or in any manner purports to deal with registered land held in trust shall be registered unless the power thereto enabling is expressly conferred in the instrument of trust and the court has construed the instrument in favor of the power. In such case a certified copy of such decree may be filed with the registrar, who shall make registration in accordance therewith. No transfer of registered land held in trust, or of any estate or interest therein, or of any charge or lien upon the same, shall be registered except upon the order of the district court, filed with the registrar adjudging and determining the true intent of the trust, condition or limitation, and directing such transfer, charge or dealing in accordance therewith. Such registration shall be conclusive evidence that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition or limitation. [Laws 1917, ch. 235, § 60.]

Records, 34 Cyc. 605; Trusts, 39 Cyc. 353; Deeds, 18 C. J. pp. 246-248, §§ 184-187.

§ 5604a61. Entering new certificate on appointment of new trustee. When a new trustee of registered land is appointed a new certificate of title shall be entered in his name upon presentation to the registrar of a certified copy of the decree or other instrument appointing him, and the surrender of the duplicate certificate. [Laws 1917, ch. 235, § 61.]

Records, 34 Cyc. 605.

§ 5604a62. Judgment; lien of; memorial of; how long lien continues; registration of instrument affecting land. No judgment requiring the payment of money shall be a lien upon registered land, except as herein provided. Any person claiming such lien shall file with the registrar a certified copy of the judgment together with a written statement containing a description of each parcel of land upon which the lien is claimed, and a proper reference to the certificate or certificates of title to such land. Upon filing such copy and statement, the registrar shall enter a memorial of such judgment upon each certificate designated in such statement, and the judgment shall thereupon be and become a lien upon the land described in such certificate or certificates. At any time after filing the certified copy of such judgments, any person claiming the lien may, by filing a written statement as herein provided, cause a memorial of such judgment to be entered upon any certificate of title to land not described in any previous statement and the judgment shall thereupon be and become a lien upon such land. The judgment shall survive and the lien thereof shall continue for a period of ten years from the date of said judgment and no longer. In every case where an instrument of any description or a copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, writ or attachment upon unregistered land, such

instrument or copy, if intended to effect registered land, shall, in lieu of recording, be filed and registered with the registrar. In addition to any facts required by law to be stated in such instrument to entitle them to be filed or recorded they shall also contain a reference, to the number of the certificate of title of the land to be affected, and, if the attachment, charge or lien is not claimed on all the land described in any certificate of title, such instruments shall contain a description sufficient to identify the land. [Laws 1917, ch. 235, § 62.]

Judgments, 34 C. J. p. 572, §§ 880-881, pp. 575-576, §§ 884-885, p. 582, § 890; Liens, 37 C. J. p. 323, § 30; Records, 34 Cyc. 605.

§ 5304a63. Continuance, reduction, etc., of attachments and liens. Attachments and liens of every description upon registered land shall be continued, reduced, discharged and dissolved by any method sufficient therefor in the case of unregistered land. All certificates, writings, or other instruments permitted or required by law to be filed or recorded to give effect to the enforcement, continuance, reduction, discharge, or dissolution of attachments or other liens upon unregistered land or to give notice of this [the] same shall in the case of like liens upon registered land be filed with the registrar. [Laws 1917, ch. 235, § 63.]

Records, 34 Cyc. 605.

Discharge of attachment. 2 R. C. L. 867 and Supps.

Dissolution of attachment. 2 R. C. L. 868 et seq. and Supps.

§ 5604a64. Plaintiff's attorney; indorsing name and address. The name and address of the plaintiff's attorney shall in all cases be endorsed upon the instrument which is registered, and he shall be deemed to be the attorney of the plaintiff until a written notice that he has ceased to be such attorney shall have been filed by registration for the plaintiff. [Laws 1917, ch. 235, § 64.]

§ 5604a65. Certificate of clerk, sheriff or other officer; sufficiency of. A certificate of the clerk of the court in which any action or proceeding shall have been pending, or in which any judgment or decree is of record, that such action has been dismissed or otherwise disposed of, or that the judgment, decree or order has been assigned, satisfied, released or reversed, or the certificate of any sheriff, or other officer, that the levy of any execution, attachment, or other process has been released, discharged or otherwise disposed of being duly filed and noted upon the register shall be sufficient to authorize the registrar to cancel, or otherwise treat the memorial thereof according to the purport of such certificate. [Laws 1917, ch. 235, § 65.]

§ 5604a66. Redemption; expiration of time for; new certificate. Upon the expiration of the time allowed by law for redemption of registered land, after it has been set off, or sold on execution or taken or sold for the enforcement of any lien, or charge of any nature, the person who claims under such execution, or under any certificate, deed or other instrument made in the course of proceedings to enforce such execution or lien, may apply to the court for an order directing the entry of a new certificate to him, and upon such notice as the court may require, the petition shall be heard and a proper order or decree rendered therein. [Laws 1917, ch. 235, § 66.]

Records, 34 Cyc. 605.

§ 5604a67. Death of owner; filing certified copy of will and its probate, or assignment of certificate; transfer by personal representative. When the owner of registered land, or of any estate or interest therein dies, having devised the same by will, the person or persons entitled thereto may file with the registrar a certified copy of such will, together with a certified copy of the order of the probate court admitting it to probate, and of the final decree of the probate court assigning the same, together with the duplicate certificate issued to the testator, and thereupon the registrar shall cancel the duplicate certificate issued to the testator, and issue a new duplicate certificate or certificates to

the persons designated in such final decree. When the owner of registered land or any estate or interest therein dies, not having devised the same, the person entitled thereto by law may file with the registrar a certified copy of the final decree of the probate court assigning the same together with the duplicate certificate issued to the intestate, and thereupon the registrar shall cancel the duplicate certificate issued to the intestate, and issue a new duplicate certificate or certificates to any persons named in said final decree as being entitled thereto. If any executor or administrator with the will annexed is authorized by the terms of any will to grant, bargain, sell, convey or mortgage registered land, he may do so in the same manner as if the land were registered in his name as such executor or administrator, provided, however, that such executor or administrator shall first file with the registrar a certified copy of the order of the probate court admitting the same to probate, and of the letters testamentary or with the will annexed issued to him thereon. [Laws 1917, ch. 235, § 67.]

Records, 34 Cyc. 605.

§ 5604a68. Jurisdiction of probate court; license; registration by purchaser or mortgagee; new certificate. Nothing contained in this act shall impair or affect the jurisdiction of the probate court to license any executor, administrator or guardian to sell or mortgage registered land. A purchaser or mortgagee receiving a deed or mortgage executed pursuant to such license shall be entitled to register his title and to the entry of a new certificate of title or memorial or registration in the same manner as upon any similar voluntary transfer of registered land; provided that no certificates shall be issued pursuant to the provisions of this section or of the preceding section except upon the order of the district court directing the issuance thereof. [Laws 1917, ch. 235, § 68.]

Records, 34 Cyc. 605.

§ 5604a69. Verified statement of right, title or interest claimed; registration of; cancellation of; costs and damages; attorney's fee. Any person claiming any right, title, or interest in registered land adverse to the registered owner thereof arising subsequent to the date of original registration, may, if no other provision is made in this act for registering the same, file with the registrar his verified statement in writing, setting forth fully his alleged right or interest, and how or from whom it was acquired, and a reference to the volume and page of the certificate of title of the registered owner, together with a description of the land, the adverse claimant's residence, and designating the place at which all notices may be served upon him. Such statement shall be entitled to registration as an adverse claim, and the court upon the petition of any party in interest shall grant a speedy hearing upon the validity of such adverse claim, and shall enter such decision and decree therein as justice and equity may require. If the adverse claim is adjudged to be invalid, the registration thereof shall be cancelled. The court may, in any case, award such costs and damages, including a reasonable attorney's fee, as it may deem just. [Laws 1917, ch. 235, § 69.]

§ 5604a70. Erasures, etc., on register; showing changes; granting new certificate, or other relief. No erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title, or of any memorial thereon and the attestation of the same by the registrar, except by order of the court. A registered owner or other person in interest may, at any time apply by petition to the court, upon the grounds that the registered interest of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interest [interests] have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorial thereon, or on any duplicate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married,

that the marriage has been terminated; or that a corporation which has owned registered land and has been dissolved, has not conveyed the same within three years after its dissolution; or upon any other reasonable ground, and the court may hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry of cancellation of a memorial upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or of his heirs or assigns, without his or their written consent. [Laws 1917, ch. 235, § 70.]

Records, 34 Cyc. 590-592.

§ 5604a71. Acting by agent; power of attorney. Any act which may legally be done or performed by any person under this act may be done or performed by his agent thereto duly authorized in writing. Such instrument or power of attorney shall be executed and acknowledged as now required by law in the case of a deed, and shall be filed with the registrar and registered by him. Any instrument revoking such power of attorney shall be executed, acknowledged and registered in like manner. [Laws 1917, ch. 235, § 71.]

Agency, 2 C. J. p. 431, § 24, p. 450, § 50, pp. 452-457, §§ 53-60, p. 538, § 162.

Revocation of power of attorney. 21 R. C. L. 886 and Supps.

Form and execution of instrument granting power of attorney. 21 R. C. L. 878 and Supps.

Acts authorized by power of attorney. 21 R. C. L. 883.

§ 5604a72. Taking land by eminent domain; new certificate; reversion; new certificate. If the land of a registered owner or any right, title, interest or estate therein is taken by eminent domain, the state or body politic, or other authority which exercises such right, shall file for registration a written instrument containing a description of the land so taken, together with the name of each owner thereof, and referring to each certificate of title by its number and place of registration in the register of titles, and stating what estate or interest in the land is taken, and for what purpose. A memorial of the right, title, interest or estate thus taken shall be made upon each certificate of title by the registrar, and if the fee is taken a new certificate shall be entered in the name of the owner for the land remaining to him after such taking. If the owner has a lien upon the land thus taken for his damages this fact shall be stated in the memorial of registration. All fees on account of any memorial of registration or entry of new certificates for land thus taken shall be paid by the state or body politic, or other authority which takes the land.

If land which was taken for public use reverts, by operation of law, to the owner or to his heirs or assigns, the district court upon the application of the person entitled to the benefits of such reversion, and after due notice and hearing, may order the entry of a new certificate of title to the person or persons entitled thereto. [Laws 1917, ch. 235, § 72.]

Records, 34 Cyc. 605.

§ 5604a73. Charges for registration. Upon the original registration of land, and also upon the registration of any land by the heirs or devisees of any deceased person, there shall be paid to the registrar one-tenth of one per cent of the assessed value of the land, exclusive of improvements, as determined by the last official assessment for general taxation. [Laws 1917, ch. 235, § 73.]

Records, 34 Cyc. 605.

§ 5604a74. Assurance fund; turning over money to county treasurer as; investment of; report. All money received by the registrar under the provision of the preceding section shall immediately be paid by him to the county treasurer as an assurance fund. The county treasurer shall invest the same

upon the order of the district court, and subject to its approval. The assurance fund shall only be invested in bonds of the United States, or of the state of North Dakota, or of any county or municipality thereof. The county treasurer shall render to the district court, at least once a year, a full and detailed report, showing all receipts, disbursements and investments on account of such funds. [Laws 1917, ch. 235, § 74.]

Records, 34 Cyc. 605.

§ 5604a75. Same; recovery from, by person injured by omission, etc., of official. Any person who without negligence on his part, sustains any loss or damage by reason of any omission, mistake or malfeasance of the registrar or his deputy, or of any examiner or of any clerk of court or his deputy, in the performance of their respective duties under this law, and any person who without negligence on his part, is wrongfully deprived of any land or any interest therein by the registration thereof, or by reason of the registration of any other person, as the owner of such land, or by reason of any mistake, omission or misdescription, in any certificate of title or in any entry or memorial or by any cancellation, in the register of titles, and who, by the provisions of this law, is precluded from bringing an action for the recovery of such land, or of any interest therein, or from enforcing any claim or lien upon the same, may institute an action in the district court to recover compensation out of the assurance fund for such loss or damage. [Laws 1917, ch. 235, § 75.]

Records, 34 Cyc. 605.

Liability of recorder for negligence. 23 R. C. L. 270.

Liability of clerks of courts for negligence. 5 R. C. L. 629 and Supps.

§ 5604a76. Defendants; who to be; execution; payments from assurance fund; interest on unpaid balance. If such action is brought to recover any loss or damage occasioned solely by the registration of such land, or solely by the registration of any other person as the owner thereof, or if such action be brought for the recovery of any loss or damage occasioned solely by the omission, mistake, or malfeasance of the officers above named, or of the examiner or of any clerk of court, or his deputy, in the performance of their respective duties, the county treasurer, in his official capacity, shall be the sole defendant. If such action be brought to recover for any loss or damage occasioned either wholly or in part, by the fraud, or wrongful act of some person or persons other than the officers herein named, or to recover for any loss or damage caused jointly by the fraud, or wrongful act, and by the omission, mistake or malfeasance of the officers above named, or of any of them, and of some other person or persons, the county treasurer in his official capacity and such other person or persons shall be joined as defendants therein. In any action where there are defendants other than the county treasurer, no execution shall issue against such treasurer until execution against all other defendants against whom judgment has been recovered has been returned, unsatisfied, either in whole or in part. An officer returning such execution shall certify thereon that the amount still due upon the execution cannot be collected from them. Thereupon the court being satisfied as to the truth of said return, shall order the county treasurer to pay the amount due upon such execution out of the assurance fund. If the assurance fund is insufficient to pay the amount of any judgment in full, the unpaid balance thereof shall bear interest at the legal rate, and shall be paid out of the first moneys coming into said assurance fund. The county attorney shall defend the county treasurer in all such actions. [Laws 1917, ch. 235, § 76.]

Records, 34 Cyc. 605.

§ 5604a77. Who may recover. No person shall recover from the assurance fund any sum whatsoever by reason of any loss, damage or deprivation occasioned solely by a breach of trust on the part of any registered owner who

is a trustee, or by the improper exercise of any power of sale in a mortgage, nor shall any person recover from the assurance fund any greater sum than the fair market value of the real estate at the time of the last payment into such fund on account thereof. [Laws 1917, ch. 235, § 77.]

Records, 34 Cyc. 605.

§ 5604a78. Limitation of action to recover. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to commence the same accrued, and not afterwards. Provided, that if, at the time the right accrued, the person entitled to bring such action or proceeding is a minor, or insane, or in prison, or absent from the United States in its service or in the service of the state, such person or any one claiming under him may commence such action or proceeding within two years after such disability is removed. [Laws 1917, ch. 235, § 78.]

§ 5604a79. Fraud in procuring, or assisting to procure, certificate of title; penalty. Whoever fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles or books kept in the office of the registrar, or of any erasure or alteration in any entry in any of said books or in any instrument authorized by this act, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit, affecting registered land shall be guilty of a felony punishable by a fine not exceeding \$5,000 or by imprisonment not exceeding five years, or by both. [Laws 1917, ch. 235, § 79.]

Records, 34 Cyc. 615.

§ 5604a80. Clerk's fees; publication in newspaper or notice; who to pay for. On the filing of any application for registration the applicant shall pay the clerk of the court the sum of three dollars which shall be in full of all clerk's fees and charges in such proceeding on his behalf. Any defendant on entering his appearance shall pay a like sum, which shall be in full of all clerk's fees on his behalf.

When any number of defendants enter their appearance jointly but one fee shall be paid. Every publication in a newspaper required by law shall be paid for by the party on whose application the publication is made. The party at whose request any notice is issued shall pay for the service of same, except when sent by mail by the clerk or by the registrar. [Laws 1917, ch. 235, § 80.]

§ 5604a81. Fees to be paid to registrar. The fees to be paid to the registrar to be as follows:

1. At or before the time of filing certified copy of the application for registration the applicant shall pay, if the land have an assessed valuation of (\$1,000) one thousand dollars or less, the sum of three dollars (\$3); if assessed for more, the further sum of (\$1) one dollar for each additional (\$1,000) one thousand dollars valuation, or major fraction thereof.

2. For registering each original certificate of title and issuing a duplicate thereof, two dollars (\$2).

3. For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the new certificate of title, three dollars (\$3).

4. For the entry of each memorial on the register, or the cancellation thereof, including the filing of all instruments and papers connected therewith and endorsements on duplicate certificate, one dollar (\$1.00) provided, that when the entry of this same memorial, or cancellation thereof is required to be made on more than two certificates held by the same owner, the fee for such entry on each certificate in excess of two, shall be twenty-five cents (25c).

5. For issuing each additional mortgagee's or lessee's duplicate, one dollar (\$1).

6. For issuing each residue certificate, two dollars (\$2).
7. For filing copy of will, with letters testamentary, or copy of letters of administration, and entering memorial thereof, two dollars (\$2).
8. For issuing separate certificates and duplicate thereof, in exchange for one certificate for two or more distinct parcels, for each exchange certificate, one dollar (\$1).
9. For each additional certificate showing condition of the register, one dollar (\$1).
10. For any certified copy of any instrument or writing on file in his office, the same fee as allowed by law to register of deeds for like services.
11. For any other service under this chapter, such fee as the court shall determine. [Laws 1917, ch. 235, § 81.]

Registers of Deeds, 34 Cyc. 1025.

§ 5604a82. Mode of taking effect; bond of registrar. This act shall take effect in each county in the state in the following manner: It is hereby made the duty of the board of county commissioners in each county of this state, when requested so to do by a petition signed by at least ten per cent of the free holders of the county, to provide each register of deeds with the necessary books, supplies and stationery required by this act on or before that date, and to fix the bond required for each registrar. It shall be the duty of each register of deeds in the several counties to qualify as registrar under this act by filing a bond as required by the board of county commissioners, and taking the oath of office as registrar. Deputy register of deeds shall qualify in like manner as their chiefs. [Laws 1917, ch. 235, § 82.]

Registers of Deeds, 34 Cyc. 1017-1018.

Official bonds. 22 R. C. L. 496 et seq. and Supps.

Oath of office. 22 R. C. L. 448.

CHAPTER 51.

HOMESTEAD.

§ 5605. Homestead defined; exemptions. The homestead of every head of a family residing in this state, and consisting of not to exceed two acres of land and the improvements thereon, if within a town plat, and not exceeding in value eight thousand dollars, over and above liens or encumbrances, or both, claimed under subdivision 1, 2 and 3 of section 5607, and if not within a town plat not exceeding in the aggregate more than one hundred sixty acres, and consisting of a dwelling house in which the homestead claimant resides and all of its appurtenances and the land on which same is situated, also all other improvements on said land and regardless of the value of same, shall be exempt from judgment, lien and from execution or forced sale, except as provided in this chapter. [Laws 1925, ch. 146; Laws 1923, ch. 229.]

Entryman, living with family, under entry certificate upon government land, to obtain a patent thereto, may acquire homestead right, before proof is made or patent issued. *First Nat. Bank v. Zook*, — N. D. —, 196 N. W. 507.

Purpose of homestead exemption is for protection of the family. *Swingle v. Swingle*, 36 N. D. 611, 162 N. W. 912.

As to exemption of homestead from judgment lien, execution, or forced sale. *Farmers' Bank v. Knife River Lumber & Grain Co.* 37 N. D. 371, 163 N. W. 1053.

Upon death of husband, wife is entitled to homestead, so long as she does not marry again. *Brudevold v. Waldorf*, 37 N. D. 516, 164 N. W. 154.

Homestead rights of wife, not affected by death of husband. *O'Hare v. Bismarek Bank*, 45 N. D. 641, 178 N. W. 1017.

Right or cause of action of husband's judgment creditor, to avoid transfer of homestead to wife, dependent upon value of land, in excess of exemption, and then

is limited to such excess as nonexempt property. *Farmers' State Bank v. Weisenhaus*, — N. D. —, 198 N. W. 673.

Section requires that there be resident family residing upon the tract, in family residence. Intent to bring family to homestead, must be accompanied by acts. *Tromsdahl v. Nass*, 27 N. D. 441, 52 L.R.A.(N.S.) 746, 146 N. W. 719.

This section limits and defines value of homestead exemption. *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

See also *Kittel v. Straus*, 47 N. D. 88, 181 N. W. 628; *Lahart v. Coffey*, 29 N. D. 644, 151 N. W. 287; *Healy v. Bismarck Bank*, 30 N. D. 628, 153 N. W. 392; *Tyvand v. McDonnell*, 37 N. D. 251, 164 N. W. 1; *Krumenacker v. Andis*, 38 N. D. 500, 165 N. W. 524; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760; *McKillip v. Farmers' State Bank*, 29 N. D. 541, 151 N. W. 287.

Homesteads, 29 C. J. pp. 782-789, §§ 2-19, p. 791, § 27, pp. 795-799, §§ 36-38, pp. 821-823, §§ 91-92, p. 826, § 97, pp. 871-874, §§ 227-229.

Effect as against children of purchase of homestead by widow under foreclosure of lien. L.R.A.1917F, 433.

Rights of surviving children under homestead and exemption laws. L.R.A. 1917C, 371.

Woman's right to homestead in estate of second husband, as affected by her homestead right in estate of first husband. L.R.A.1916A, 998.

Rights of widow under homestead and exemption laws. L.R.A.1917C, 365.

Money decree for permanent alimony or separate maintenance as lien on homestead. L.R.A.1916B, 652.

What constitutes a family. L.R.A.1917C, 361.

Wife as head of family within homestead statute. 51 L.R.A.(N.S.) 1121.

Liability of homestead to assessment or lien for local improvement. L.R.A. 1915E, 662.

Enforcement of claim for alimony against homestead. 50 L.R.A.(N.S.) 699.

Effect of nonresidence of family whose head is a resident. 52 L.R.A.(N.S.) 746.

Separation agreement as affecting right to homestead. 35 A.L.R. 1518.

Divorce as affecting homestead. 36 A.L.R. 431.

Failure of head of family to claim homestead exemption as affecting other members of the family. 33 A.L.R. 611.

Effect of remarriage upon widow's existing homestead rights. L.R.A.1916A, 1000.

Scope and import of term, "Owner" in homestead exemption statutes. 2 A.L.R. 793.

Validity of statute abolishing vested right in homestead exemption as against particular classes of claims. 6 A.L.R. 1143.

Imprisonment as affecting abandonment of homestead. 5 A.L.R. 259.

Exemption of proceeds of voluntary sale of homestead. 1 A.L.R. 483.

Exemption of homestead. 13 R. C. L. 599, 600.

§ 5606. How selected. If the homestead claimant is married the homestead may be selected from the separate property of the husband, or with the consent of the wife, from her separate property. When the homestead claimant is not married, but is the head of a family within the meaning of section 5626, the homestead may be selected from any of his or her property; provided, that the homestead so selected must in no case embrace different lots or tracts of land unless they are contiguous. [R. C. 1905, § 5050; Laws 1891, ch. 67, § 2; R. C. 1899, § 3606.]

Section requires that there be a resident family residing upon the tract, in family residence. Intent to bring family to homestead, must be accompanied by acts. *Tromsdahl v. Nass*, 27 N. D. 441, 52 L.R.A.(N.S.) 746, 146 N. W. 719.

See also *Healy v. Bismarck Bank*, 30 N. D. 628, 153 N. W. 392; *Severtson v. Peoples*, 28 N. D. 372, 148 N. W. 1054.

§ 5607. When subject to execution. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. On debts secured by mechanics' or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same;

2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant;

3. On debts created for the purchase thereof and for all taxes accruing and levied thereon;

4. On all other debts when, upon an appraisal as hereinafter provided, it appears that the value of such homestead is more than five thousand dollars (\$5,000.00) over and above liens or incumbrances claimed under subdivision 1, 2 and 3 hereof, and then only to the extent of any value in excess of the sum total of such liens and incumbrances plus said five thousand (\$5,000.00) dollars. [Laws 1923, ch. 229.]

Explanatory note. The exemption in subdiv. 4, ante, would seem to have been raised from \$5000 to \$8000 by Laws 1925, ch. 146, re-enacting § 5605, ante.

Loan to one purchasing relinquishment from an entry man, to purchase same, and to establish a home upon the premises, is a debt "created for the purchase price;" and a mortgage to secure the loan, is valid, although wife does not join. *First Nat. Bank v. Zook*, — N. D. —, 196 N. W. 507.

Homestead subject to execution or forced sale on debts created for purchase thereof, and for taxes. *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

See also *Swiden v. Hasn*, 43 N. D. 360, 175 N. W. 213; *Farmers' State Bank v. Weisenhaus*, — N. D. —, 198 N. W. 673.

Homesteads, 29 C. J. p. 826, §§ 97-98, pp. 863-871, §§ 192-226, pp. 883-885, §§ 253-259.

Homestead exemption as against claim for money loaned by third person to pay off existing purchase money obligations. L.R.A.1915E, 875.

Right to mechanic's lien as affected by the acquisition of a homestead right after the making of the contract or commencement of the work. L.R.A.1918B, 818.

Homestead as subject of mechanic's lien. L.R.A.1918D, 1055.

Execution for claims for labor and materials used in improvement of homestead. 13 R. C. L. 608 and Supps.

Execution for debt secured by mortgage or for purchase money of homestead. 13 R. C. L. 606.

Execution for purchase money of homestead. 13 R. C. L. 603, 604 and Supps.

Execution upon surplus or excess value of homestead over statutory amount. 13 R. C. L. 617 et seq.

§ 5608. How conveyed. The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both the husband and wife, without regard to the value thereof. [Laws 1923, ch. 230, § 1.]

To constitute an acknowledgment, grantor must make an admission of execution of the instrument, before the officer. *Rasmussen v. Stone*, 30 N. D. 451, 152 N. W. 809; *Severtson v. Peoples*, 28 N. D. 372, 148 N. W. 1054.

Homestead exemption can be conveyed or encumbered only by an instrument executed and acknowledged by both husband and wife. *Swingle v. Swingle*, 36 N. D. 611, 162 N. W. 912.

Mortgage executed by husband, fraudulently executed and acknowledged in name of wife, by another person, is void, even in hands of innocent purchaser for value without notice. *Yusko v. Studt*, 37 N. D. 221, 163 N. W. 1066.

Deed of statutory homestead from husband to wife held valid, without execution by wife, pursuant to existing law. *Wehe v. Wehe*, 44 N. D. 280, 175 N. W. 366.

Mortgage executed by husband alone on homestead lands, valid as to excess in value above homestead estate. *First Nat. Bank v. Hallquist*, 43 N. D. 263, 134 N. W. 269.

Husband cannot waive or forfeit homestead rights of wife. *Schaf v. Corey*, — N. D. —, 196 N. W. 502.

See also *Erickson v. Wiper*, 33 N. D. 193, 157 N. W. 592; *Sexton v. Sutherland*, 42 N. D. 509, 174 N. W. 214; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760; *Tromsdahl v. Nass*, 27 N. D. 441, 52 L.R.A.(N.S.) 746, 146 N. W. 719.

Homesteads, 29 C. J. pp. 883-885, §§ 253-259, pp. 907-909, §§ 304-308.

Conveyance of homestead by husband after abandonment by wife. L.R.A. 1915D, 551.

Liability of homestead in hands of devisee for the debts of the deviser. L.R.A. 1918D, 1002.

Transfer of homestead exemption from one building or tract of land to another. 50 L.R.A.(N.S.) 1128.

Wife's right to exclude husband from possession, use, or enjoyment of homestead owned by her. 21 A.L.R. 745.

Necessity of privity examination of wife to acknowledgment of conveyance. 1 A.L.R. 1089.

Action for damages against signing spouse for breach of contract to convey homestead signed by one spouse only. 4 A.L.R. 1272; 16 A.L.R. 1033.

Necessity of joint conveyance of homestead by husband and wife. 13 R. C. L. 622 et seq. and Supps.

§ 5608a. Separate deeds of husband and wife to same property legalized.

In all cases where a married man or woman has heretofore conveyed real property which may have been the homestead of himself or herself, or family, by a deed duly signed and acknowledged, but not signed by the wife or husband of such grantor, and such wife or husband either before or after, by a deed duly signed and acknowledged, conveys same real estate to the same grantee or a subsequent grantee from him, this conveyance by such separate deeds shall be valid and effectual to pass the title to such grantee or subsequent grantee, the same as if the conveyance had been made by a single instrument duly executed and acknowledged by both husband and wife. [Laws 1917, ch. 132, § 1.]

Homesteads, 29 C. J. p. 885, § 259; Husband and Wife, 30 C. J. p. 576, § 108.

Conveyance of homestead by husband after abandonment by wife. L.R.A. 1915D, 551.

Husband's power without wife's consent to convey premises by his sole deed after abandonment. 37 L.R.A.(N.S.) 807.

Power of husband to create easements in homestead without wife's consent. 27 L.R.A.(N.S.) 963.

Power of legislature to take away husband's right to convey or encumber homestead property. 36 L.R.A.(N.S.) 1029.

Validity of conveyance or encumbrance of homestead by wife after abandonment by husband. 36 L.R.A.(N.S.) 1024.

Effect of a wife's separate deed of homestead in connection with a conveyance or encumbrance by husband, or her subsequent joinder therein. 8 L.R.A.(N.S.) 748.

Separate conveyance of homestead by husband and wife. 13 R. C. L. 627 and Supps.

§ 5609. Comp. Laws, 1913.

First Nat. Bank v. Zook, — N. D. —, 196 N. W. 507.

§ 5610. Comp. Laws, 1913.

As to right of wife to maintain action to protect homestead. Sexton v. Sutherland, 37 N. D. 500, 164 N. W. 278.

Assertion of claim to homestead land, barred by previous abandonment thereof as a homestead. Sexton v. Sutherland, 42 N. D. 509, 174 N. W. 214.

Abandonment by husband of homestead interest held to prevent wife, who never resided thereon, from maintaining action to set aside deed to same, executed by husband alone. Blatchley v. Dakota Land & Cattle Co. 26 N. D. 532, 145 N. W. 95.

See also Tromsdahl v. Nass, 27 N. D. 441, 52 L.R.A.(N.S.) 746, 146 N. W. 719; First Nat. Bank v. Zook, — N. D. —, 196 N. W. 507; Vannatta v. McClintock, 26 N. D. 166, 144 N. W. 76.

§ 5611. When appraised. When an execution for the enforcement of a judgment obtained in a case not within any of the classes specified under subdivisions 1, 2 or 3 or section 5607 is levied upon the homestead the judgment

creditor may apply to the district court in the county in which such homestead is situated for the appointment of persons to appraise the value thereof. [Laws 1923, ch. 229, § 1.]

Severtson v. Peoples, 28 N. D. 372, 148 N. W. 1054; *Farmers State Bank v. Weisenhaus*, — N. D. —, 198 N. W. 673; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

Homesteads, 29 C. J. pp. 966-977, §§ 413-436.

§§ 5612-5616. Comp. Laws, 1913.

First Nat. Bank v. Hallquist, 48 N. D. 263, 184 N. W. 269; *Farmers State Bank v. Weisenhaus*, — N. D. —, 198 N. W. 673; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§ 5617. Comp. Laws, 1913.

First Nat. Bank v. Hallquist, 48 N. D. 263, 184 N. W. 269; *Severtson v. Peoples*, 28 N. D. 372, 148 N. W. 1054; *Farmers State Bank v. Weisenhaus*, — N. D. —, 198 N. W. 673; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§§ 5618, 5619. Comp. Laws, 1913.

First Nat. Bank v. Hallquist, 48 N. D. 263, 184 N. W. 269; *Severtson v. Peoples*, 28 N. D. 372, 148 N. W. 1054; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§ 5620. Comp. Laws, 1913.

First Nat. Bank v. Hallquist, 48 N. D. 263, 184 N. W. 269; *Severtson v. Peoples*, 28 N. D. 385, 148 N. W. 1054.

§ 5621. Comp. Laws, 1913.

No necessity for selection or declaration of a homestead, where extent and value of the homestead does not exceed that fixed by law. *Farmers' Bank v. Knife River Lumber & Grain Co.* 37 N. D. 371, 163 N. W. 1053.

See also *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

§ 5622. Comp. Laws, 1913.

Husband cannot waive or forfeit homestead rights of wife. *Schaf v. Corey*, — N. D. —, 196 N. W. 502.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

§ 5623. Comp. Laws, 1913.

Husband cannot waive or forfeit homestead rights of wife. *Schaf v. Corey*, — N. D. —, 196 N. W. 502.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

See also *Krumenacker v. Andis*, 38 N. D. 500, 165 N. W. 524; *O'Hare v. Bismarck Bank*, 45 N. D. 641, 178 N. W. 1017.

§§ 5624, 5625. Comp. Laws, 1913.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

§ 5626. Comp. Laws, 1913.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

See also *Healy v. Bismarck Bank*, 30 N. D. 628, 153 N. W. 392; *O'Hare v. Bismarck Bank*, 45 N. D. 641, 178 N. W. 1017; *Tromsdahl v. Nass*, 27 N. D. 441, 52 L.R.A.(N.S.) 746, 146 N. W. 719.

§ 5627. Comp. Laws, 1913.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

Death of husband does not vest title to homestead in wife, but she takes estate for life or years according to statute. *O'Hare v. Bismarck Bank*, 45 N. D. 641, 178 N. W. 1017.

See also *Healy v. Bismarck Bank*, 30 N. D. 628, 153 N. W. 392; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§ 5628. Comp. Laws, 1913.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

See also *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§ 5629. Comp. Laws, 1913.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

See also *Severtson v. Peoples*, 28 N. D. 372, 148 N. W. 1054; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§ 5630. Comp. Laws, 1913.

Upon death of head of family, homestead survives for benefit of surviving husband, or wife and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

See also *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§ 5631. Comp. Laws, 1913.

Upon death of head of family, homestead survives for benefit of surviving husband or wife, and minor children. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

Death of husband, leaving wife as sole heir, vests fee in homestead in wife exempt from any claims, except those specifically prescribed by statute. *Swiden v. Hasn*, 43 N. D. 360, 175 N. W. 213; *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

§ 5632. Comp. Laws, 1913.

Cullen v. Sullivan, — N. D. —, 199 N. W. 760.

CHAPTER 52.

WILL.

- ARTICLE 1. EXECUTION AND REVOCATION OF WILL, §§ 5640-5680.
 2. INTERPRETATION OF WILLS AND EFFECT OF VARIOUS PROVISIONS, §§ 5685-5708.
 3. GENERAL PROVISIONS, §§ 5720-5732.

ARTICLE 1.—EXECUTION AND REVOCATION OF WILL.

§ 5640. Comp. Laws, 1913.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

§ 5649. Comp. Laws, 1913.

Whether or not will was witnessed in presence of testatrix, question for jury. *Ostlund v. Ecklund*, 45 N. D. 76, 176 N. W. 350.

Word "declare," means to make known, to signify, or show in any manner, either by words or conduct, that the instrument that the testator signed, is his will. *Edwardson v. Gerwien*, 41 N. D. 506, 171 N. W. 101.

See also *Novak v. Lovin*, 33 N. D. 424, 157 N. W. 297.

§ 5667. Comp. Laws, 1913.

Torgerson v. Hauge, 34 N. D. 646, 3 A.L.R. 164, 159 N. W. 6.

§ 5678. Comp. Laws, 1913.

Kahoutek v. Kahoutek, 39 N. D. 215, 166 N. W. 816.

§ 5680. Comp. Laws, 1913.

Section applies only to subscribing witnesses to will. *Keller v. Reichert*, — N. D. —, 189 N. W. 690.

ARTICLE 2.—INTERPRETATION OF WILLS AND EFFECT OF VARIOUS PROVISIONS.

§ 5685. Comp. Laws, 1913.

In construction of wills, first duty of court is to ascertain intent of testator from language used upon subject-matter devised, considering circumstances under which will was made. *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732.

See also *Kahoutek v. Kahoutek*, 39 N. D. 215, 166 N. W. 816.

§ 5686. Comp. Laws, 1913.

Where there is a latent ambiguity, and where the false words may be stricken out, leaving enough to evidence intention of testator, and to describe the legatee, extrinsic evidence is permissible; but not to correct a mere mistake. *Kahoutek v. Kahoutek*, 39 N. D. 215, 166 N. W. 816.

See also *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732.

§ 5687. Comp. Laws, 1913.

In construction of wills, first duty of court is to ascertain intent of testator from language used upon subject-matter devised, considering circumstances under which will was made. *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732.

See also *Kahoutek v. Kahoutek*, 39 N. D. 215, 166 N. W. 816.

§§ 5689, 5692. Comp. Laws, 1913.

Kahoutek v. Kahoutek, 39 N. D. 215, 166 N. W. 816.

§ 5693. Comp. Laws, 1913.

Kahoutek v. Kahoutek, 39 N. D. 215, 166 N. W. 816; *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732.

§ 5694. Comp. Laws, 1913.

Kahoutek v. Kahoutek, 39 N. D. 215, 166 N. W. 816.

§ 5708. Comp. Laws, 1913.

Where there is a latent ambiguity, and where the false words may be stricken out, leaving enough to evidence intention of testator, and to describe legatee, extrinsic evidence is permissible, but not to correct a mere mistake. *Kahoutek v. Kahoutek*, 39 N. D. 215, 166 N. W. 816.

ARTICLE 3.—GENERAL PROVISIONS.

§ 5720. Comp. Laws, 1913.

Residuary legacy embraces only what remains after discharge of bequests; general legatee not required to contribute to expenses of administration where contribution would enhance a residuary legacy, and decrease a general legacy. *Re Murphy*, 48 N. D. 1267, 189 N. W. 497.

§§ 5721, 5722. Comp. Laws, 1913.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

§ 5727. Comp. Laws, 1913.

Arntson v. First Nat. Bank, 39 N. D. 408, L.R.A.1918F, 1038, 167 N. W. 760.

§ 5732. Comp. Laws, 1913.

Widow not entitled to interest, where provision made for widow constitutes both legacy and a devise, and where amount of gift depends upon value of estate, including expenses, dividends, and accretions. *Re Murphy*, 48 N. D. 1267, 189 N. W. 497.

CHAPTER 53.

SUCCESSION.

§ 5741. Comp. Laws, 1913.

As to whether father of insured intestate is an "heir" rendering him capable of sharing in proceeds of policy. *Maixner v. Zumpf*, — N. D. —, 199 N. W. 183.

§ 5742. Comp. Laws, 1913.

As to whether father of insured intestate is an "heir," rendering him capable of sharing in proceeds of policy. *Maixner v. Zumpf*, — N. D. —, 199 N. W. 183.

See also *Cathro v. McArthur*, 30 N. D. 337, 152 N. W. 686; *Arntson v. First Nat. Bank*, 39 N. D. 408, L.R.A.1918F, 1038, 167 N. W. 760; *Delaney v. State*, 42 N. D. 630, 174 N. W. 290; *Stenson v. H. S. Halvorson Co.* 28 N. D. 151, L.R.A. 1915A 1179, 147 N. W. 800.

§ 5743. **Subdiv. 2. Order of succession.** If the decedent leaves no issue and the estate does not exceed in value the sum of fifteen thousand dollars, all the estate goes to the surviving husband or wife, and as to all property in excess of fifteen thousand dollars in value, one-half thereof goes to the surviving husband or wife and the other one-half goes to the decedent's father or mother in equal shares, and if either is dead to the survivor; if the decedent leaves no issue and both father and mother are dead and the estate does not exceed in value twenty-five thousand dollars, the whole thereof goes to the surviving husband or wife; as to all property in excess of twenty-five thousand dollars in value, one-half thereof goes to the surviving husband or wife, and if the decedent leaves brothers or sisters or children of deceased brothers or sisters, then the other one-half thereof in equal shares to the brothers or sisters of decedent and to the children of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to the father and mother in equal shares, and if either is dead, to the survivor. If the decedent leaves a surviving husband or wife and no issue, and no father nor mother, nor brother nor sister, nor children of a deceased brother or sister, then the whole estate goes to the surviving husband or wife. [Laws 1915, ch. 249, § 1.]

As to whether father of insured intestate is an "heir" rendering him capable of sharing in proceeds of policy. *Maixner v. Zumpf*, — N. D. —, 199 N. W. 183.

See also *Delaney v. State*, 42 N. D. 630, 174 N. W. 290; *Swiden v. Hasn*, 43 N. D. 360, 175 N. W. 213; *Dow v. Little*, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082.

Descent and Distribution, 18 C. J. pp. 828-834 §§ 41-54, pp. 843-850 §§ 78-92.
Husband and wife as heirs of each other. 9 R. C. L. 51, et seq. and Supps.

§ 5760. Comp. Laws, 1913.

Section gives exclusive remedy to perfect escheat. *Delaney v. State*, 42 N. D. 630, 174 N. W. 290.

See also *Maixner v. Zumpf*, — N. D. —, 199 N. W. 183.

§ 5761. Comp. Laws, 1913.

Delaney v. State, 42 N. D. 630, 174 N. W. 290.

CHAPTER 54.

OBLIGATIONS.

- ARTICLE 1. DEFINITIONS OF OBLIGATIONS, § 5763.
2. INTERPRETATION OF OBLIGATIONS, §§ 5771-5777.
3. TRANSFER OF OBLIGATIONS, §§ 5782-5792.
4. EXTINCTION OF OBLIGATIONS, §§ 5799-5819.
5. PERFORMANCE OF OBLIGATIONS OR OFFER, §§ 5821, 5824.
6. ACCORD AND SATISFACTION OF OBLIGATIONS, §§ 5825-5828.
7. NOVATION, § 5830.
8. RELEASE, §§ 5833-5835.

ARTICLE 1.—DEFINITION OF OBLIGATIONS.

§ 5763. Comp. Laws, 1913.

Liability a law dependent upon violation of some legal duty owing to another. *Lark Equity Exch. v. Jones*, 42 N. D. 145, 171 N. W. 863.

ARTICLE 2.—INTERPRETATION OF OBLIGATIONS.

§ 5771. Comp. Laws, 1913.

Performance of all conditions precedent necessary, before other party can be called upon to perform his part. *Sunshine Cloak & Suit Co. v. Roquette Bros.* 30 N. D. 143, L.R.A.1916E, 932, 152 N. W. 359.

Agreement by vendor to produce an abstract, showing good and merchantable title to property conveyed, is a condition precedent, which must be complied with before he can require vendee to perform. *Kennedy v. Dennstadt*, 31 N. D. 422, 154 N. W. 271.

See also *Lilly v. Haynes Co-op. Coal Min. Co.*, — N. D. —, 196 N. W. 556.

§ 5772. Comp. Laws, 1913.

Kennedy v. Dennstadt, 31 N. D. 422, 154 N. W. 271.

§ 5774. Comp. Laws, 1913.

Agreement by vendor, to produce an abstract, showing good and merchantable title to property conveyed, is a condition precedent, which must be complied with before he can compel vendee to perform. *Kennedy v. Dennstadt*, 31 N. D. 422, 154 N. W. 271.

See also *Sunshine Cloak & Suit Co. v. Roquette Bros.*, 30 N. D. 143, L.R.A. 1916E, 932, 152 N. W. 359.

§ 5775. Comp. Laws, 1913.

As to anticipatory breach of executory contract of purchase and sale. *Stanford v. McGill*, 6 N. D. 536, 38 L.R.A. 760, 72 N. W. 938 overruled. *Hart-Parr Co. v. Finley*, 31 N. D. 130, L.R.A.1915E, 851, 153 N. W. 137.

In action to recover price or value of goods, plaintiff has burden to prove the contract, items, delivery and acceptance, compliance by him, or waiver by buyer, and that the goods delivered complied with the contract. *Skogness v. Seger*, 35 N. D. 366, 160 N. W. 508.

§ 5777. Comp. Laws, 1913.

Pearson v. Ellithorpe, 48 N. D. 332, 184 N. W. 672.

ARTICLE 3.—TRANSFER OF OBLIGATIONS.

§ 5782. Comp. Laws, 1913.

Merchants State Bank v. Sawyer Farmers' Co-op. Asso. 47 N. D. 375, 14 A.L.R. 1353, 182 N. W. 263; *Dixon-Reo Co. v. Horton Motor Co.* — N. D. —, 191 N. W. 780.

§ 5783. Comp. Laws, 1913.

Gardner v. Stangebye, 48 N. D. 513, 185 N. W. 369; *Dixon-Reo Co. v. Horton Motor Co.* — N. D. —, 191 N. W. 780.

§§ 5785–5792. Comp. Laws, 1913.

Mercer County State Bank v. Hayes, 34 N. D. 601, 159 N. W. 74.

ARTICLE 4.—EXTINCTION OF OBLIGATIONS.

§ 5799. Comp. Laws, 1913.

Payment in part of indebtedness secured by mortgage, directed by debtor to be applied in mortgage, reduces the mortgage, and the creditor cannot thereafter apply the same upon another debt. *Hagen v. Dwyer*, 36 N. D. 346, 162 N. W. 699.

§ 5800. Comp. Laws, 1913.

Tender and deposit pursuant to law, of full amount due upon note secured by mortgages, extinguishes obligation. *Swallow v. First State Bank*, 35 N. D. 608, 161 N. W. 207.

§ 5805. Comp. Laws, 1913.

Sunshine Cloak & Suit Co. v. Roquette Bros. 30 N. D. 143, L.R.A.1916E, 932, 152 N. W. 359.

§ 5815. Comp. Laws, 1913.

Offer by owner of impounded cattle to pay damages and costs, thirteen days

after notice, held not to extinguish debt nor constitute an offer of judgment for the same. *Ryding v. Hanson*, 30 N. D. 99, 152 N. W. 120.

Tender and deposit in a bank of full amount due upon rates secured by mortgage, extinguishes obligation, entitling mortgagor to discharge, which it refused by mortgage, renders him liable to penalty. *Swallow v. First State Bank*, 35 N. D. 608, 161 N. W. 207.

See also *Fox v. Nelson*, 30 N. D. 589, 153 N. W. 395; *Raad v. Grant*, 43 N. D. 546, 169 N. W. 588; *Streeter v. Archer*, 46 N. D. 251, 176 N. W. 826; *Harth v. St. Paul Cattle Loan Co.* — N. D. —, 191 N. W. 615.

§ 5816. Comp. Laws, 1913.

Thornhill v. Olson, 31 N. D. 81, L.R.A.1916A, 493, 153 N. W. 442.

§ 5819. Comp. Laws, 1913.

Anderson v. Phillips, 40 N. D. 586, 169 N. W. 315; *Harth v. St. Paul Cattle Loan Co.*, — N. D. —, 191 N. W. 615.

ARTICLE 5.—PERFORMANCE OF OBLIGATIONS OR OFFER.

§ 5821. Comp. Laws, 1913.

Submitting to jury sufficiency of plaintiff's tender of performance or his justification in refusing to perform, where parties to contract differed on true consideration of same, proper. *Pattee v. Prall*, 45 N. D. 107, 176 N. W. 659.

See also *Hart-Parr Co. v. Finley*, 31 N. D. 130, L.R.A.1915E, 851, 153 N. W. 137.

§ 5824. Comp. Laws, 1913.

Hart-Parr Co. v. Finley, 31 N. D. 130, L.R.A.1915E, 851, 153 N. W. 137.

ARTICLE 6.—ACCORD AND SATISFACTION OF OBLIGATIONS.

§ 5825. Comp. Laws, 1913.

Agreement and acceptance of consideration for accord and satisfaction prerequisite to extinguishment of obligation. *Billings v. G. Doering Grain Co.* 47 N. D. 196, 181 N. W. 54.

There may be an accord of either a liquidated or a disputed unliquidated demand. *Wilkins v. National Union F. Ins. Co.* 48 N. D. 1295, 189 N. W. 317.

"Final loss adjustment," and paid draft held to constitute a good accord and satisfaction of obligations on account of crop insurance policy. *Rokusek v. National Union F. Ins. Co.* — N. D. —, 195 N. W. 300.

See also *Meske v. Melicher*, — N. D. —, 194 N. W. 737.

§ 5826. Comp. Laws, 1913.

Written acknowledgment of satisfaction by payment of lesser amount, or payment of lesser amount in pursuance of written agreement, obviates necessity for new consideration for satisfaction; offer made in writing may be withdrawn before final payment. *Strobeck v. Blackmore*, 38 N. D. 593, 165 N. W. 980.

Upon non-execution of accord, insured may maintain action upon original insurance policy. *Lehde v. National Union F. Ins. Co.* 46 N. D. 162, 180 N. W. 56.

Upon partial execution of agreement for accord, creditor may either sue on original claim for any balance remaining, or sue for breach of contract for accord. *Meske v. Melicher*, — N. D. —, 194 N. W. 737.

See also *Wilkins v. National Union F. Ins. Co.* 48 N. D. 1295, 189 N. W. 317; *Rokusek v. National Union F. Ins. Co.* — N. D. —, 195 N. W. 300.

§ 5827. Comp. Laws, 1913.

Agreement and acceptance of consideration for accord and satisfaction prerequisite to extinguishment of obligation. *Billings v. G. Doering Grain Co.* 47 N. D. 196, 181 N. W. 54.

See also *Rokusek v. National Union F. Ins. Co.* — N. D. —, 195 N. W. 300.

§ 5828. Comp. Laws, 1913.

Written acknowledgment of satisfaction by payment of lesser amount, or payment of lesser amount in pursuance of written agreement, obviates necessity

for new consideration for satisfaction; offer made in writing may be withdrawn before final payment. *Strobeck v. Blackmore*, 38 N. D. 593, 165 N. W. 980.

"Final loss adjustment," and paid draft, held to constitute good accord and satisfaction of obligations on account of crop insurance policy. *Rokusek v. National Union F. Ins. Co.* — N. D. —, 195 N. W. 300.

ARTICLE 7.—NOVATION.

§ 5830. Comp. Laws, 1913.

State ex rel. *Olson v. Royal Indemnity Co.* 44 N. D. 550, 175 N. W. 625.

ARTICLE 8.—RELEASE.

§ 5833. Comp. Laws, 1913.

Written acknowledgment of satisfaction by payment of lesser amount or payment of lesser amount in pursuance of written agreement, obviates necessity for new consideration for satisfaction; offer made in writing may be withdrawn before final payment. *Strobeck v. Blackmore*, 38 N. D. 593, 165 N. W. 980.

See also *Quinlivan v. Dennstedt Land Co.* 39 N. D. 606, 168 N. W. 51.

§ 5834. Comp. Laws, 1913.

Release given by passenger, injured while on railway train, of his cause of action, induced by false representations, may be rescinded, and action for damages may be maintained without decree canceling release. *Clark v. Northern P. R. Co.* 36 N. D. 503, L.R.A.1916E, 399, 162 N. W. 406.

§ 5835. Comp. Laws, 1913.

Orth v. Procise, 42 N. D. 149, 171 N. W. 861; *State v. Royal Indemnity Co.* 44 N. D. 550, 175 N. W. 625.

CHAPTER 55.

CONTRACTS.

- ARTICLE 1. DEFINITION, §§ 5836, 5837.
 2. PARTIES, § 5841.
 3. CONSENT, §§ 5842–5866.
 4. OBJECT OF A CONTRACT, § 5876.
 5. CONSIDERATION, §§ 5872–5882.
 6. MANNER OF CREATING CONTRACTS, §§ 5885–5894.
 7. INTERPRETATION OF CONTRACTS, §§ 5896–5921.
 8. UNLAWFUL CONTRACTS, §§ 5922–5929.
 9. RESCISSION OF CONTRACTS, §§ 5933–5936.
 10. ALTERATION AND CANCELATION OF CONTRACTS, §§ 5938, 5940.

ARTICLE 1.—DEFINITION.

§ 5836. Comp. Laws, 1913.

Maas v. Rettke, 41 N. D. 63, 170 N. W. 309.

§ 5837. Comp. Laws, 1913.

Contract to be valid must be made by capable parties, and must have a sufficient consideration. *Shellburg v. Wilton Bank*, 39 N. D. 530, 167 N. W. 721.

See also *Maas v. Rettke*, 41 N. D. 63, 170 N. W. 309; *Guild v. More*, 32 N. D. 432, 155 N. W. 44.

ARTICLE 2.—PARTIES.

§ 5841. Comp. Laws, 1913.

Third person for whose benefit contract is made may enforce it, before rescission by the parties: contract cannot be rescinded to detriment of third party, where he approves, and accepts it, and acts thereunder. *State Bank v. Schultze*, — N. D. —, 199 N. W. 138.

Third party not entitled to sue on benefit incidentally derived from contract, not within contemplation of parties thereto. *Farmers State Bank v. Anton*, — N. D. —, 199 N. W. 582.

See also *First Nat. Bank v. Burdick*, — N. D. —, 200 N. W. 44; *Herrmann v. State Bank*, 34 N. D. 313, 158 N. W. 986; *Steen v. Neva*, 37 N. D. 40, 163 N. W. 272; *Brown v. Leeak*, — N. D. —, 203 N. W. 185.

ARTICLE 3.—CONSENT.

§ 5842. Comp. Laws, 1913.

Knowingly causing one to sign note by mistake of law, as fraud. *Orth v. Procise*, 38 N. D. 580, 165 N. W. 557.

Consent of parties to contract, must be free and mutual, and communicated by each to the other. Both parties must be bound, or neither is bound. *Shellburg v. Wilton Bank*, 39 N. D. 530, 167 N. W. 721; *Maas v. Rettke*, 41 N. D. 63, 170 N. W. 309.

There is no free or mutual consent to a contract, where it is signed under mistake of fact. *Streeter v. Archer*, 46 N. D. 251, 176 N. W. 826.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *Kuhn v. Marquart*, 45 N. D. 482, 178 N. W. 428; *State v. Taylor*, 31 N. D. 236, 153 N. W. 981.

§ 5843. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981.

§ 5844. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

Knowingly causing one to sign note, by mistake of law, as fraud. *Orth v. Procise*, 38 N. D. 580, 165 N. W. 557.

Consent obtained by undue influence or taking advantage of one's weakness of mind, is not free. *Shellburg v. Wilton Bank*, 39 N. D. 530, 167 N. W. 721.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981; *Guild v. More*, 32 N. D. 432, 155 N. W. 44; *Jacobson v. Mohall Teleph. Co.* 34 N. D. 213, L.R.A.1916F, 532, 157 N. W. 1033; *Clark v. Northern P. R. Co.* 36 N. D. 503, L.R.A.1917E, 399, 162 N. W. 406; *Kuhn v. Marquart*, 45 N. D. 482, 178 N. W. 428.

§ 5845. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981.

§ 5846. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981; *Johanna v. Lennon*, 32 N. D. 71, 155 N. W. 685.

§ 5847. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981.

§ 5848. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981; *Johanna v. Lennon*, 32 N. D. 71, 155 N. W. 685.

§ 5849. Comp. Laws, 1913.

Representations, believed to be true by defendant, made without intent to deceive and causing no damage, held warranted by information in possession of

defendant, and plaintiff could not rescind contract. *O'Hair v. Sutherland*, 30 N. D. 103, 152 N. W. 123.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

Upon establishment of fraud, at inception of contract and note, burden shifts to indorsee to prove that he was bona fide purchaser without notice before maturity. *Stevens v. Barnes*, 43 N. D. 483, 18 A.L.R. 10, 175 N. W. 709.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981; *Crane & O. Co. v. Sykeston School Dist.* 36 N. D. 254, 162 N. W. 413; *Johanna v. Lennon*, 32 N. D. 71, 155 N. W. 685; *Clark v. Northern P. R. Co.* 36 N. D. 503, L.R.A.1917E, 399, 162 N. W. 406; *Swan v. Great Northern R. Co.* 40 N. D. 258, L.R.A.1918F, 1063, 163 N. W. 657; *Dalheimer v. Lucia*, — N. D. —, 194 N. W. 925.

§ 5850. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

Constructive fraud cannot be proved under allegation of actual fraud. *Pratt v. Huber Mfg. Co.* 41 N. D. 301, 171 N. W. 246.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981; *Johanna v. Lennon*, 32 N. D. 71, 155 N. W. 685.

§ 5851. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981; *Clark v. Northern P. R. Co.* 36 N. D. 503, L.R.A.1917E, 399, 162 N. W. 406.

§ 5852. Comp. Laws, 1913.

Intoxication as affecting consent. *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

Rescission of conveyance of land for undue influence. *Buchanan v. Prall*, 39 N. D. 423, 167 N. W. 488.

See also *State v. Taylor*, 31 N. D. 236, 153 N. W. 981.

§ 5854. Comp. Laws, 1913.

Acquiring title and causing lien of a mortgage to be cancelled, in ignorance of defects of title, ground for cancellation of release, and for subrogation to mortgagee's rights thereunder. *Hodge v. Dunlop*, — N. D. —, 190 N. W. 551.

§ 5855. Comp. Laws, 1913.

Contract induced under misapprehension of law by one party, of which the other is aware, may be rescinded. *Hellebust v. Bonde*, 42 N. D. 324, 172 N. W. 812; *Orth v. Procise*, 38 N. D. 580, 165 N. W. 557.

Payment by city of part of mothers' pension under misapprehension of law, is not voluntary, and money must be refunded. *Bismarek v. Burleigh County*, — N. D. —, 190 N. W. 811.

See also *Jacobson v. Mohall Teleph. Co.* 34 N. D. 213, L.R.A.1916F, 532, 157 N. W. 1033; *Maas v. Rettke*, 41 N. D. 63, 170 N. W. 309.

§ 5858. Comp. Laws, 1913.

Hellebust v. Bonde, 42 N. D. 324, 172 N. W. 812.

§ 5862. Comp. Laws, 1913.

Grow v. Taylor, 23 N. D. 469, 137 N. W. 451.

§ 5866. Comp. Laws, 1913.

Smith v. Bradley, 27 N. D. 613, 147 N. W. 784; *Northern Trust Co. v. Bruegger*, 35 N. D. 150, 159 N. W. 859.

ARTICLE 4.—OBJECT OF A CONTRACT.

§ 5867. Comp. Laws, 1913.

Gile v. Interstate Motor Car Co. 27 N. D. 108, L.R.A.1915B, 109, 145 N. W. 732.

ARTICLE 5.—CONSIDERATION.

§ 5872. Comp. Laws, 1913.

Promise to release seed lien, good consideration for promise to pay money; surrender of legal right, whether or not it has a substantial value, is a legal detriment. *Divide County v. Citizens' State Bank*, — N. D. —, 201 N. W. 693.

See also *Maas v. Rettke*, 41 N. D. 63, 170 N. W. 309; *Farmers State Bank v. Anton*, — N. D. —, 199 N. W. 582.

§ 5880. Comp. Laws, 1913.

Clow v. Sweeney, 42 N. D. 194, 172 N. W. 66.

§ 5881. Comp. Laws, 1913.

Quinlivan v. Dennstedt Land Co. 39 N. D. 606, 168 N. W. 51; *Clow v. Sweeney*, 42 N. D. 194, 172 N. W. 66; *Stubbins Hotel Co. v. Beissbarth*, 43 N. D. 191, 174 N. W. 217.

§ 5882. Comp. Laws, 1913.

In action on promissory note, maker has burden of proving want of consideration, where he alleges such want as defense. *First State Bank v. Radke*, — N. D. —, 35 A.L.R. 1355, 199 N. W. 930.

In action to set aside written instrument, valid on its face, for failure of consideration, the burden of proof is upon the plaintiff. *Englert v. Dale*, 25 N. D. 587, 142 N. W. 169.

See also *Stubbins Hotel Co. v. Beissbarth*, 43 N. D. 191, 174 N. W. 217; *Clow v. Sweeney*, 42 N. D. 194, 172 N. W. 66.

ARTICLE 6. MANNER OF CREATING CONTRACTS.

§ 5885. Comp. Laws, 1913.

From the acknowledgment of the existence of a debt, law implies a promise to pay. *Finch, Van Slyke & McConville v. Styer*, — N. D. —, 199 N. W. 444.

§ 5886. Comp. Laws, 1913.

Contract, for the sale of land, entered into by an agent having verbal authority to secure purchaser, is void. *Holland v. Johnson*, 42 N. D. 360, 174 N. W. 874.

§ 5888. Subdiv. 4. Repealed by § 6002a81, post.

Contract, which may be performed within a year, not required to be in writing. *Bergh v. John Wymon Farm Land & Loan Co.* 30 N. D. 158, 152 N. W. 281.

Contract to give real estate security, must, to be valid, be reduced to writing. *First Nat. Bank v. Messner*, 35 N. D. 78, 159 N. W. 92.

Antenuptial agreement, other than mutual promise to marry, must, to be valid, be in writing. *Fischer v. Dolwig*, 39 N. D. 161, 166 N. W. 793.

As to creation of oral trust. *Arnston v. First Nat. Bank*, 39 N. D. 408, L.R.A. 1918F, 1038, 167 N. W. 760.

Declaration by defendant that he would see that plaintiff got his pay, for goods delivered to a third person, in a promise to pay for debt, default, or miscarriage of another within the statute of frauds. *Gidley v. Glass*, 41 N. D. 542, 171 N. W. 93.

Oral contract to hold land in trust, is within statute of frauds and is void. *Weber v. Bader*, 42 N. D. 142, 172 N. W. 72.

Oral contract extending time for payment of note, within statute of frauds. *Bangs, Berry & Carson v. Nichols*, 47 N. D. 123, 181 N. W. 87.

Oral lease for term of four years, not binding, unless reduced to writing. *Valker v. National Tea Co.* 48 N. D. 982, 188 N. W. 306.

See also *Bach v. Lyons*, 42 N. D. 25, 171 N. W. 890; *Wilson Co. v. Knowles*, — N. D. —, 204 N. W. 663.

§ 5889. Comp. Laws, 1913.

Parol evidence admissible to show that one was fraudulently induced to become a party to a contract, even though the contract is in writing. *Dalheimer v. Lucia*, — N. D. —, 194 N. W. 925.

Parol testimony inadmissible to vary terms of complete and unambiguous contract; but where it is not complete, parol testimony is admissible, to establish

part that is not complete. *Streeter v. Archer*, 46 N. D. 251, 176 N. W. 826; *Gilbert Mfg. Co. v. Bryan*, 39 N. D. 13, 166 N. W. 805; *Stair v. Hibbs*, — N. D. —, 204 N. W. 621.

As to admissibility of parol evidence to explain negotiable instrument. *First State Bank v. Kelly*, 30 N. D. 84, 152 N. W. 125.

See also *Quinlivan v. Dennstedt Land Co.* 39 N. D. 606, 168 N. W. 51; *Gussner v. Miller*, 44 N. D. 587, 176 N. W. 359; *Minneapolis Thresh. Mach. Co. v. Huncovsky*, — N. D. —, 194 N. W. 830; *Harney v. Wirtz*, 30 N. D. 292, 152 N. W. 803; *Erickson v. Wiper*, 33 N. D. 193, 157 N. W. 592; *Foot Schulze & Co. v. Skeffington*, — N. D. —, 202 N. W. 642.

§ 5891. Comp. Laws, 1913.

Written instruments, such as promissory note and mortgages, have no legal inception, until delivery, in accordance with intention of parties. *Stockton v. Turner*, 30 N. D. 641, 153 N. W. 275.

See also *First State Bank v. Kelly*, 30 N. D. 84, 152 N. W. 125; *Guild v. More*, 32 N. D. 432, 155 N. W. 44; *Foot Schulze & Co. v. Skeffington*, — N. D. —, 202 N. W. 642; *Douglas County State Bank v. Sutherland*, — N. D. —, 204 N. W. 683.

§ 5894. Comp. Laws, 1913.

Quinlivan v. Dennstedt Land Co. 39 N. D. 606, 168 N. W. 51.

ARTICLE 7.—INTERPRETATION OF CONTRACTS.

§ 5896. Comp. Laws, 1913.

Hage v. M. Sigbert Awes Co. 46 N. D. 133, 179 N. W. 986; *Gladstone Equity Exch. Co. v. Hines*, 47 N. D. 454, 182 N. W. 763; *Halstead v. Missouri Slope Land & Invest. Co.* 48 N. D. 220, 184 N. W. 284; *Dixon-Reo v. Horton Motor Co.* — N. D. — 191 N. W. 780; *Hutchinson v. Bohnsack School Dist.* — N. D. —, 199 N. W. 484; *Harney v. Wirtz*, 30 N. D. 292, 152 N. W. 803.

§§ 5897-5899. Comp. Laws, 1913.

Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803.

§ 5901. Comp. Laws, 1913.

Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803; *Gladstone Equity Exch. Co. v. Hines*, 47 N. D. 454, 182 N. W. 763; *Kennedy v. Dennstadt*, 31 N. D. 422, 154 N. W. 271; *Dixon-Reo Co. v. Horton Motor Co.* — N. D. —, 191 N. W. 780; *Hutchinson v. Bohnsack School Dist.* — N. D. —, 199 N. W. 484.

§ 5902. Comp. Laws, 1913.

Section merely establishes rule of interpretation. *Emlden State Bank v. Boyle*, — N. D. —, 196 N. W. 820.

See also *Merchants Nat. Bank v. Reiland*, — N. D. —, 199 N. W. 945.

§ 5903. Comp. Laws, 1913.

Halstead v. Missouri Slope Land & Invest. Co. 48 N. D. 220, 184 N. W. 284.

§ 5904. Comp. Laws, 1913.

Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803; *Emlden State Bank v. Boyle*, — N. D. —, 196 N. W. 820.

§ 5905. Comp. Laws, 1913.

Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803.

§ 5907. Comp. Laws, 1913.

Ambiguous contract should be interpreted in the circumstance in which it was made and matter to which it relates. *Powell v. International Harvester Co.* 41 N. D. 220, 170 N. W. 559.

See also *Keck v. Kavanaugh*, 45 N. D. 81, 177 N. W. 99; *Hage v. Sigbert Awes Co.* 46 N. D. 133, 179 N. W. 986; *Halstead v. Missouri Slope Land & Inv. Co.* 48 N. D. 220, 184 N. W. 284.

§ 5908. Comp. Laws, 1913.

Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803; *Powell v. International Harvester*

Co. 41 N. D. 220, 170 N. W. 559; Gladstone Equity Exchange Co. v. Hines, 47 N. D. 454, 182 N. W. 763; Dixon-Reo Co. v. Horton Motor Co. — N. D. —, 191 N. W. 780.

§ 5909. Comp. Laws, 1913.

Citizens State Bank v. Lockwood, 32 N. D. 381, 156 N. W. 47.

§ 5910. Comp. Laws, 1913.

Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803; Gladstone Equity Exchange Co. v. Hines, 47 N. D. 454, 182 N. W. 763; Halstead v. Missouri Slope Land & Invest. Co. 48 N. D. 220, 184 N. W. 284; Dixon-Reo Co. v. Horton Motor Co. — N. D. —, 191 N. W. 780.

§ 5911. Comp. Laws, 1913.

Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803.

§ 5913. Comp. Laws, 1913.

Words inconsistent with nature of contract or with main intention, should be rejected. Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803.

§§ 5915, 5916. Comp. Laws, 1913.

What is implied in an express contract is as much a part of it as what is expressed. Mace v. Cole, — N. D. —, 35 A.L.R. 445, 198 N. W. 816.

§ 5917. Comp. Laws, 1913.

What is implied in an express contract is as much a part of it as what is expressed. Mace v. Cole, — N. D. —, 35 A.L.R. 445, 198 N. W. 816.

See also Sunshine Cloak & Suit Co. v. Roquette Bros. 30 N. D. 143, L.R.A. 1916E, 932, 152 N. W. 359; Citizens State Bank v. Lockwood, 32 N. D. 381, 156 N. W. 47.

§ 5918. Comp. Laws, 1913.

Time, to be essence of contract, must be so expressed. Sunshine Cloak & Suit Co. v. Roquette Bros. 30 N. D. 143, L.R.A.1916E, 932, 152 N. W. 359.

§ 5921. Comp. Laws, 1913.

Under contract of sale, until transfer of title of subject matter, the contract remains executory. Gile v. Interstate Motor Car Co. 27 N. D. 108, L.R.A. 1915B, 109, 145 N. W. 732.

See also Sunshine Cloak & Suit Co. v. Roquette Bros. 30 N. D. 143, L.R.A. 1916E, 932, 152 N. W. 359; Guild v. More, 32 N. D. 432, 155 N. W. 44; Gardner v. Lindeman, 41 N. D. 25, 169 N. W. 807.

ARTICLE 8.—UNLAWFUL CONTRACTS.

§ 5922. Comp. Laws, 1913.

Contracts by bank to purchase land, and to pay mortgage on land conveyed to it, in violation of statute, not merely ultra vires, but unlawful and void. Smith v. Rennix, — N. D. —, 204 N. W. 843.

See also Harney v. Wirtz, 30 N. D. 292, 152 N. W. 803.

§ 5925. Comp. Laws, 1913.

Agreement to pay liquidated damages for failure of mortgagor to pay first installment due on mortgage out of a certain crop held void. Hockspring v. Young, 27 N. D. 322, 146 N. W. 547.

See also Halstead v. Missouri Slope Land & Invest. Co. 48 N. D. 220, 184 N. W. 284; Halstead v. Missouri Slope Land & Invest. Co. 48 N. D. 1001, 188 N. W. 163.

§ 5926. Comp. Laws, 1913.

Agreement to pay liquidated damages for failure of mortgagor to pay installment due on mortgage out of a certain crop, held void. Hockspring v. Young, 27 N. D. 322, 146 N. W. 547.

See also Halstead v. Missouri Slope Land & Invest. Co. 48 N. D. 220, 184 N. W. 284; Gile v. Interstate Motor Car Co. 27 N. D. 108, L.R.A.1915B, 109, 145 N. W. 732.

§ 5927. Comp. Laws, 1913.

Limiting time within which one may enforce his rights under an insurance policy, to six months after rejection of claim, held void. *Dinnie v. United Commercial Travelers*, 41 N. D. 42, 169 N. W. 811.

See also *Graham v. Alliance Hail Asso.* 47 N. D. 425, 182 N. W. 463.

§ 5929. Comp. Laws, 1913.

Party selling business can only agree with buyer to refrain from carrying on a similar business within a specified county or city. *Strobeek v. McWilliams*, 42 N. D. 30, 171 N. W. 865.

Oral contract to refrain from engaging in grocery business, held void, as being in restraint of trade, where evidence failed to establish sale of good will of business carried on in building sold. *Brottman v. Schela*, — N. D. —, 202 N. W. 132.

ARTICLE 9.—RESCISSION OF CONTRACTS.

§ 5933. Comp. Laws, 1913.

O'Hair v. Sutherland, 30 N. D. 103, 152 N. W. 123; *Donovan v. Dickson*, 37 N. D. 404, 164 N. W. 27.

§ 5934. Comp. Laws, 1913.

Failure of consideration in any material respect from any cause gives buyer of goods right to rescind contract. *State Bank v. Sukirt*, — N. D. —, 196 N. W. 100.

See also *Crane & O. Co. v. Sykeston School Dist.* 36 N. D. 254, 162 N. W. 413; *Thronson v. Blough*, 38 N. D. 574, 166 N. W. 132; *O'Hair v. Sutherland*, 30 N. D. 103, 152 N. W. 123; *Donovan v. Dickson*, 37 N. D. 404, 164 N. W. 27; *Swan v. Great Northern R. Co.* 40 N. D. 258, L.R.A.1918F, 1063, 168 N. W. 657; *Mathias v. State Farmers' Mut. Hail Ins. Co.* 40 N. D. 240, 168 N. W. 664; *Western Electric Co. v. Jamestown*, 47 N. D. 157, 181 N. W. 363.

§ 5936. Comp. Laws, 1913.

To rescind contract of settlement for personal injuries for fraud, misrepresentation, or mistake, there must be repudiation of settlement made; one using property received in settlement, as his own, knowing all facts, is bound by the settlement. *Gilmore v. Western Electric Co.* 42 N. D. 206, 172 N. W. 111.

One rescinding a contract must act promptly on discovering facts entitling him to rescind, and must restore consideration received. *Fekjar v. Iowa State Live Stock Ins. Co.* 44 N. D. 389, 177 N. W. 455.

Necessity for restoring consideration received under contract on rescission. *Rokusek v. National Union F. Ins. Co.* — N. D. —, 195 N. W. 300; *Swan v. Great Northern R. Co.* 40 N. D. 258, L.R.A.1918F, 1063, 168 N. W. 657.

Right to rescind on ground of fraud, waived by unexcused delay, although no prejudice or injury be shown as result thereof. *Bauer v. National Union F. Ins. Co.* — N. D. —, 198 N. W. 546.

Impossibility of placing parties in statu quo, and long delay, as affecting rescission. *Rosenwater v. Selleseth*, 33 N. D. 254, 156 N. W. 540.

See also *Mathias v. State Farmers' Mut. Hail Ins. Co.* 40 N. D. 240, 168 N. W. 664; *Raad v. Grant*, 43 N. D. 546, 169 N. W. 588; *Lehde v. National Union F. Ins. Co.* 46 N. D. 162, 180 N. W. 56; *Skogness v. Seger*, 35 N. D. 366, 160 N. W. 508; *Donovan v. Dickson*, 37 N. D. 404, 164 N. W. 27; *Donovan v. Dickson*, 28 N. D. 229, 148 N. W. 537.

ARTICLE 10.—ALTERATION AND CANCELATION OF CONTRACTS.

§ 5938. Comp. Laws, 1913.

Contract in writing may be altered only by a contract in writing, or by an executed oral agreement. *J. I. Case Threshing Mach. Co. v. Loomis*, 31 N. D. 28, 153 N. W. 479; *Wynn v. Coonen*, 31 N. D. 160, 153 N. W. 980.

Although a written contract cannot be altered by an unexecuted parol agreement, yet the parties to a written contract may enter into a new parol agreement, separate and distinct from the old one, unless such agreement is required to be in writing. *Quinlivan v. Dennstedt Land Co.* 39 N. D. 606, 168 N. W. 51.

Contract for the purchase of land, at a certain price, with interest at a certain rate, not altered by parol assent to purported account stated, in which interest is calculated at a different rate. *Thompson v. Baker*, — N. D. —, 203 N. W. 195.

See also *Scofield Implement Co. v. Minot Farmers Grain Asso.* 31 N. D. 605, 154 N. W. 527; *Gardner v. Lindeman*, 41 N. D. 25, 169 N. W. 807; *First Nat. Bank v. Burdick*, — N. D. —, 200 N. W. 44.

§ 5940. Comp. Laws, 1913.

Changing amount of liability under a contract, a material alteration, operating to release sureties. *J. R. Watkins Medical Co. v. Payne*, 47 N. D. 100, 180 N. W. 968.

Unauthorized filling of blanks in a surety bond, by a creditor, so as to contain amount of existing indebtedness, constitutes a material alteration, resulting in discharge of sureties or guarantors. *Watkins v. Keeney*, — N. D. —, 37 A.L.R. 1389, 201 N. W. 833.

CHAPTER 55A.

PERSONAL INJURY.

§ 5941a1. **Voidability of settlement or adjustment.** Every settlement or adjustment of any cause of action and every contract of retainer or employment to prosecute an action for damages on account of any personal injuries received, whether death ensue or not to the person injured, shall be voidable if made while the person so injured is under disability from the effect of the injury so received, or if made within thirty days after the date of such injury. [Laws 1917, ch. 179, § 1.]

Release of claim for damages for personal injuries, within thirty days after injury voidable. *Karas v. MacAdoo*, 46 N. D. 344, 179 N. W. 710.

Infant's right to set aside consent judgment in action for personal injuries. 20 A.L.R. 1249.

Avoidance by infant of release of cause of action ex delicto. 11 L.R.A.(N.S.) 690.

Releases by servant after injury has been received and without reference to a prior contract. 48 L.R.A.(N.S.) 447.

Relief from unconscionable compromise. 5 R. C. L. 897.

§ 5941a2. **Limitation of time to avoid; amount received available as offset or counterclaim, but not as bar.** The person so injured, or in case of his death, his personal representative, may elect, at any time within six months after the date of such injury to avoid such settlement, adjustment or contract by a notice in writing to that effect or by bringing an action to recover damages therefor. Whenever such action shall be so commenced, within the period of time so limited, the amount received by the person so injured or his representative in case of his decease, in any settlement or adjustment so made, shall not be a bar to the prosecution of such action, but may be set up as an offset or counterclaim to the amount of damages recoverable, if any. [Laws 1917, ch. 179, § 2.]

Return or tender of consideration for release of claim for personal injuries set aside on ground of fraud. L.R.A.1918F, 1073.

CHAPTER 56.

OBLIGATIONS IMPOSED BY LAW.

§ 5942. Comp. Laws, 1913.

Steinke v. Halvorson, 46 N. D. 10, 178 N. W. 964; *Guild v. More*, 32 N. D. 432, 155 N. W. 44; *Rhoads v. First Nat. Bank*, 37 N. D. 421, 163 N. W. 1046.

§ 5943. Comp. Laws, 1913.

Rescission of contract by person of unsound mind. *Thronson v. Blough*, 38 N. D. 574, 166 N. W. 132.

See also *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159; *Guild v. More*, 32 N. D. 432, 155 N. W. 44; *Hellebust v. Bonde*, 42 N. D. 324, 172 N. W. 812; *Andrieux v. Kaeding*, 47 N. D. 17, 181 N. W. 59.

§ 5944. Comp. Laws, 1913.

Promise to pay to government and to a county money which is not required to be paid, is a "promise made without any intention of performing." *Hellebust v. Bonde*, 42 N. D. 324, 172 N. W. 812.

See also *Andrieux v. Kaeding*, 47 N. D. 17, 181 N. W. 59; *National Cash Register Co. v. Midway City Creamery Co.* — N. D. —, 191 N. W. 762; *Guild v. More*, 32 N. D. 432, 155 N. W. 44; *McLennan v. Plummer*, 34 N. D. 269, 158 N. W. 269.

§ 5946. Comp. Laws, 1913.

Cunningham v. Lahr Motor Sales Co. — N. D. —, 198 N. W. 347; *Hauge v. Bye*, — N. D. —, 36 A.L.R. 613, 201 N. W. 159.

§ 5947. Comp. Laws, 1913.

Cunningham v. Lahr Motor Sales Co. — N. D. —, 198 N. W. 347.

§ 5948. Comp. Laws, 1913.

Duty of master to provide safe and proper machinery, in control of competent servants. *Warehime v. Huseby*, 38 N. D. 344, 165 N. W. 502.

Setting fire to bottom of straw stack, in season where ground was covered with snow, was not negligence where fire escaped after twelve days and after second snow storm. *Hogan v. Bragg*, 41 N. D. 203, 170 N. W. 324.

See also *York v. General Utilities Corp.* 41 N. D. 137, 170 N. W. 312; *Dubs v. Northern P. R. Co.* 42 N. D. 124, 171 N. W. 888; *Wingen v. Minneapolis, St. P. & S. Ste. M. R. Co.* 42 N. D. 517, 173 N. W. 832; *Steinke v. Halvorson*, 46 N. D. 10, 178 N. W. 964.

CHAPTER 57.

SALE.

- ARTICLE 1. GENERAL PROVISIONS, §§ 5950, 5951.
 2. AGREEMENTS FOR SALE, §§ 5952-5956.
 2a. FILING OF BILLS OF SALE, §§ 5960a1-5960a3.
 3. FORM OF THE CONTRACT, §§ 5961-5963.
 4. RIGHTS AND OBLIGATIONS OF THE SELLER; RIGHTS AND DUTIES BEFORE DELIVERING, §§ 5965, 5966.
 5. DELIVERY OF PERSONAL PROPERTY, §§ 5967-5972.
 6. WARRANTY OF PERSONAL PROPERTY, §§ 5973-5988.
 7. RIGHTS AND OBLIGATIONS OF THE BUYER, §§ 5989-5994.
 8. SALE BY AUCTION, §§ 5995-6001a4.
 9. WAIVER OF CAUSE OF ACTION, § 6002.

ARTICLE 1.—GENERAL PROVISIONS.

§ 5950. Repealed by § 6002a79, post. See § 6002a1, subdiv. 2, post.

§ 5951. Repealed by § 6002a79, post.

ARTICLE 2.—AGREEMENTS FOR SALE.

§§ 5952-5956. Repealed by § 6002a79, post. See § 6002a1, post.

ARTICLE 2a.—FILING OF BILLS OF SALE.

§ 5960a1. **Signing of right to file.** A bill of sale, or other instrument, trans-

ferring the title to personal property, must be signed by the vendor or transferor in the presence of two witnesses who must sign the same as witnesses thereto, or acknowledge the execution of the same before some official qualified to take acknowledgments. Any such instrument so witnessed or acknowledged, shall be entitled to be filed in the office of the register of deeds of the county where the property or any part thereof covered by such instrument, is at the time so situated. [Laws 1923, ch. 141, § 1.]

Sales, 35 Cyc. 337, 350.

§ 5960a2. Filing as notice. The filing of such instrument shall operate as notice thereof to all subsequent purchasers and encumbrancers of so much of said property as is at the time of such filing situated in the county wherein such instrument is filed, and the filing of such instrument shall be deemed equivalent to an immediate delivery, followed by an actual and continued change of possession of the property covered by such instrument. [Laws 1923, ch. 141, § 2.]

Sales, 35 Cyc. 319-321.

§ 5960a3. Emergency. Whereas, there is now no law providing for the filing of the instruments covered by this act and prescribing the effect of such filing therefore 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. [Laws 1923, ch. 141, § 2.]

ARTICLE 3.—FORM OF THE CONTRACT.

§ 5961. Repealed by § 6002a79, post. See § 6002a4, post.

§ 5962. Repealed by § 6002a79, post.

§ 5963. Comp. Laws, 1913.

Written contract for the sale of land, entered into by agent having only parol authority to contract for sale thereof, is wholly void. *Holland v. Johnson*, 42 N. D. 360, 174 N. W. 874.

Section goes to validity of a contract falling within it, and renders it wholly void. Section is available as a defense under general issue, where complaint fails to allege whether contract was in writing or not. *Fried v. Lonski*, 48 N. D. 1023, 188 N. W. 582.

Contract for conveyance of land executed by party to be charged, may be enforced, even though the authority of agent of vendee, who signed the contract was not given in writing. *Merritt v. Adams County Land & Invest. Co.* 29 N. D. 496, 151 N. W. 11.

ARTICLE 4.—RIGHTS AND OBLIGATIONS OF THE SELLER; RIGHTS AND DUTIES BEFORE DELIVERING.

§ 5965. Repealed by § 6002a79, post.

§ 5966. Repealed by § 6002a79, post. See § 6002a65, post.

ARTICLE 5.—DELIVERY OF PERSONAL PROPERTY.

§§ 5967-5972. Repealed by § 6002a79, post. See § 6002a43, post.

ARTICLE 6. WARRANTY OF PERSONAL PROPERTY.

§§ 5973-5985. Repealed by § 6002a79, post. See §§ 6002a12-6002a15, post.

§ 5973. Comp. Laws, 1913.

As to breach of warranty relating to time when ewes would lamb. *McCurdy v. Aylor*, 41 N. D. 187, 170 N. W. 523.

§ 5975. Comp. Laws, 1913.

Red River Valley Land Co. v. Harris, 42 N. D. 76, 172 N. W. 68.

§ 5979. Comp. Laws, 1913.

Sorg v. Brost, 29 N. D. 124, 150 N. W. 455.

§ 5980. Comp. Laws, 1913.

Reliance by buyer upon judgment or skill of seller, who knew purpose for which goods are intended to be used, raises an implied warranty by seller, that the goods are merchantable, and fit for purpose intended. Ward v. Valker, 44 N. D. 598, 176 N. W. 129.

See also Sorg v. Brost, 29 N. D. 124, 150 N. W. 455.

§ 5981. Comp. Laws, 1913.

Parol evidence admissible to show quality of property sold, where contract states nothing as to quality. Gusner v. Miller, 44 N. D. 587, 176 N. W. 359.

§ 5984. Comp. Laws, 1913.

Burdick v. Farmers' Mercantile Co. 48 N. D. 227, 184 N. W. 4.

§§ 5987, 5988. Repealed by § 6002a79, post.

ARTICLE 7.—RIGHTS AND OBLIGATIONS OF THE BUYER.

§§ 5989-5991. Repealed by § 6002a79, post.

§ 5991. Comp. Laws, 1913.

Advance-Rumley Thresher Co. v. Geyer, 40 N. D. 18, 168 N. W. 731.

§ 5991a. **Reasonable time to discover defects.** Any person, firm or corporation purchasing any gas or oil burning tractor, gas or steam engine, harvesting or threshing machinery for their own use shall have a reasonable time after delivery for the inspection and testing of the same, and if it does not prove to be reasonably fit for the purpose for which it was purchased the purchaser may rescind the sale by giving notice within a reasonable time after delivery to the parties from whom any such machinery was purchased, or the agent who negotiated the sale or made delivery of such personal property or his successor, and placing same at the disposal of the seller. [Laws 1919, ch. 238, § 1.]

Sales, 35 Cyc. 399-414, 604, 607.

Purchaser's right to reject goods for breach of warranty on inspection where no opportunity for inspection was given until after delivery. 27 L.R.A.(N.S.) 915.

Failure of vendee to inspect or test goods as waiver of express warranty. 24 L.R.A.(N.S.) 235.

Opportunity to inspect as affecting question whether description of kind or quality in contract of sale is a warranty or a condition precedent. 35 L.R.A.(N.S.) 271.

Buyer's right to inspect at designation, where goods are delivered to carrier. 27 A.L.R. 524.

Reasonableness of time for inspection. 23 R. C. L. 1434 and Supps.

§ 5992. Repealed by § 6002a79, post.

Advance-Rumley Thresher Co. v. Geyer, 40 N. D. 18, 168 N. W. 731.

§ 5993. Comp. Laws, 1913.

Advance-Rumley Thresher Co. v. Geyer, 40 N. D. 18, 168 N. W. 731.

§ 5993a. **Invalidity of provisions to the contrary.** Any provision in any written order or contract of sale, or other contract which is contrary to any of the provisions of this act is hereby declared to be against public policy and void. [Laws 1919, ch. 238, § 2.]

Explanatory note. The above section corresponds very closely with § 5993 which was not repealed with the other sections of this article by § 6002a79, post.

Sales, 35 Cyc. 391, 393.

§ 5994. Repealed by § 6002a79, post. See § 6002a69, post.

ARTICLE 8.—SALE BY AUCTION.

Explanatory note. Transfer of property at auction sale, see § 6002a21, post.

§§ 5995–6001. Repealed by § 6002a79, post.

§ 5998. Comp. Laws, 1913.

Requirement that certain amount of purchase price be paid to a third person, where there are no written or printed conditions, other than bare advertisement, does not violate this section. *Steen v. Neva*, 37 N. D. 40, 163 N. W. 272.

§ 6001a1. **Notice of to county treasurer.** Every owner of personal property who decides to sell such property at public auction shall notify the county treasurer of the county in which such property is to be sold not less than six days prior to the date fixed for the sale by sending to him either a copy of the auction bill, or a notice of such auction sale, which must contain the name and postoffice address of the clerk of such auction sale. [Laws 1921, ch. 120, § 1; Laws 1917, ch. 183, § 1.]

§ 6001a2. **Unpaid personal property taxes; notice of.** Upon receipt of such notice, the county treasurer shall ascertain whether the owner of such personal property has paid the personal property taxes assessed against him and if he finds that such taxes are due and owing he shall immediately notify the clerk of said public auction sale by registered letter showing the amount due on the property to be sold at said auction sale. [Laws 1921, ch. 120, § 2; Laws 1917, ch. 183, § 2.]

§ 6001a3. **Same; retention of from proceeds.** Every clerk of every public auction sale shall before turning over the proceeds of the sale of such personal property sold at public auction sale, retain in his possession sufficient funds therefrom to pay all personal property taxes assessed against the same or which may be outstanding against the same and shall within ten days from date of said sale turn the amount therefrom to the county treasurer in the county of which said sale took place or in which the taxes have been levied and take his receipt therefor. [Laws 1921, ch. 120, § 3.]
Taxation, 37 Cyc. 1220–1234.

§ 6001a4. **Fine for violating provisions.** Any person violating any of the provisions of this act shall be subject to a fine of not to exceed fifty dollars for each offense. [Laws 1921, ch. 120, § 4; Laws 1917, ch. 183, § 3.]

ARTICLE 9.—WAIVER OF CAUSE OF ACTION.

§ 6002. Comp. Laws, 1913.

Wegner v. First Nat. Bank, 42 N. D. 397, 173 N. W. 814.

CHAPTER 57A.

UNIFORM SALES ACT.

- ARTICLE**
1. GENERAL PROVISIONS, §§ 6002a1, 6002a2.
 2. FORMALITIES OF THE CONTRACT, §§ 6002a3, 6002a4.
 3. SUBJECT MATTER OF CONTRACT, §§ 6002a5–6002a8.
 4. THE PRICE, §§ 6002a9, 6002a10.
 5. CONDITIONS AND WARRANTIES, §§ 6002a11–6002a15.
 6. SALE BY SAMPLE, § 6002a16.
 7. TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER, §§ 6002a17–6002a22.
 8. TRANSFER OF TITLES, §§ 6002a23–6002a40.
 9. PERFORMANCE OF THE CONTRACT, §§ 6002a41–6002a51.

ARTICLE 10. RIGHTS OF UNION SELLER AGAINST THE GOODS, §§ 6002a52, 6002a53.

11. UNPAID SELLER'S LIEN, §§ 6002a54-6002a56.
12. STOPPAGE IN TRANSIT, §§ 6002a57-6002a59.
13. RESALE BY THE SELLER, § 6002a60.
14. RESCISSION BY THE SELLER, §§ 6002a61, 6002a62.
15. ACTION FOR BREACH OF CONTRACT, §§ 6002a63-6002a70.
16. INTERPRETATION, §§ 6002a71-6002a79.

PART I.

ARTICLE 1.—GENERAL PROVISIONS.

§ 6002a1. Contracts to sell and sales. 1 A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

2. A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

3. A contract to sell or a sale may be absolute or conditional.

4. There may be a contract to sell or a sale between one part owner and another. [Laws 1917, ch. 202, § I.]

Sales, 35 Cyc. 25-27, 41.

Matter following signature as part of contract. 5 L.R.A.(N.S.) 436.

Serving game or fish with meal as a sale within meaning of game law. L.R.A. 1917F, 769.

Transaction as a sale or assignment of accounts or a loan with a pledge of the accounts as security within usury law. L.R.A.1917E, 1121.

Construction of contract having some provisions peculiar to consignment and agency contracts, and others to sale contracts. L.R.A.1917B, 626.

Question whether automobile distribution contract is one of agency or sale. L.R.A.1915B, 110.

Advertisements of seller of personal property as part of the contract of sale. 28 A.L.R. 991.

Assignment of a part of the amount due or to fall due upon a money obligation as a sale or a loan for purposes of usury law. 24 A.L.R. 858.

Definition of sale. 23 R. C. L. 1187 and Supps.

§ 6002a2. Capacity; liabilities for necessities. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section means goods suitable to the conditions in life of such infant or other person, and to his actual requirements at the time of delivery. [Laws 1917, ch. 202, § 2.]

Sales, 35 Cyc. 41; Drunkards, 19 C. J. p. 813 § 114; Infants, 31 C. J. pp. 1075-1081 §§ 169-181; Insane Persons, 32 C. J. pp. 939-941 §§ 523-526.

Liability of infant husband for necessities furnished wife while with him. 65 L.R.A. 550.

Attorney's services in personal injury action as necessities. 7 A.L.R. 1011.

Must the plaintiff in an action against an infant for necessities furnished show them actually to have been required. 1 B. R. C. 156.

Lack of parent or guardian as enlarging infant's capacity to contract for other than necessities. 36 L.R.A.(N.S.) 57.

Capacity to buy and sell. 23 R. C. L. 1273, 1274.

Liability of infants for necessities. 14 R. C. L. 254 and Supps.

What are necessities. 14 R. C. L. 256, 257 and Supps.

Validity of contracts by insane persons for necessities. 14 R. C. L. 586.

Capacity of drunkard to contract. 6 R. C. L. 598 and Supps.

ARTICLE 2.—FORMALITIES OF THE CONTRACT.

§ 6002a3. **Form of contract or sale.** Subject to the provisions of this act and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or word of mouth, or partly in writing, and partly by word of mouth, or may be inferred from the conduct of the parties. [Laws 1917, ch. 202, § 3.]

Sales, 35 Cyc. 86-87.

Form of contract of sale. 23 R. C. L. 1260.

§ 6002a4. **Statute of frauds.** (1) A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery, but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provision of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming part owner of those specific goods. [Laws 1917, ch. 202, § 4.]

Does not render contract void, but voidable at election of either party. *Abraham v. Durward*, 46 N. D. 611, 180 N. W. 783.

Frauds, Statute of, 27 C. J. pp. 231-255 §§ 234-303.

Necessity of written authority for agent to sign contract within Statute of Frauds. 27 A.L.R. 606.

When goods remaining in custody of seller or some third person deemed to have been received by buyer, within exception to Statute of Frauds. 4 A.L.R. 902.

Agent of undisclosed principal signing contract, as satisfying Statute of Frauds. 23 A.L.R. 932.

Lead pencil signature. 8 A.L.R. 1339.

Check or note as memorandum satisfying Statute of Frauds. 20 A.L.R. 363.

Contracts relating to corporate stock as within provisions of Statute of Frauds dealing with sales of goods, etc. 14 A.L.R. 394.

Who must sign note or memorandum of executory contract for the sale of chattels within the Statute of Frauds. 43 L.R.A.(N.S.) 410.

Must a contract for the sale of growing crops or a reservation of the same by the grantor in deed be in writing. 23 L.R.A.(N.S.) 1218.

Sale or mortgage of crops. L.R.A.1917C, 20.

Contract for timber to be sawed as a sale within the statute of frauds. 14 L.R.A. 233; 30 L.R.A.(N.S.) 324.

Right to show parol warranty in connection with a contract of sale of personalty. 19 L.R.A.(N.S.) 1183.

Contract to transfer personal property in consideration of services, as affected by Statute of Frauds relating to contracts for the sale of goods, etc. 16 L.R.A.(N.S.) 381.

Necessity of writing to make binding a commission to purchase personal property. 11 L.R.A.(N.S.) 650.

Offer by purchaser to sell property to a third person as acceptance which will satisfy Statute of Frauds. 36 L.R.A.(N.S.) 76.

Distinction between sales of personalty and agreements for work and labor as affecting statute of frauds. 30 L.R.A.(N.S.) 319; 43 L.R.A.(N.S.) 97.

Name of principal, or of authorized agent, in body of instrument, as satisfying Statute of Frauds where transaction was not conducted by him. 28 A.L.R. 1114.

Necessity of statement of, price or consideration for sale of goods or choses in action, in writing in order to satisfy Statute of Frauds. 30 A.L.R. 1163.

Acceptance which will satisfy Statute of Frauds where purchaser of goods is in possession at time of sale. 36 A.L.R. 649.

Amount or value of goods to bring sale within Statute of Frauds. 25 R. C. L. 614.

ARTICLE 3.—SUBJECT MATTER OF CONTRACT.

§ 6002a5. Existing and future goods. (1) The goods which form the subject to a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this act called "future goods."

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. [Laws 1917, ch. 202, § 5.] Sales, 35 Cyc. 44-47.

Validity of sale of future or growing crops. 23 L.R.A. 449; L.R.A.1917C, 8.

Sale of property not in existence. 23 R. C. L. 1243 et seq. and Supps.

§ 6002a6. Undivided shares. (1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. [Laws 1917, ch. 202, § 6.]

Sales, 35 Cyc. 292-293.

Sufficiency of selection or designation of goods sold out of larger lot. 26 L.R.A. (N.S.) 1.

Sale of undivided interest in chattels. 23 R. C. L. 1241.

§ 6002a7. Destruction of goods sold. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement was made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

(a) As avoided, or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. [Laws 1917, ch. 202, § 7.]

Sales, 35 Cyc. 45, 246.

Destruction of property sold conditionally while in seller's possession. 36 L.R.A.(N.S.) 595.

Effect on sale, of destruction of property after actual or constructive delivery, 1160

preventing the ascertainment of the price according to the terms of the contract. 19 L.R.A.(N.S.) 197.

Risk of destruction or loss of property. 24 R. C. L. 47 and Supps.

§ 6002a8. Destruction of goods contracted to be sold. (1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract:

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. [Laws 1917, ch. 202, § 8.]

Sales, 35 Cyc. 45, 246.

Risk of destruction or loss of property. 24 R. C. L. 47 and Supps.

ARTICLE 4.—THE PRICE.

§ 6002a9. Definition and ascertainment of price. (1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.

(3) Where the transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this act shall not apply.

(4) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. [Laws 1917, ch. 202, § 9.]

Sales, 35 Cyc. 47-49, 101-105, 123.

Effect on sale, of destruction of property after actual or constructive delivery, preventing the ascertainment of the price according to the terms of the contract. 19 L.R.A.(N.S.) 197.

Acceptance of commercial paper as payment of purchase price upon conditional sale. 35 L.R.A.(N.S.) 90.

Notes given for purchase money on conditional sale as payment of debt. 35 L.R.A.(N.S.) 90.

Increasing price upon sale on credit as usury. 28 L.R.A.(N.S.) 102.

Price in general. 23 R. C. L. 1377 and Supps.

Absence of express agreement as to price. 23 R. C. L. 1378 and Supps.

§ 6002a10. Sale at a valuation. (1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of either the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by parts IV and V of this act (§§ 6002a52-6002a70, post). [Laws 1917, ch. 202, § 10.]

Sales, 35 Cyc. 48, 101-105.

ARTICLE 5.—CONDITIONS AND WARRANTIES.

Explanatory note. Reasonable time to discover defects in certain articles purchased, see §§ 5991a, 5993a, ante.

§ 6002a11. **Effect of conditions.** (1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such a party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the non-performance of the conditions as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer, to perform his promise and to accept and pay for the goods. [Laws 1917, ch. 202, § 11.]

Sales, 35 Cyc. 110-113, 434.

Exclusiveness of remedy for breach of warranty provided in contract for the sale of an animal. 50 L.R.A.(N.S.) 774.

Right of purchaser to reject goods for breach of warranty on sale by sample. 27 L.R.A.(N.S.) 922.

Measure of damages recoverable for breach of warranty. 49 L.R.A.(N.S.) 1154.

Breach of warranty in the principal contract as defense to a surety. 21 L.R.A. 406.

Right of rescission on breach of warranty by vendor of seeds. 37 L.R.A.(N.S.) 85; L.R.A.1916C, 1013.

Construction of provisions for return of property, in event of rescission for breach of warranty. 32 L.R.A.(N.S.) 212.

Right of purchaser to reject goods for breach of warranty. 27 L.R.A.(N.S.) 914.

Purchaser's election to rescind for breach of warranty as affecting recovery against seller. 27 L.R.A.(N.S.) 925.

Use as waiver of right to rescind for breach of warranty. 36 L.R.A.(N.S.) 467.

Right of purchaser of goods deliverable in instalments to rescind the contract or refuse further deliveries for breach as to quality. 38 L.R.A.(N.S.) 539.

Purchaser's right to reject goods for breach of warranty on inspection where no opportunity for inspection was given until after delivery. 27 L.R.A.(N.S.) 915.

Right of purchaser, upon rejecting goods for breach of warranty, to resell them on account of seller. 27 L.R.A.(N.S.) 932.

Time when limitation begins to run on liability for breach of warranty. 15 L.R.A.(N.S.) 162.

Availability of breach of warranty as defense in replevin or claim and delivery where not specially pleaded. 34 L.R.A.(N.S.) 473.

Effect of change of condition of chattel upon right to return it for breach of warranty. 3 L.R.A.(N.S.) 678.

May purchaser recover damages for breach of warranty or fraud as to both articles where an article is substituted for another at his request and both are defective. 37 L.R.A.(N.S.) 298.

Admissibility upon question as to breach of warranty of evidence as to success or failure of goods or apparatus. L.R.A.1915B, 626.

Right of a purchaser of chattel to avail himself of breach of warranty made to the seller. 51 L.R.A.(N.S.) 1111.

Remedies of parties to a contract of sale providing that seller will remove the property if it does not fulfil the warranty. 50 L.R.A.(N.S.) 805.

Yielding to adverse claimant as affecting buyer's right to assert breach of warranty of title of personal property. L.R.A.1918B, 1138.

Exclusiveness of remedy for breach of warranty given in contract of sale of chattels other than machinery or animals. 50 L.R.A.(N.S.) 778.

Exclusiveness of remedy for breach of warranty provided in contract for sale of machinery. 50 L.R.A.(N.S.) 753.

Remedy of purchaser on default of one who sells with particular description of kind or quality. 35 L.R.A.(N.S.) 291.

Right of purchaser who has resold to recover for breach of warranty as to quantity or quality, where he has not actually made good to his vendees. 3 L.R.A.(N.S.) 465.

Breach of parol warranty as defense to action between original parties on note for purchase price of chattel. 28 L.R.A.(N.S.) 267.

Necessity and sufficiency of compliance with conditions of warranty in sale of personal property. 50 L.R.A.(N.S.) 783.

Construction of provision for return in event of rescission for breach of warranty. 32 L.R.A.(N.S.) 212.

Effect of provision in contract of sale for return of defective goods upon buyer's right to recover for breach of warranty, express or implied. 12 L.R.A.(N.S.) 540.

Remedy for breach of warranty of horse where its death prevents its return and the substitution of another, as provided by the contract. 25 L.R.A.(N.S.) 823.

Waiver by seller of provision for return of goods in case of rescission for breach of warranty. 32 L.R.A.(N.S.) 214.

Vendee's failure to inspect or test goods as waiver of express warranty. 24 L.R.A.(N.S.) 235.

What amounts to a breach of warranty of soundness of a horse. 32 L.R.A.(N.S.) 182.

Evidence as to results of use of substance upon issue as to breach of warranty as to ingredients. L.R.A.1915D, 875.

Prior action by seller in which claim for breach of warranty might have been asserted by counterclaim, set-off, or cross petition as barring or abating subsequent independent action for such breach. 8 A.L.R. 706.

Set-off or counterclaim in action for breach of warranty, of claim barred by limitation. 16 A.L.R. 330.

Right of dealer against his vendor in case of breach of warranty as to article purchased for resale and resold. 22 A.L.R. 133.

Resale by buyer where seller has refused to receive the property rejected for breach of warranty. 24 A.L.R. 1445.

Judgment against seller of chattels for breach of warranty as conclusive upon prior warrantor. 8 A.L.R. 667.

Waiver of breach of warranty on sale of seed, nursery, stock, etc. 16 A.L.R. 896; 32 A.L.R. 1248.

Applicability of provision in contract of sale for return of article, where article delivered does not answer to description. 30 A.L.R. 321.

Waiver of breach of warranty as to automobile or truck. 34 A.L.R. 547.

Right of action for breach of warranty as to automobile or truck. 34 A.L.R. 549.

Breach of warranty as affecting purchaser of purchase money note with knowledge of the character of the consideration. 46 L.R.A.(N.S.) 868.

When does statute of limitations begin to run against action for breach of warranty. L.R.A.1916F, 818.

Right of purchaser to reject goods for breach of warranty relating to goods to be manufactured. 27 L.R.A.(N.S.) 924.

Right of one liable for damages from defective article to recover over against manufacturer. L.R.A.1915C, 336.

Acceptance of goods with knowledge of breach of warranty was waiver of breach. 35 L.R.A.(N.S.) 501.

Necessity and sufficiency of compliance with conditions of warranty in sale of personal property. 50 L.R.A.(N.S.) 783.

Waiver of conditions in contract of sale limiting the warranty. 50 L.R.A.(N.S.) 796.

Covenants and conditions distinguished. 23 R. C. L. 1330.

Waiver of breach of warranty. 24 R. C. L. 239 and Supps.

Nonperformance of conditions as breach of warranty. 24 R. C. L. 155.

§ 6002a12. Definition of express warranty. Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise to induce the buyer to purchase the goods and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement

of the seller's opinion only shall be construed as a warranty. [Laws 1917, ch. 202, § 12.]

Sales, 35 Cyc. 372-390.

Express warranty on sale for accommodation of buyer. 32 A.L.R. 1150.

Express warranty on sale of seed, nursery stock, etc. 16 A.L.R. 876.

Express warranty as to quality of article to be manufactured as excluding implied warranty. 33 L.R.A.(N.S.) 508.

Express warranty of seeds sold as excluding implied warranty. 33 L.R.A.(N.S.) 803.

May words in an executory contract, from which the law implies a warranty as to quality, be relied on as an express warranty. 25 L.R.A.(N.S.) 160.

Definition of express warranty. 24 R. C. L. 153 and Supps.

§ 6002a13. Implied warranties of title. In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale.

(3) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person not declared or known to the buyer before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee or any other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest. [Laws 1917, ch. 202, § 13.]

Sales, 35 Cyc. 393-396.

Implied warranty on sale of vessel. 3 A.L.R. 622.

Warranty on sale of second hand article. L.R.A.1915B, 478.

Does implied covenant of title on sale of chattels protect against outstanding liens or encumbrances. 16 L.R.A.(N.S.) 410.

Implied warranty of title. 24 R. C. L. 65, 182 and Supps.

§ 6002a14. Implied warranty in sale by description. Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. [Laws 1917, ch. 202, § 14.]

Sales, 35 Cyc. 403.

Implied warranty on sale by description. 23 R. C. L. 1362 and Supps; 24 R. C. L. 173 and Supps.

§ 6002a15. Implied warranties of quality. Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods applied under a contract to sell or a sale except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies upon the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for that purpose.

(2) Where the goods are brought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3) If the buyer has examined the goods, there is no implied warranty as regards the defects which such examination ought to have revealed.

(4) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith. [Laws 1917, ch. 202, § 15.]

Implied warranty as to fitness for purpose of article sold, by seller. *Minneapolis Steel & Machinery Co. v. Casey Land Agency*, — N. D. —, 201 N. W. 172.

In action on note for price of a fotoplayer, evidence held to sustain verdict for defendant for breach of warranty. *Dyer & Bros. v. Bauer*, 48 N. D. 396, 184 N. W. 809.

Where buyer relies on seller's skill or judgment, and seller knows purpose for which goods are intended, there is an implied warranty as to fitness for purpose by seller. *Ward v. Valker*, 44 N. D. 598, 176 N. W. 129.

See also *State ex rel. City of Fargo v. Wetz*, 44 N. D. 598, 176 N. W. 129; *Smith v. Will & Co.* — N. D. —, 199 N. W. 861; *Gussner v. Miller*, 44 N. D. 587, 176 N. W. 359; *Abraham v. Durward*, 46 N. D. 611, 180 N. W. 783; *Jacobson v. Horner*, — N. D. —, 193 N. W. 327.

Sales, 35 Cyc. 391, 397-411.

Warranties and conditions upon sale of seeds, nursery stock, etc. L.R.A.1916C, 1012; 16 A.L.R. 859; 32 A.L.R. 1241.

Advertisements of seller as constituting warranty of seed. 28 A.L.R. 1009.

Implied warranty in addition to stipulated test. L.R.A.1915B, 1131.

Implied warranty of quality, condition or fitness on sale of secondhand article. 29 A.L.R. 1231.

Effect of sale of seeds with particular description of kind or quality. 35 L.R.A. (N.S.) 277.

Effect of sale with particular description of kind or quality. 35 L.R.A.(N.S.) 258.

Express warranty as to quality excluding implied warranty as to quality. 33 L.R.A.(N.S.) 502.

Parol evidence that parties to a written contract which merely names a class or species, contemplated a particular quality or kind. 9 L.R.A.(N.S.) 967.

Exhibition of article or sample to jury on issue of quality of goods. 35 L.R.A. (N.S.) 1021.

Distinction between warranty of identity and warranty of quality. 35 L.R.A. (N.S.) 265.

Implied warranty of trees, shrubs, plants, or vines. 49 L.R.A.(N.S.) 1151.

Express or implied warranty of quality, condition, or fitness of automobile or truck sold by retail dealer. 34 A.L.R. 535.

Warranty or condition as to kind or quality implied by sale under trade term which by use has become generic. 35 A.L.R. 249.

Fitness of food or medicine for live stock. L.R.A.1916B, 1109.

Implied warranty of fitness of animals sold for slaughter. L.R.A.1917D, 823.

Implied warranty of fitness of articles of food, etc. 22 L.R.A. 195; 15 L.R.A. (N.S.) 884; L.R.A.1917F, 472.

Implied warranty by manufacturer of machinery or apparatus not in itself defective, of fitness for use under existing conditions. 6 L.R.A.(N.S.) 180.

Implied warranty of fitness of property bought for special purpose. 22 L.R.A. 187; 15 L.R.A.(N.S.) 868; 31 L.R.A.(N.S.) 783; 34 L.R.A.(N.S.) 737.

Implied warranty upon retail sale of garment, for personal wear. 27 A.L.R. 1507.

Implied condition or warranty of merchantability on sale of goods without particular description or warranty, or present opportunity for inspection. 21 A.L.R. 367.

Implied warranty by other than packer of fitness of canned goods. 5 A.L.R. 248.

Implied warranty of fitness of particular article purchased from manufacturer for particular use. 15 L.R.A.(N.S.) 855.
 Implied warranty of quality. 24 R. C. L. 178, 179 and Supps.

ARTICLE 6.—SALE BY SAMPLE.

§ 6002a16. **Implied warranties in sale by sample.** In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 47 (3).

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. [Laws 1917, ch. 202, § 16.]

Sales, 35 Cyc. 405.

Sale of manufacturers by sample as excluding implied warranty other than that goods shall conform to sample. 29 L.R.A.(N.S.) 139.

Warranty on sale by manufacturer of goods by sample. 70 L.R.A. 665.

Does sale by sample exclude implied warranty other than that goods shall conform to sample. 29 L.R.A.(N.S.) 139.

Warranty on sale of goods by sample. 70 L.R.A. 653.

Implied warranty on sale by sample. 23 R. C. L. 1362 and Supps.

PART II.

ARTICLE 7.—TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER.

§ 6002a17. **No property passes until goods are ascertained.** Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6. [Laws 1917, ch. 202, § 17.]

Sales, 35 Cyc. 291-302.

Identification of subject matter as necessary to passing of title. 24 R. C. L. 23.

Necessity for segregation on sale of part of mass to pass title. 24 R. C. L. 24, 25.

§ 6002a18. **Property in specific goods passes when parties so intend.** (1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intended it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade and the circumstances of the case. [Laws 1917, ch. 202, § 18.]

Newell v. McMurray, — N. D. —, 201 N. W. 845.

Sales, 35 Cyc. 97-98, 120-122.

Passing of title to property by delivery thereof to a carrier for transportation to consignee or vendee. 22 L.R.A. 415.

Failure to comply with statute upon sale of motor vehicle as affecting title. 37 A.L.R. 1465.

Attachment or execution creditor as purchaser within rule that first of two purchasers to obtain possession will prevail. 21 A.L.R. 1031.

When title passes under contract for sale of goods to be produced or manufactured. 50 L.R.A.(N.S.) 111.

Necessity of meeting of minds as to price. 32 L.R.A.(N.S.) 429.

When title passes upon shipment of intoxicating liquor C. O. D. 24 L.R.A.(N.S.) 143.

Passing of title as question of intention of parties. 24 R. C. L. 15 and Supps.

§ 6002a19. Rules for ascertaining intention. Unless a different intention appears, the following are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1. Where there is an unconditional contract to sell specific goods, in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time for delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such a thing be done.

Rule 3. (1) When the goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revert the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction:

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of the rejection then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the case provided for in the next rule and in section 20 (§ 6002a22, post). This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalent.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

[Laws 1917, ch. 202, § 19.]

Newell v. McMurray, — N. D. —, 201 N. W. 845.

Sales, 35 Cyc. 274-344.

Passing of title by delivery f. o. b. 33 L.R.A.(N.S.) 54.

Rule that title passes on delivery to carrier as applicable to shipment in "pool" car for several purchasers. 36 A.L.R. 410.

Effect of premature delivery to pass title to purchaser. 31 L.R.A.(N.S.) 942.

Dishonor of draft or check for purchase price on a cash sale as affecting seller's rights in respect of property or its proceeds. 31 A.L.R. 578.

Liability for loss of, or damage to, property delivered on trial or with privilege of return. 31 A.L.R. 1365.

What constitutes delivery of goods sold under "c. i. f." contract. 10 A.L.R. 701; 20 A.L.R. 1236.

Failure to ship by carrier designated by buyer as affecting passing of title. 31 A.L.R. 955.

Necessity of delivery. 17 L.R.A. 177.

Passing of title on sale of goods with privilege of return. L.R.A.1916E, 1209.

Effect of acceptance of order for goods on passing of title. 17 L.R.A. 178.

Seller's mistake as to identity of vendee, as affecting the passing of title to the goods sold. L.R.A.1918B, 975.

Effect of attaching draft to bill of lading to prevent title passing upon delivery of goods to carrier. 2 L.R.A.(N.S.) 1078.

When title passes under consignment of goods for sale with provision in effect that consignee purchase balance of consignment. 39 L.R.A.(N.S.) 620.

Effect of indorsing and mailing to purchaser a bill of lading, naming seller as consignee, to pass title to purchaser. 34 L.R.A.(N.S.) 293.

When title passes where vendor consigns goods to himself and vendee is to be notified of their arrival and to receive them upon payment of draft. 39 L.R.A.(N.S.) 309.

Provision for payment of instalments of price of article during construction as indicating intention to pass title. 2 B. R. C. 646.

What constitutes a sufficient delivery to transfer title to property sold. 26 L.R.A.(N.S.) 27.

Passing of title to consignee on delivery to carrier as affected by provisions of bill of lading and attachment of draft thereto. 2 L.R.A.(N.S.) 79.

Determination of intention of parties as to passing of title. 24 R. C. L. 15 and Supps.

§ 6002a20. Reservation of right of possession or property when goods are shipped. (1) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where the goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and the bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. [Laws 1917, ch. 202, § 20.]

Sales, 35 Cyc. 316-319, 332-335.

Conditional delivery. 24 R. C. L. 38 and Supps.

Delivery of goods to carrier. 24 R. C. L. 40 and Supps.

Delivery of goods to seller's agent. 24 R. C. L. 42 and Supps.

Bill of lading taken in name of seller. 24 R. C. L. 44 and Supps.

Effect of retention of bill of lading by seller. 24 R. C. L. 43 and Supps.

§ 6002a21. Sale by auction. In the case of sale by auction—

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such a sale in his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent to the buyer. [Laws 1917, ch. 202, § 21.]

Auctions and Auctioneers, 6 C. J. p. 829, § 27, p. 830, § 29, p. 831, §§ 33-34, p. 835, § 40.

Entire or severable contract on sale of goods by auction. 23 R. C. L. 1343.

Passing of title on sale by auction. 2 R. C. L. 1143.

Withdrawal of property put up at auction. 2 R. C. L. 1134 and Supps.

Retraction of bid at auction sale. 2 R. C. L. 1126 and Supps.

Right of seller to bid at auction sale. 2 R. C. L. 1128 and Supps.

§ 6002a22. Risk of loss. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether the delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligation under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. [Laws 1917, ch. 202, § 22.]

Sales, 35 Cyc. 343-344.

Agreement as to risk as a test to determine when title passes under a contract of sale. L.R.A.1918B, 822.

Must seller or buyer bear loss from failure to contract with carrier for full liability. L.R.A.1917F, 561.

Risk of loss of goods. 24 R. C. L. 47 and Supps.

ARTICLE 8.—TRANSFER OF TITLES.

§ 6002a23. Sale by a person not the owner. (1) Subject to the provisions of this act, where the goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this act however shall affect:

(a) The provisions of any factor's acts, recording acts or any enactment enabling the apparent owner of the goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common law or statutory power of sale under the order of a court of competent jurisdiction. [Laws 1917, ch. 202, § 23.]

Sales, 35 Cyc. 357-363; Factors, 25 C. J. pp. 419-425 §§ 153-161.

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Rights of bona fide purchasers of personal property. 24 R. C. L. 373 et seq. and Supps.

Sale of goods by factors. 11 R. C. L. 758 et seq. and Supps.

§ 6002a24. Sale by one having a voidable title. Where the seller of the goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. [Laws 1917, ch. 202, § 24.]

Sales, 35 Cyc. 556.

§ 6002a25. Sale by seller in possession of goods already sold. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods, or documents of title under any sale, pledge or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale shall have same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. [Laws 1917, ch. 202, § 25.]

Sales, 35 Cyc. 344-355.

When goods considered in transitu. 24 R. C. L. 141.

Sale by seller in possession of goods already sold. 24 R. C. L. 50 and Supps.

§ 6002a26. Creditors' rights against sold goods in sellers' possession. Where a person having sold goods continues in possession of the goods or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. [Laws 1917, ch. 202, § 26.]

Sales, 35 Cyc. 355.

Rights of creditor of seller against sold goods in seller's possession. 24 R. C. L. 50.

§ 6002a27. Definition of negotiable documents of title. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. [Laws 1917, ch. 202, § 27.]

Sales, 35 Cyc. 319-321.

§ 6002a28. Negotiation of negotiable documents by delivery. A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the documents the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer, or,

(b) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

(c) Where by the terms of a negotiable document of title the goods are deliverable to bearer, or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the endorsement of such indorsee. [Laws 1917, ch. 202, § 28.]

Carriers, 10 C. J. pp. 201-298 §§ 265-278; Sales, 35 Cyc. 319-321; Shipping, 36 Cyc. 218; Warehousemen, 40 Cyc. 416-417.

Transfer of bill of lading or warehouse receipt. 24 R. C. L. 17.

Negotiation of bills of lading by delivery. 4 R. C. L. 30 and Supps.

Negotiation of warehouse receipts. 27 R. C. L. 968.

§ 6002a29. Negotiation of negotiable documents by indorsement. A negotiable document of title may be negotiated by the indorsement of the person

to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If endorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner. [Laws 1917, ch. 202, § 29.]

Carriers, 10 C. J. p. 204 § 268; Sales, 35 Cyc. 319-321; Warehousemen, 40 Cyc. 417.

Negotiation of warehouse receipts by indorsement. 27 R. C. L. 970.

§ 6002a30. Negotiable documents of title marked "not negotiable." If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this act. But nothing in this act contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title placing thereon the words "not negotiable," "non-negotiable" or the like. [Laws 1917, ch. 202, § 30.]

Carriers, 10 C. J. p. 201 § 265, p. 204 § 268, p. 205 § 271, p. 207 § 274, p. 208 § 278; Warehousemen, 40 Cyc. 417.

Non-negotiable bills of lading. 4 R. C. L. 29 and Supps.

Non-negotiable warehouse receipts. 27 R. C. L. 967.

§ 6002a31. Transfer of non-negotiable documents. A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right. [Laws 1917, ch. 202, § 31.]

Carriers, 10 C. J. pp. 204-205 §§ 269-270; Warehousemen, 40 Cyc. 416.

Negotiability of non-negotiable warehouse receipts. 27 R. C. L. 967 and Supps.
Negotiability of non-negotiable bills of lading. 4 R. C. L. 29 and Supps.

§ 6002a32. Who may negotiate a document. A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the document, the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery. [Laws 1917, ch. 202, § 32.]

Carriers, 10 C. J. p. 205 § 270, pp. 207-208 §§ 276-278; Warehousemen, 40 Cyc. 419-425.

Who may negotiate bills of lading. 4 R. C. L. 30.

§ 6002a33. Rights of person to whom document has been negotiated. A person to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee has contracted directly with him. [Laws 1917, ch. 202, § 33.]

Carriers, 10 C. J. pp. 205-208 §§ 271-278; Sales, 35 Cyc. 321; Shipping, 36 Cyc. 218; Warehousemen, 40 Cyc. 425.

Rights of transferees of bills of lading or warehouse receipts. 4 R. C. L. 35 et seq. and Supps., 24 R. C. L. 320, 380, 27 R. C. L. 970 et seq.

§ 6002a34. Rights of person to whom document has been transferred. A

person to whom a document of title has been transferred, but not negotiated, acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of transfer thereof, and thereby to acquire the direct obligation of such bailee to possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by notification of such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. [Laws 1917, ch. 202, § 34.]

Carriers, 10 C. J. pp. 205-208 §§ 271-278; Shipping, 36 Cyc. 218; Warehousemen, 40 Cyc. 419-425.

Rights of transferees of bills of lading or warehouse receipts. 4 R. C. L. 35 et seq. and Supps; 24 R. C. L. 320, 380; 27 R. C. L. 970 et seq.

§ 6002a35. Transfer of negotiable document without indorsement. Where a negotiable document of title is transferred for value by delivery and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [Laws 1917, ch. 202, § 35.]

Carriers, 10 C. J. p. 204 § 269; Warehousemen, 40 Cyc. 425.

Transfer of bill of lading without indorsement. 4 R. C. L. 32 and Supps.

§ 6002a36. Warranties on sale of document. A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

- (a) That the document is genuine;
- (b) That he has a legal right to negotiate or transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the document, and
- (d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. [Laws 1917, ch. 202, § 36.]

Sales, 35 Cyc. 390-411; Warehousemen, 40 Cyc. 424.

Warranties on transfer of bill of lading. 4 R. C. L. 30 and Supps.

Warranties on transfer of warehouse receipt. 27 R. C. L. 975.

§ 6002a37. Indorser not a guarantor. The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. [Laws 1917, ch. 202, § 37.]

Warehousemen, 40 Cyc. 419, 424.

§ 6002a38. When negotiation not impaired by fraud, mistake or duress. The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid

value therefor, without notice of the breach of duty, or fraud, mistake or duress. [Laws 1917, ch. 202, § 38.]

Carriers, 10 C. J. pp. 207-208 §§ 276-278; Warehousemen, 40 Cyc. 417-424.

When negotiation of bill of lading not impaired by fraud, mistake or duress.
4 R. C. L. 38 and Supps.

§ 6002a39. Attachment or levy upon goods for which a negotiable document has been issued. If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in possession of such bailee be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee, or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. [Laws 1917, ch. 202, § 39.]

Carriers, 10 C. J. pp. 280-283 §§ 400-402; Shipping, 36 Cyc. 218; Warehousemen, 40 Cyc. 424, 443.

Attachment or levy upon goods, for which a negotiable warehouse receipt has been issued. 27 R. C. L. 976.

§ 6002a40. Creditors' remedies to reach negotiable documents. A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [Laws 1917, ch. 202, § 40.]

Executions, 23 C. J. p. 831 § 939.

Creditor's remedies to reach negotiable warehouse receipts. 27 R. C. L. 977.

PART III.

ARTICLE 9.—PERFORMANCE OF THE CONTRACT.

§ 6002a41. Seller must deliver and buyer accept goods. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. [Laws 1917, ch. 202, § 41.]

Right of recovery for breach of contract to deliver alfalfa seed not affected by warranty or nonwarranty, through agreement or common usage. *Smith v. Will & Co.* — N. D. —, 199 N. W. 861.

Sales, 35 Cyc. 164, 256.

Necessity of buyer's acceptance of goods sold out of a larger lot. 26 L.R.A. (N.S.) 13.

Repudiation of contract of sale of personal property on one ground as waiver of other objections. 3 B. R. C. 591.

Necessity of acceptance to pass title under contract for sale of goods to be produced or manufactured. 50 L.R.A.(N.S.) 133.

Admissibility of books of account to prove delivery of goods sold. 52 L.R.A. 690.

Construction and effect of "strike" clause in contract of sale and delivery. 9 L.R.A.(N.S.) 1187.

Duty of vendor of trees, shrubs, plants, or vines, as to delivery and notice thereof. 49 L.R.A.(N.S.) 1155.

Duty of parties with respect to delivery and receipt of articles sold with particular description of kind or quality. 35 L.R.A.(N.S.) 287.

Law governing validity of sale as depending on transfer of possession. 64 L.R.A. 829.

Duties of seller as to delivery. 23 R. C. L. 1415, et seq. and Supps.

Necessity for delivery. 24 R. C. L. 35 and Supps.

Duties of buyer as to acceptance. 23 R. C. L. 432 et seq. and Supps.

Necessity for acceptance by buyer. 24 R. C. L. 90.

Payment of price. 23 R. C. L. 1439, 1445 et seq.

§ 6002a42. Delivery and payment are concurrent conditions. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. [Laws 1917, ch. 202, § 42.]

Sales, 35 Cyc. 262.

Acceptance of commercial paper as payment of purchase price upon conditional sale. 35 L.R.A.(N.S.) 90.

Notes given for purchase money on conditional sale as payment of debt. 35 L.R.A.(N.S.) 90.

What misrepresentations will afford defense to action for purchase price of books. 22 L.R.A.(N.S.) 1210.

Failure of consideration as defense to action on a purchase price note. 39 L.R.A.(N.S.) 938; L.R.A.1918A, 1055.

Who is real party in interest by whom action for goods sold must be brought. 65 L.R.A. 597.

Recovery of purchase price of goods sold to keeper or inmate of house of ill fame. L.R.A.1917B, 1168.

Right to recover price of property sold for unlawful use. 15 L.R.A. 834.

Law governing right of action for purchase price before expiration of credit. 64 L.R.A. 828.

Seller's right to recover possession or value of property on default by purchaser. 32 L.R.A. 459.

Right of seller of property to municipal corporation under invalid contract to take or remove property upon refusal of payment. 20 L.R.A.(N.S.) 110; L.R.A. 1915B, 173.

Delay in attempting to regain property obtained under agreement to pay therefor on delivery, as waiver of that condition. 11 L.R.A.(N.S.) 948; 23 L.R.A. (N.S.) 824; L.R.A.1915D, 355.

Effect of refusal to execute purchase-money notes to give vendor an immediate right of action. 12 L.R.A.(N.S.) 180.

Right to recover purchase price where purchaser wrongfully repudiates his contract. 51 L.R.A.(N.S.) 735.

Right of seller to recover contract price or value of articles delivered while refusing further deliveries for purchaser's failure to pay. 43 L.R.A. 1009.

Right of seller, upon breach of executory contract, to maintain action for contract price. 17 L.R.A.(N.S.) 808; 26 L.R.A.(N.S.) 248.

Right to recover for goods sold under contract containing provision for an exclusive agency. 6 L.R.A.(N.S.) 547.

Effect of setting up defects as a counterclaim in an action on one of a series of notes given for, or to recover on instalment of, the purchase price, upon the right to set up a like counterclaim in subsequent actions. 10 L.R.A.(N.S.) 734.

Action for price as bar to action for damages for fraud. 8 L.R.A.(N.S.) 582.

Action for price before expiration of credit. 3 L.R.A.(N.S.) 908.

War conditions as excuse for nondelivery. 3 A.L.R. 48; 9 A.L.R. 1522; 11 A.L.R. 1432; 15 A.L.R. 1520; 37 A.L.R. 1499.

Delivery and payment as concurrent conditions. 23 R. C. L. 1407.

§ 6002a43. Place, time and manner of delivery. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is bound to send the goods

to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledge to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. [Laws 1917, ch. 202, § 43.]

Sales, 35 Cyc. 171-202, 311.

Admissibility of extrinsic evidence as to time for delivery of goods where none is specified in written contract. 31 L.R.A.(N.S.) 619; L.R.A.1916B, 1039.

Delivery on week day pursuant to contract made on Sunday. 20 L.R.A.(N.S.) 86.

Retaining control of bill of lading to insure payment as affecting sufficiency of delivery to carrier as compliance with provision requiring delivery at place of shipment. L.R.A.1915B, 537.

Failure of seller to deliver goods on agreed date as ground for rescission by purchaser. L.R.A.1916E, 940.

Tender of property to buyer who is in default in fixing date for delivery and is not present at the agreed place. 2 L.R.A.(N.S.) 529.

What constitutes delivery of goods sold under c. i. f. contract. 10 A.L.R. 701; 20 A.L.R. 1236.

What constitutes delivery to vendee which will terminate right of stoppage in transitu. 7 A.L.R. 1374.

What amounts to f. o. b. delivery. 16 A.L.R. 597.

Construction and effect of provision as to declaration by seller of carrier vessel. 27 A.L.R. 165.

War conditions as excuse for delay. 3 A.L.R. 48; 9 A.L.R. 1522; 11 A.L.R. 1432; 15 A.L.R. 1520; 37 A.L.R. 1499.

Construction of provision in contract as to strike as excuse for delay. 35 A.L.R. 721.

Right to fill order from diverted ship under contract which calls for shipment to certain port. 36 A.L.R. 518.

Place of delivery. 23 R. C. L. 1417 and Supps.

Time of delivery. 23 R. C. L. 1421 and Supps.

Delivery of property in hands of third persons. 24 R. C. L. 36.

§ 6002a44. Delivery of wrong quantity. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than a fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract, and reject the rest or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. [Laws 1917, ch. 202, § 44.]

Smith v. Will & Co. — N. D. —, 199 N. W. 861.

Sales, 35 Cyc. 120, 202, 204, 222.

Delivery of wrong quantity. 23 R. C. L. 1420 and Supps.

§ 6002a45. Delivery in installments. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

(2) Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects to or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of the contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat the whole contract as broken. [Laws 1917, ch. 202, § 45.]

Sales, 35 Cyc. 210.

Time for delivery of goods sold to be delivered in reasonable instalments, or in instalments as required by the buyer. L.R.A.1918A, 609.

Action for damages on delivery of goods in instalments. 24 R. C. L. 68 and Supps.

§ 6002a46. Delivery to a carrier on behalf of the buyer. (1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is deemed to be a delivery of the goods to the buyer, except in the case provided for in section 19, Rule 5 (§ 6002a21, Rule 5, ante), or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. [Laws 1917, ch. 202, § 46.]

Sales, 35 Cyc. 193-198.

Effect of delivery to carrier upon buyer's right to reject goods for lack of quality. 8 L.R.A.(N.S.) 1167.

Delivery to carrier. 23 R. C. L. 1423, 1424 and Supps.

Duty of seller to insure goods on delivery to carrier. 23 R. C. L. 1428 and Supps.

Negligence of seller on delivery of goods to carrier. 23 R. C. L. 1429 and Supps.

§ 6002a47. Right to examine goods. (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether

such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. [Laws 1917, ch. 202, § 47.]

Smith v. Will & Co. — N. D. —, 199 N. W. 861; Minneapolis Thresh. Mach. Co. v. Huncovsky, — N. D. —, 202 N. W. 280.

Sales, 35 Cyc. 225-229.

Buyer's right to inspect at destination, where goods are delivered to carrier. 27 A.L.R. 524.

Right to examine goods. 23 R. C. L. 1432 and Supps.

Reasonableness of time for examination of goods by buyer. 23 R. C. L. 1434 and Supps.

Right of inspection where goods are delivered to carrier. 23 R. C. L. 1427.

§ 6002a48. What constitutes acceptance. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. [Laws 1917, ch. 202, § 48.]

Sales, 35 Cyc. 258-260.

Effect of use of property purchased on approval after expression of dissatisfaction. 14 L.R.A.(N.S.) 1107.

Effect of retention of goods after notice of mistake in quoted price. 15 L.R.A.(N.S.) 368.

What constitutes acceptance under contract for sale of article on approval. 50 L.R.A.(N.S.) 808; L.R.A.1918B, 873.

What constitutes acceptance which will pass title under contract for sale of goods to be produced or manufactured. 50 L.R.A.(N.S.) 138.

Acknowledgment by seller of receipt of order for goods as an acceptance. 38 L.R.A.(N.S.) 903.

Particular circumstance indicating acceptance by delivery to carrier. 35 L.R.A.(N.S.) 1043.

What constitutes acceptance. 23 R. C. L. 1436 and Supps.

Failure to return as acceptance. 23 R. C. L. 1438 and Supps.

§ 6002a49. Acceptance does not bar action for damages. In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer does not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor. [Laws 1917, ch. 202, § 49.]

Admission of evidence to prove notice by buyer to seller of warranted article of failure to conform to warranty, proper. Minneapolis Thresh. Mach. Co. v. Huncovsky, — N. D. —, 202 N. W. 280.

Sales, 35 Cyc. 260, 430, 647.

Acceptance with knowledge of breach of warranty as waiver of breach. 35 L.R.A.(N.S.) 501.

Effect of acceptance of goods as a waiver of damages for delay in delivery. 54 L.R.A. 718; 7 L.R.A.(N.S.) 1114.

Effect of acceptance by purchaser on sale with particular description of kind or quality. 35 L.R.A.(N.S.) 279.

Effect of acceptance of trees, shrubs, plants, or vines on liability of vendor. 49 L.R.A.(N.S.) 1154.

Acceptance of chattel before agreement as to purchase price, as assent to seller's price. 11 L.R.A.(N.S.) 254.

Effect of acceptance of goods deliverable in instalments on right to rescind contract or refuse further deliveries for breach as to quality. 38 L.R.A.(N.S.) 542.

Right of buyer to retain goods and defeat action for price on discovering that goods do not comply with requirement of contract. 4 L.R.A.(N.S.) 1167.

Effect of acceptance of goods as a waiver of damages for delay in delivery. 54 L.R.A. 718; 7 L.R.A.(N.S.) 1114.

Acceptance as waiver of defects in quality. 23 R. C. L. 1439 et seq. and Supps.

§ 6002a50. Buyer is not bound to return goods wrongly delivered. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. [Laws 1917, ch. 202, § 50.]

Sales, 35 Cyc. 229, 260.

Selling or mortgaging chattel as waiver of purchaser's right to return. 38 L.R.A.(N.S.) 1035.

Failure to return goods. 23 R. C. L. 1438 and Supps.

§ 6002a51. Buyer's liability for failure to accept delivery. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract thereafter provided in favor of the seller when the buyer is in default. [Laws 1917, ch. 202, § 51.]

Sales, 35 Cyc. 257, 586.

Effect of seller's election to resell goods to fix damages for purchaser's refusal to accept on seller's right to purchase. 42 L.R.A.(N.S.) 675.

Resale to fix damages for purchaser's refusal to accept goods. 42 L.R.A.(N.S.) 669.

Remedy of conditional vendor for refusal to accept. 68 L.R.A. 100.

PART IV.

ARTICLE 10.—RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

§ 6002a52. Definition of unpaid seller. (1) The seller of goods is deemed to be an unpaid seller within the meaning of this act—

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2) In this part of this act the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller. [Laws 1917, ch. 202, § 52.]

§ 6002a53. Remedies of an unpaid seller. (1) Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods as such, has—

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;

(c) A right of resale as limited by this act;

(d) A right to rescind the sale as limited by this act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery

similar to and coextensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Laws 1917, ch. 202, § 53.]

Sales, 35 Cyc. 131-133, 486-511, 164.

Choice of substantive rights in case of fraud in sale of property. 35 A.L.R. 1153.

Remedies of seller as affected by failure to comply with statute upon sale of motor vehicle. 37 A.L.R. 1465.

Dishonor of draft or check for purchase price, on a cash sale as affecting seller's rights in respect of the property, or its proceeds. 31 A.L.R. 578.

Lien of seller for purchase price. 24 R. C. L. 121 et seq. and Supps.

Seller's right of stoppage in transitu. 24 R. C. L. 129 et seq. and Supps.

Resale on account of buyer. 24 R. C. L. 108 et seq. and Supps.

Right of seller to rescind sale. 24 R. C. L. 331.

Right of seller to rescind on default of buyer. 24 R. C. L. 373 and Supps.

ARTICLE 11.—UNPAID SELLER'S LIEN.

§ 6002a54. When right of lien may be exercised. (1) Subject to the provisions of this act, the unpaid seller of goods who is in possession of them is entitled to retain the possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. [Laws 1917, ch. 202, § 54.]

Sales, 35 Cyc. 486-492.

Personal liability of purchaser of personal property which is subject to a lien. 59 L.R.A. 737.

Right of vendor by conditional sale to assert lien on default of payment. 32 L.R.A. 464.

Vendor's lien for purchase price of railroad rails. 66 L.R.A. 44.

Law governing right to vendor's lien. 64 L.R.A. 831.

Applicability of doctrine of vendor's equitable lien to personal property. 3 B. R. C. 824.

Lien of seller. 24 R. C. L. 121 et seq. and Supps.

§ 6002a55. Lien after part delivery. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. [Laws 1917, ch. 202, § 55.]

Sales, 35 Cyc. 491.

Lien after delivery. 24 R. C. L. 126, 127 and Supps.

§ 6002a56. When lien is lost. (1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods;

(c) By waiver thereof.

(2) The unpaid seller of goods having a lien thereon does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. [Laws 1917, ch. 202, § 56.]

Sales, 35 Cyc. 489-491.

Waiver of seller's lien by attachment or execution. 50 L.R.A. 714.

Loss of lien of seller. 24 R. C. L. 121 et seq. and Supps.

ARTICLE 12.—STOPPAGE IN TRANSIT.

§ 6002a57. Seller may stop goods on buyer's insolvency. Subject to the provisions of this act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. [Laws 1917, ch. 202, § 57.]

Sales, 35 Cyc. 493-494.

Stoppage in transitu of goods on insolvency of buyer. 24 R. C. L. 133 and Supps.

§ 6002a58. When goods are in transit. (1) Goods are in transit within the meaning of section 57—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission [to the buyer, until the buyer, or his agent] in that behalf, takes delivery of them from such carrier or other bailee.

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them even if the seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of section 57.

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery, has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. [Laws 1917, ch. 202, § 58.]

Sales, 35 Cyc. 499-504.

When right of stoppage in transitu terminates. 7 A.L.R. 1374.

Right of stoppage in transitu after reshipment. 34 L.R.A.(N.S.) 31.

Effect on right of stoppage in transitu of contract to ship goods f. o. b. 62 L.R.A. 805.

Waiver of right of stoppage in transitu by attachment or execution. 50 L.R.A. 721.

§ 6002a59. Ways of exercising the right to stop. (1) The unpaid seller may exercise his right of stoppage in transit either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier, or other bailee in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such delivery must

be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. [Laws 1917, ch. 202, § 59.]

Sales, 35 Cyc. 505-506.

Exercise of right of stoppage in transitu. 24 R. C. L. 149.

ARTICLE 13.—RESALE BY THE SELLER.

§ 6002a60. When and how resale may be made. (1) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transit may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. [Laws 1917, ch. 202, § 60.]

Jacobson v. Horner, — N. D. —, 193 N. W. 327.

Sales, 35 Cyc. 519-525.

Seller's right to recover, from purchaser, expenses of caring for personal property prior to its resale upon failure of sale contract. 29 A.L.R. 61.

Resale on account of buyer. 24 R. C. L. 108 et seq.

ARTICLE 14.—RESCISSION BY THE SELLER.

§ 6002a61. When and how the seller may rescind the sale. (1) An unpaid seller having a right of lien or having stopped the goods in transit, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer has been in default an unreasonable time before the right of rescission was asserted. [Laws 1917, ch. 202, § 61.]

Sales, 35 Cyc. 127, 131-134, 144, 157, 512-519; Contracts, 13 C. J. p. 609 § 648.

Election to rescind for fraud as barring action for damages or vice versa. 35 A.L.R. 1155, 1159.

Rescission of conditional sale on default of payment. 32 L.R.A. 469.

Rescission for failure to pay for instalment as delivered. 32 L.R.A.(N.S.) 1.

Necessity of returning consideration before bringing replevin for property obtained by fraudulent purchase. 21 L.R.A. 206; 1 L.R.A.(N.S.) 474.

Right of purchaser on conditional sale to recover back payments where contract is mutually rescinded. 38 L.R.A.(N.S.) 894.

Effect of default in payment, followed by rescission, as forfeiture of payments already made. 3 L.R.A.(N.S.) 785.

Right of infant to rescind sale of corporate stock. 28 L.R.A.(N.S.) 128.

Rescission by vendor of seeds. 37 L.R.A.(N.S.) 85.

Rescission by seller on default of buyer. 24 R. C. L. 273 and Supps.

§ 6002a62. Effect of sale of goods subject to lien or stoppage in transit.

Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transit. [Laws 1917, ch. 202, § 62.]

Sales, 35 Cyc. 497, 504.

Effect of sale by buyer on seller's right of stoppage in transitu. 24 R. C. L. 139 and Supps.

Effect of seller's right of stoppage in transitu on right of bona fide purchaser of documents of title. 24 R. C. L. 140 and Supps.

PART V.

ARTICLE 15.—ACTION FOR BREACH OF CONTRACT.

SUBARTICLE 1.—REMEDIES OF THE SELLER.

§ 6002a63. Action for the price. (1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of a transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section 64 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. [Laws 1917, ch. 202, § 63.]

Sales, 35 Cyc. 526-537.

Repudiation of contract by buyer as affecting seller's right to ship goods and bring action to recover purchase price. 27 A.L.R. 1231.

Contract requiring seller to look to property alone for payment as affecting action for purchase price. 17 A.L.R. 714.

Entirety or divisibility of contract as affecting right of seller to recover for goods delivered. 2 A.L.R. 663.

Action for price. 24 R. C. L. 89 et seq. and Supps.

§ 6002a64. Action for damages for non-acceptance of the goods. (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted or, if no time was fixed for acceptance then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. [Laws 1917, ch. 202, § 64.]

Measure of damages for breach of contract for purchase of personal property. *Jacobson v. Horner*, — N. D. —, 193 N. W. 327.

Method of determining damages, when there is an available and no available market. *Jacobson v. Horner*, — N. D. —, 193 N. W. 327.

See also *Schnitz Bros. v. Balles & Rogers Co.* 48 N. D. 673, 186 N. W. 96. Sales, 35 Cyc. 583, 591-600.

Action for damages for nonacceptance of goods. 24 R. C. L. 114 et seq. and Supps.

§ 6002a65. When seller may rescind contract or sale. Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. [Laws 1917, ch. 202, § 65.]

Magnuson v. Stiehm, 40 N. D. 141, 168 N. W. 613.

Sales, 35 Cyc. 131-134, 144, 506-519; Contracts, 13 C. J. p. 609 § 648.

Breach of one contract as ground for repudiation of another contract. 27 A.L.R. 1157.

Rescission of contract of sale by seller. 24 R. C. L. 273.

SUBARTICLE 2.—REMEDIES OF THE BUYER.

§ 6002a66. Action for converting or detaining goods. Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of similar kind when wrongfully converted or withheld. [Laws 1917, ch. 202, § 66.]

Hart-Parr Co. v. Finley, 31 N. D. 130, L.R.A.1915E, 851, 153 N. W. 137; *Elliott Supply Co. v. Lish*, 36 N. D. 640, 163 N. W. 271.

Sales, 35 Cyc. 602-619; Detinue, 18 C. J. p. 987; *Replevin*, 34 Cyc. 1342; *Trover and Conversion*, 38 Cyc. 1997.

Liability for negligent performance, by seller, of agreement to ship goods, by reason of which they are lost. 12 L.R.A.(N.S.) 679.

Replevin by buyer on nondelivery of goods by seller. 24 R. C. L. 63 and Supps.

Conversion of goods by wrongful detention. 26 R. C. L. 1117 and Supps.

§ 6002a67. Action for failing to deliver goods. (1) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or

refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

(2) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. [Laws 1917, ch. 202, § 67.]

Sales, 35 Cyc. 633-645.

Right of buyer to purchase on market before expiration of time for delivery where seller gives notice that he will not deliver. L.R.A.1917A, 1001.

Right of buyer to maintain separate action for nondelivery of each instalment under entire contract. 3 L.R.A.(N.S.) 1042.

Acceptance of portion of instalment, as affecting right to rescind continuing contract for failure to deliver whole. 21 L.R.A.(N.S.) 864.

Failure of seller to deliver goods on agreed date as ground for rescission by purchaser. L.R.A.1916E, 940.

Notice to vendor as condition of vendee's right to refuse subsequent deliveries after breach as to earlier deliveries. 8 L.R.A.(N.S.) 1110.

Action by buyer for damages for nondelivery of goods. 24 R. C. L. 68 and Supps.

§ 6002a68. Specific performance. Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as the court may deem just. [Laws 1917, ch. 202, § 68.]

Specific Performance, 36 Cyc. 554-569.

Specific performance of contracts in relation to personal property. L.R.A. 1918E, 597.

Specific performance of contracts for sale of corporate stock. 50 L.R.A. 501; 31 L.R.A.(N.S.) 491; L.R.A.1915D, 300.

Suit by buyer for specific performance. 24 R. C. L. 64 and Supps.

Specific performance of contract of sale of personal property. 25 R. C. L. 293 and Supps.

§ 6002a69. Remedies for breach of warranty. Where there is a breach of warranty by the seller; the buyer may, at his election—

(a) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was

transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon the returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuse to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 53 (§ 6002a53, ante).

(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such loss in the absence of special circumstances showing the proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. [Laws 1917, ch. 202, § 69.]

Rights of buyer upon breach of warranty by seller. *Minneapolis Steel & Machinery Co. v. Casey Land Agency*, — N. D. —, 201 N. W. 172.

Remedies of buyer for breach of warranty. *Tiedeman v. Rasmussen*, — N. D. —, 198 N. W. 550.

Evidence of rescission and breach of warranty held sufficient to support verdict for defendant. *Grewer v. Schafer*, — N. D. —, 197 N. W. 596.

Burden on defendant, who rescinded sale contract, to show breach of warranty, and rescission of contract. *Axford v. Gaines*, — N. D. —, 195 N. W. 555.

Rescission of sale for breach of warranty. *Tuveson v. Olson*, 45 N. D. 415, 178 N. W. 281.

See also *O'Hair v. Sutherland*, 30 N. D. 103, 152 N. W. 123; *Grewer v. Schafer*, — N. D. —, 197 N. W. 596; *Foote v. L. C. Smith & Bros. Typewriter Co.* 43 N. D. 83, 172 N. W. 833; *O. J. Barnes Co. v. Sheggerud*, 43 N. D. 279, 173 N. W. 950.

Sales, 35 Cyc. 138, 434-479.

Use as waiver of right to rescind for breach of warranty. 36 L.R.A.(N.S.) 467.

Purchaser's election to rescind for breach of warranty as affecting recovery against seller. 27 L.R.A.(N.S.) 925.

Right of purchaser of goods deliverable in instalments to rescind the contract, or refuse further deliveries, for breach as to quality. 38 L.R.A.(N.S.) 539.

Right of purchaser to reject goods for breach of warranty. 27 L.R.A.(N.S.) 914.

Right of rescission on breach of warranty by vendor of seeds. 37 L.R.A.(N.S.) 85; L.R.A.1916C, 1013.

Necessity that tender, as condition of rescission for breach of warranty, shall cover all the property sold. 8 L.R.A.(N.S.) 727.

Remedy for breach of warranty of horse where its death prevents its return and the substitution of another, as provided by the contract. 25 L.R.A.(N.S.) 823.

Effect of provision in contract of sale for return of defective goods upon buyer's right to recover for breach of warranty, express or implied. 12 L.R.A.(N.S.) 540.

Construction of provision for return in event of rescission for breach of warranty. 32 L.R.A.(N.S.) 212.

Right of purchaser who has resold to recover for breach of warranty as to
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quantity or quality, where he has not actually made good to his vendees. 3 L.R.A. (N.S.) 465.

Right of purchaser of goods deliverable in instalments to rescind the contract or refuse further deliveries for breach as to quality. 38 L.R.A.(N.S.) 539.

Remedy of purchaser on default of one who sells with particular description of kind or quality. 35 L.R.A.(N.S.) 291.

Rights and remedies of purchaser in sales by description. 14 L.R.A. 492.

Exclusiveness of remedy for breach of warranty given in contract of sale of chattels other than machinery or animals. 50 L.R.A.(N.S.) 778.

Exclusiveness of remedy for breach of warranty provided in contract for sale of machinery. 50 L.R.A.(N.S.) 753.

Exclusiveness of remedy for breach of warranty provided in contract for the sale of an animal. 50 L.R.A.(N.S.) 774.

Yielding to adverse claimant as affecting buyer's right to assert breach of warranty of title of personal property. L.R.A.1918B, 1138.

Right of purchaser of chattel to avail himself of breach of warranty made to the seller. 51 L.R.A.(N.S.) 1111.

May purchaser recover damages for breach of warranty or fraud as to both articles where one article is substituted for another at his request and both are defective. 37 L.R.A.(N.S.) 298.

Effect of change of condition of chattel upon right to return it for breach of warranty. 3 L.R.A.(N.S.) 678.

Right of purchaser, upon rejecting goods for breach of warranty, to resell them on account of seller. 27 L.R.A.(N.S.) 932.

Liability of vendor of diseased live stock, in the absence of express warranty. 29 L.R.A.(N.S.) 202.

Right of action for breach of warranty as to automobile or truck. 34 A.L.R. 549.

Prior action by seller in which claim for breach of warranty might have been asserted by counterclaim, set-off, or cross petition as barring or abating subsequent independent action for such breach. 8 A.L.R. 706.

Set-off or counterclaim in action for breach of warranty, of claim barred by limitation. 16 A.L.R. 330.

Right of dealer against his vendor in case of breach of warranty as to article purchased for resale and resold. 22 A.L.R. 133.

Resale by buyer where seller has refused to receive the property rejected for breach of warranty. 24 A.L.R. 1445.

Judgment against seller of chattels for breach of warranty as conclusive upon prior warrantor. 8 A.L.R. 667.

Action by buyer for breach of warranty. 24 R. C. L. 234 et seq. and Supps.

§ 6002a70. Interest and special damages. Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. [Laws 1917, ch. 202, § 70.]

Sales, 35 Cyc. 476.

Recovery of interest in action for price. 24 R. C. L. 95.

Recovery of interest on damages for breach of warranty. 24 R. C. L. 256.

Right of buyer to recover special damages. 24 R. C. L. 75, 77 and Supps.

PART VI.

ARTICLE 16.—INTERPRETATION.

§ 6002a71. Variation of implied obligation. Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. [Laws 1917, ch. 202, § 71.]

Pratt v. Huber Mfg. Co. 41 N. D. 301, 171 N. W. 246; Buchbinder Bros v. 1186

Walker, 42 N. D. 405, 173 N. W. 947; Elliott Supply Co. v. Johnson, 34 N. D. 632, 159 N. W. 2.

Sales, 35 Cyc. 97, 391; Customs and Usages, 17 C. J. pp. 490-492 §§ 51-52.

Usage of trade as varying implied warranty. 24 R. C. L. 211.

Variation of warranty in sale by description by custom of trade. 24 R. C. L. 223.

Exclusion of implied warranties by express warranties. 23 R. C. L. 1402, 1403 and Supps; 24 R. C. L. 178 and Supps.

Control of contract of sale by usage and custom. 27 R. C. L. 189 and Supps.

§ 6002a72. Rights may be enforced by action. Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action. [Laws 1917, ch. 202, § 72.]

Actions, 1 C. J. p. 986 § 95.

Enforcement of rights by action. 1 R. C. L. 322 and Supps.

§ 6002a73. Rules for cases not provided for by this act. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. [Laws 1917, ch. 202, § 73.]

Contracts, 13 C. J. pp. 369-419 §§ 245-338.

§ 6002a74. Interpretation shall give effect to purpose of uniformity. This act shall be so interpreted and construed, as to effectuate its general purpose to make uniform the laws of those states which enact it. [Laws 1917, ch. 202, § 74.]

Statutes, 36 Cyc. 1154.

Interpretation of statute to effectuate its purpose. 25 R. C. L. 1013 and Supps.

§ 6002a75. Provisions not applicable to mortgages. The provisions of this act relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. [Laws 1917, ch. 202, § 75.]

Chattel Mortgages, 11 C. J. p. 387; Pledges, 31 Cyc. 779.

§ 6002a76. Definitions. (1) In this act, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, set-off and suit in equity.

“Buyer” means a person who buys or agrees to buy goods or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of set-off or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from one person to another.

“Divisible contract to sell or sale” means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertained by computation.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

“Fault” means a wrongful act or default.

“Fungible goods” means any goods of which any unit is from its nature or mercantile usage treated as the equivalent of any other unit.

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" includes all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Order" in section of this act relating to documents of title means an order by indorsement on the document.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right to set-off or counter-claim.

"Property" means the general property in goods, and not merely a special property.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Purchaser" includes mortgagee and pledgee.

"Quality of goods" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2) A thing is done in "good faith" within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the Federal bankruptcy law or not.

(4) Goods are in a "deliverable state" within the meaning of this act when they are in such a state that the buyer would under contract, be bound to take delivery of them. [Laws 1917, ch. 202, § 76.]

§ 6002a77. Act does not apply to existing sales or contracts to sell. None of the provisions of this act shall apply to any sale, or to any contract to sell, made prior to the taking effect of this act. [Laws 1917, ch. 202, § 76a.]

§ 6002a78. No repeal of uniform warehouse receipt act or uniform bills of lading act. Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the act to make uniform the law of warehouse receipts, or of the act to make uniform the law of bills of lading. [Laws 1917, ch. 202, § 76b.]

§ 6002a79. Inconsistent legislation repealed. All acts or parts or acts inconsistent with this act are hereby repealed, except as provided in section 76b (§ 78, ante).

The following sections of the Compiled Laws of North Dakota (1913) are hereby repealed: Sections 5888, (4), 5950, 5951, 5952, 5953, 5954, 5955, 5956, 5961, 5962, 5965, 5966, 5967, 5968, 5969, 5970, 5971, 5972, 5973, 5974, 5975, 5976, 5977, 5978, 5979, 5980, 5981, 5982, 5983, 5984, 5985, 5987, 5988, 5989, 5990, 5991, 5992, 5994, 5995, 5996, 5997, 5998, 5999, 6000, 6001, 6003, 6004, 6005, 6881, 6882, 6883, 6884, 6885, 7153, 7154, 7155, 7156, 7157, 7158 and 7159. [Laws 1917, ch. 202, § 77.]

CHAPTER 57B.

MACHINERY AND ENGINE REPAIRS TO BE KEPT WITHIN THE STATE.

§ 6002b. Keeping repairs within state; penalty for violation. On and after

the taking effect of this act it shall be unlawful for the manufacturers of any gas or oil burning tractors, steam or gas engines, harvesting and threshing machinery, automobiles and auto trucks; to sell or deliver within this state any such gas or oil burning tractor, steam or gas engine, harvesting and threshing machinery, automobiles or auto trucks, without having first established at least one supply depot within the state where shall be kept constantly on hand a full and complete supply of repairs for the same.

Any manufacturer selling or delivering, or causing to be sold or delivered any such machinery in violation of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$25.00 and not to exceed \$200.00 for each offence. [Laws 1919, ch. 195, § 1.]

CHAPTER 58.

EXCHANGE.

§§ 6003-6005. Repealed by § 6002a79, ante.

CHAPTER 59.

DEPOSIT.

ARTICLE 5. STORAGE, § 6034.
7. FINDING, § 6042.

ARTICLE 5.—STORAGE.

§ 6034. Comp. Laws, 1913.
Billings v. G. Doering Grain Co. 47 N. D. 196, 181 N. W. 54.

ARTICLE 7.—FINDING.

§ 6042. Comp. Laws, 1913.
Paulson v. Sorenson, 33 N. D. 488, 157 N. W. 473.

CHAPTER 60.

LOANS.

ARTICLE 3.—LOAN OF MONEY.

§ 6070. Comp. Laws, 1913.
Stutsman County v. Dakota Trust Co. 47 N. D. 228, 181 N. W. 586.

§ 6072. **Legal rate six per cent.** Interest for any legal indebtedness shall be at the rate of six per cent per annum, unless a different rate not to exceed nine per cent per annum is contracted in writing and all contracts shall bear the same rate of interest after they become due as before. [Laws 1925, ch. 155, § 1; Laws 1915, ch. 176, § 1.]

Parol contract to pay interest in excess of legal rate, enforceable as to legal rate only. First Nat. Bank v. Messner, 35 N. D. 78, 159 N. W. 92.

Surety on bond liable for interest from time of demand at legal rate. Stutsman Co. v. Dakota Trust Co. 47 N. D. 228, 181 N. W. 586.

See also Merchants Nat. Bank v. Brastrup, 39 N. D. 619, 168 N. W. 42.

Interest, 33 C. J. pp. 186-187 §§ 26-27, p. 191 § 35, p. 195 § 41, p. 219 § 97, pp. 225-226 §§ 109-111.

Regulation of legal rate of interest by legislature. 15 R. C. L. 19 and Supps.

Rate of interest as fixed by stipulation of parties. 15 R. C. L. 20 and Supps.

Legal rate of interest after maturity. 15 R. C. L. 22 and Supps.

§ 6072a. Rate of interest on indebtedness. The rate of interest on all indebtedness hereafter incurred shall be the same after maturity as before maturity, and any contract attempting to make the rate of interest higher after maturity shall be void as to such increase of interest. [Laws 1919, ch. 166.]

Interest, 33 C. J. pp. 225-228 §§ 109-112.

Legal rate of interest after maturity. 15 R. C. L. 22 and Supps.

Validity of stipulation for different rate of interest after maturity. 15 R. C. L. 21 and Supps.

§ 6073. Usury defined. No person, firm, company or corporation shall directly or indirectly take or receive, or agree to take or receive in money, goods or things in action or in any other way, any greater sum or any greater value for the loan or forbearance of money, goods or things in action, than nine per cent per annum, and in the computation of interest, the same shall not be compounded. Any violation of this section shall be deemed usury. [Laws 1925, ch. 155, § 2; Laws 1915, ch. 176, § 2.]

Lindberg v. Burton, 41 N. D. 587, 171 N. W. 616; Thompson v. Baker, — N. D. —, 203 N. W. 195.

Interest, 33 C. J. pp. 191-193 §§ 35-38; Usury, 39 Cyc. 910, 925, 945, 962.

Agreement to pay compound interest as usurious. 37 A.L.R. 325.

Validity of agreement to pay interest on interest. 37 A.L.R. 335.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year. 29 A.L.R. 1112.

Officer's or employee's acceptance of secret compensation in making a loan by the bank as charging the bank with usury. 7 A.L.R. 139.

Leaving part of loan on deposit with lender as usury. 12 A.L.R. 1422.

Usury requiring borrower to employ lender's agent or member of lender's family as his agent. 21 A.L.R. 812, 813.

Commissions to agent of, lender, as rendering loan usurious. 21 A.L.R. 841.

Commissions to intermediaries acting for borrower as rendering loan usurious. 21 A.L.R. 823.

Usury: requiring borrower to pay insurance premium on property mortgaged as security. 1 A.L.R. 834.

Requiring borrower to take out life insurance, as rendering loan usurious. 21 A.L.R. 876.

Usury: expenses or charges incident to loan of money. 21 A.L.R. 797.

Including expense of efforts to collect or settle, in note extending time of payment as usury. 21 A.L.R. 899.

Payment of bonus by stranger. L.R.A.1917F, 923.

Loan to pay usurious debt. L.R.A.1918C, 354.

Stipulation for attorneys' fees as usury. L.R.A.1915B, 944.

Usury in exacting payment of interest for full term upon payment of debt before maturity. 28 L.R.A.(N.S.) 113; L.R.A.1916B, 812.

Application of usury law to purported sale or assignment of accounts. L.R.A. 1917E, 1121.

Usury in, loan, because of commissions to intermediaries as affected by lender's knowledge of such commissions. 21 A.L.R. 830, 850.

Increasing price upon sale on credit as usury. 28 L.R.A.(N.S.) 102.

Fixed interest charge for uncertain term. 3 A.L.R. 1385.

Interest in excess of legal rate as usury. 15 R. C. L. 4.

Taking of interest in advance as usury. 15 R. C. L. 12 and Supps.

Definition of usury. 27 R. C. L. 203 and Supps.

Compound interest. 15 R. C. L. 36 and Supps.

§ 6075. Comp. Laws, 1913.

Lindberg v. Burton, 41 N. D. 587, 171 N. W. 616.

§ 6076. Penalty for usury. The taking, receiving, reserving or charging a rate of interest greater than is allowed by section 6073 and 6075 as amended by chapter 176, Session Laws of the state of North Dakota for the year 1915 shall be deemed a forfeiture of the entire interest which the note, bill or other

evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back in an action for that purpose twice the amount of interest thus paid from the person taking or receiving the same; provided, that such action is commenced within four years from the time the usurious transaction occurred. Any person whether in his own individual right or as the agent, servant or representative of any individual, firm or corporation, who shall violate the terms and provisions of section 6072 or 6073, shall be guilty of a misdemeanor and upon conviction thereof, shall be confined in the county jail not exceeding 90 days, and shall be fined in any sum not exceeding \$300.00 or may be punished by both such fine and imprisonment. The penal clause of this action [section] shall be deemed and construed to be cumulative, and the civil action in this section provided for shall be in no wise altered or taken away by virtue of the clause in this section providing for the fine and imprisonment of persons guilty of violation of section 6072 or section 6073 hereof. [Laws 1919, ch. 235, § 1.]

Cause of action for penalty arises only when interest has actually been paid. *Lindberg v. Burton*, 41 N. D. 587, 171 N. W. 616.

See also *Lee v. Dolan*, 34 N. D. 449, 158 N. W. 1007.

Usury, 39 Cyc. 1007, 1033, 1036-1037, 1095.

Usury as defense to mortgagee's action to enforce liability of grantee of mortgagor, assuming mortgage debt. 21 A.L.R. 495.

Right of grantor or surety for corporation to set up usury where the corporation could not. 6 A.L.R. 586.

Accommodation party's rights as against accommodated party after payment, as affected by usury. 36 A.L.R. 559.

Payment of, or offer to pay principal and legal interest as condition of relief in equity against usurious contract. 17 A.L.R. 123.

Cruel and unusual punishment for usury. L.R.A.1915C, 570.

Right, in absence of statutory provision therefor, to maintain action to recover back usurious payments. L.R.A.1918B, 585.

Usury as a defense against a bona fide purchaser of a bill or note. L.R.A. 1918C, 773.

Right to open judgment to let in defense of usury. 12 L.R.A.(N.S.) 659; L.R.A. 1916F, 859.

Right of creditors to set up usury in their debtor's contract with others. L.R.A.1915C, 634.

Penalties for usury. 27 R. C. L. 274 et seq.

§ 6078. Comp. Laws, 1913.

Stutsman County v. Dakota Trust Co. 47 N. D. 228, 181 N. W. 586.

CHAPTER 61.

HIRING.

ARTICLE 2.—HIRING OF REAL PROPERTY.

§ 6092. Comp. Laws, 1913.

As to renewal of lease by operation of law. *Botnen v. Eckre*, 41 N. D. 514, 171 N. W. 95.

§ 6094. Comp. Laws, 1913.

As to renewal of lease by operation of law. *Botnen v. Eckre*, 41 N. D. 514, 171 N. W. 95.

Lease held to be a continuation of old one, where tenant held over, and landlord was to receive half the crop of grain, as under the old lease. *Herrmann v. Minnekota Elevator Co.* 27 N. D. 235, 145 N. W. 821.

See also *McKenzie v. Hopkins*, 29 N. D. 180, 150 N. W. 881.

§§ 6095, 6096. Comp. Laws, 1913.

As to renewal of lease by operation of law. *Botnen v. Eckre*, 41 N. D. 514, 171 N. W. 95.

CHAPTER 62.

SERVICE.

- ARTICLE 1. DEFINITION OF EMPLOYMENT, § 6105.
 2. OBLIGATIONS OF THE EMPLOYER, §§ 6106-6108.
 2a. CONSTRUCTION WORK, §§ 6108a1-6108a3.
 3. OBLIGATIONS OF THE EMPLOYEE, §§ 6112, 6115.

ARTICLE 1.—DEFINITION OF EMPLOYMENT.

§ 6105. Comp. Laws, 1913.

Minneapolis Iron Store Co. v. Branum, 36 N. D. 355, L.R.A.1917E, 298, 162 N. W. 543.

ARTICLE 2.—OBLIGATIONS OF THE EMPLOYER.

§ 6106. Comp. Laws, 1913.

Warehime v. Huseby, 38 N. D. 344, 165 N. W. 502.

§ 6107. Comp. Laws, 1913.

In action against railway and foreman of machine shop, for injury caused to plaintiff by his own negligence and that of the foreman, bringing in verdict against railway alone, held to be a mistrial. *Bauer v. Great Northern R. Co.* 40 N. D. 542, 169 N. W. 84.

Employer not liable to employee for injury caused to him by his own negligence. *Vanevery v. Minneapolis, St. P. & S. Ste. M. R. Co.* 41 N. D. 599, 171 N. W. 610.

Liability of employer for injury caused to employee by negligence in construction and operation of a coal shed, and failure to maintain same in reasonably safe condition. *Yuha v. Minneapolis, St. P. & S. Ste. M. R. Co.* 42 N. D. 179, 121 N. W. 851.

Employer liable to employee for injury caused from direction of employer to work in dangerous place. *Lilly v. Elm Point Min. Co.* 45 N. D. 464, 178 N. W. 128.

Retention by master of careless and incompetent servant, with knowledge of such carelessness and incompetence, as affecting fellow servant doctrine. *Hennessy v. Ginsberg*, 46 N. D. 229, 180 N. W. 796.

See also *Warehime v. Huseby*, 38 N. D. 344, 165 N. W. 502; *Wingen v. Minneapolis, St. P. & S. Ste. M. R. Co.* 42 N. D. 517, 173 N. W. 832; *Kanable v. Great Northern R. Co.* 45 N. D. 619, 178 N. W. 999; *Karas v. MacAdoo*, 46 N. D. 344, 179 N. W. 710.

§ 6108. Comp. Laws, 1913.

Master held liable for injury to employe caused by negligence of foreman in charge of mine elevator. *Warehime v. Huseby*, 38 N. D. 344, 165 N. W. 502.

Employer liable to employee for injury caused from direction of employer to work in dangerous place. *Lilly v. Elm Point Min. Co.* 45 N. D. 464, 178 N. W. 128.

Retention by master of careless and incompetent servant in his employment, knowing that servant is careless or incompetent, renders him liable to any other servant suffering injury through carelessness or incompetence of servant retained. *Hennessy v. Ginsberg*, 46 N. D. 229, 180 N. W. 796.

Liability of master for injury to employee by permitting work to be done in onerous and dangerous way. *Karas v. MacAdoo*, 46 N. D. 344, 179 N. W. 710.

See also *Wingen v. Minneapolis, St. P. & S. Ste. M. R. Co.* 42 N. D. 517, 173 N. W. 832.

ARTICLE 2a.—CONSTRUCTION WORK.

§ 6108a1. **Scaffoldings, etc., to be safeguarded.** All scaffolds, hoists, cranes, stays, ladders, supports or other mechanical contrivances erected or constructed by any person, firm or corporation in the state, for use in the erection, repairing, alteration, removal or painting of any house, building, bridge, viaduct, steel tank, standpipe or other structure shall be erected and constructed in a safe, suitable and proper manner, and shall be so erected and constructed, placed and operated as to give proper and adequate protection to life and limb of any person or persons employed or engaged thereon, or passing under or by the same, and in such manner as to prevent the falling of any material that may be used or deposited thereon. Scaffolding or staging swung or suspended from an overhead support more than twenty feet from the ground or floor shall have, where practicable, a safety rail properly secured and braced, rising at least thirty-four inches above the floor or main portion of such scaffolding or staging and extending along the entire length of the outside and ends thereto, and such scaffolding or staging shall be so fastened as to prevent the same swaying from the building or structure. [Laws 1921, ch. 42, § 1.]

Experimental evidence as to safety of Scaffold. 8 A.L.R. 47.

Scaffolds or staging as embraced by words "works," "ways," "equipment," "machinery," etc. in employers' liability acts. 23 A.L.R. 722.

What constitutes "scaffolding" within meaning of workmen's compensation act. L.R.A.1916A, 198.

Negligence of coservant in respect to preparation of scaffolds, staging, etc. 54 L.R.A. 142.

Master's liability for negligence of coservant in respect to defective scaffolds. 54 L.R.A. 170.

What are scaffolds or structures within statutes relating to safety of scaffolds in connection with structures. 30 L.R.A.(N.S.) 30.

Scaffolding, etc. as ways, works, etc. within meaning of employer's liability acts. L.R.A.1915F, 1036.

Duty of master as to condition of scaffold constructed by employees, to an employee not a member of the gang for whose use the scaffold was primarily constructed. 22 L.R.A.(N.S.) 952.

Applicability as between master and servant of maxim, Res ipsa loquitur, to fall of scaffold. 28 L.R.A.(N.S.) 586.

Employee's right of action for employer's violation of building laws as to scaffolds. 9 L.R.A.(N.S.) 376.

Nondelegable duties as to defective ladders. 54 L.R.A. 72.

Liability of master for injury to servant by defective ladder not forming part of a structure. 13 L.R.A.(N.S.) 687; 51 L.R.A.(N.S.) 337.

Ladders as ways, works, etc. within meaning of employer's liability acts. L.R.A. 1915F, 1038.

Nondelegable duties as to defects in scaffolds, platforms, etc. 54 L.R.A. 69, 77.

Duty of master as to scaffolding. 18 R. C. L. 596 and Supps.

§ 6108a2. **Penalty for neglect to place temporary floors.** Any person engaged in and having supervision and charge of the building, erection or construction of any block, building or structure, who shall neglect or refuse to place or have placed upon the joists of each and every story of such block, building or structure, as soon as the joists are in position, counter floors of such quality and strength as to render perfectly safe the going to and fro thereon of all mechanics, laborers and other persons engaged upon the construction or in supervising the same, or in the building or placing of materials therefor, shall be deemed guilty of a misdemeanor and upon conviction thereof in any court or [of] competent jurisdiction shall be fined in any sum not less than twenty-five dollars nor more than two hundred dollars, and each and every day that such person, contractor, agent, factor or architect shall neglect or refuse to have such floors so placed as aforesaid, after written notice by the

building inspector or from any person whose life or personal safety may be endangered by such neglect or refusal, shall be held and considered a separate offense, severally liable to the penalties aforesaid. [Laws 1921, ch. 42, § 2.]

§ 6108a3. Penalty. Any contractor or other person having charge of the erection, construction, repairing, alteration, removal or painting of any building, bridge, viaduct, steel tank, standpipe or other structure, within the provisions of the two preceding sections, shall comply with the terms thereof, and any such contractor or other person violating any of the provisions of the two preceding sections shall, upon conviction thereof, be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned for not less than thirty days nor more than one year, or both such fine or imprisonment, in the discretion of the court. In addition to the penalties (sic) herein provided, in the refusal or neglect of any person, firm or corporation, or his, or its agents, to comply with the provisions of the two preceding sections, the use of any such scaffold, hoist, crane, stays, ladder, support, or other mechanical contrivance, or the erection, repairing, alteration, removal or painting of any building, bridge, viaduct, steel tank or other structure, may be prohibited by the labor commissioner, or inspector deputized by him, and a notice to that effect shall be posted upon the premises. Such notice shall not be removed until such scaffold, hoist, crane, stays, ladder, support or other mechanical contrivance or temporary floorings are properly and safely constructed. [Laws 1921, ch. 42, § 3.]

ARTICLE 3.—OBLIGATIONS OF THE EMPLOYEE.

§ 6112. Comp. Laws, 1913.

Employer liable for injury caused to employee by directing him to work in dangerous place. *Lilly v. Elm Point Min. Co.* 45 N. D. 464, 178 N. W. 128.

See also *Karas v. MacAdoo*, 46 N. D. 344, 179 N. W. 710.

§ 6115. Comp. Laws, 1913.

Employer liable to employee for injury caused to him by directing him to work in dangerous place. *Lilly v. Elm Point Min. Co.* 45 N. D. 464, 178 N. W. 128.

See also *Minneapolis Iron Store Co. v. Branum*, 36 N. D. 355, L.R.A.1917E, 298, 162 N. W. 543; *Karas v. MacAdoo*, 46 N. D. 344, 179 N. W. 710.

CHAPTER 63.

PARTICULAR EMPLOYMENTS.

ARTICLE 1.—MASTER AND SERVANT.

§ 6134. Comp. Laws, 1913.

Minneapolis Iron Store Co. v. Branum, 36 N. D. 355, L.R.A.1917E, 298, 162 N. W. 543; *Montain v. Fargo*, 38 N. D. 432, L.R.A.1918C, 600, 166 N. W. 416.

CHAPTER 67.

CARRIAGE OF PROPERTY.

ARTICLE 3.—BILL OF LADING.

§ 6209. Comp. Laws, 1913.

Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co. 34 N. D. 466, 159 N. W. 81.

§§ 6210, 6211. Comp. Laws, 1913.

Merchants Nat. Bank v. Reiland, — N. D. —, 199 N. W. 945.

§§ 6212, 6213. Comp. Laws, 1913.

Knapp v. Minneapolis, St. P. & S. Ste. M. Ry. Co. 34 N. D. 466, 159 N. W. 81.

CHAPTER 69.

COMMON CARRIERS.

- ARTICLE 1. COMMON CARRIERS IN GENERAL, §§ 6235-6242.
2. COMMON CARRIERS OF PERSONS, §§ 6243-6252.
3. COMMON CARRIERS OF PROPERTY, §§ 6253-6261.
4. SHIPMENT OF LIVE STOCK, § 6262.
5. COMMON CARRIERS OF MESSAGES, §§ 6263-6270.

ARTICLE 1.—COMMON CARRIERS IN GENERAL.

§ 6235. Comp. Laws, 1913.

Street railway company, operating lines on city streets, interurban lines, and lines into rural communities, a common carrier. Peterson v. Fargo-Moorhead Street R. Co. 37 N. D. 440, 164 N. W. 42.

See also Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

§ 6236. Comp. Laws, 1913.

Minneapolis, St. P. & S. Ste. M. R. Co. v. Washburn Lignite Coal Co. 40 N. D. 69, 12 A.L.R. 744, 168 N. W. 684; Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

§ 6237. Comp. Laws, 1913.

Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

§ 6238. Comp. Laws, 1913.

Carrier liable for actual damage to passengers for misinformation as to time of departure of trains. Weeks v. Great Northern R. Co. 43 N. D. 426, 8 A.L.R. 1178, 175 N. W. 726.

See also Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

§§ 6239-6242. Comp. Laws, 1913.

Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

ARTICLE 2.—COMMON CARRIERS OF PERSONS.

§§ 6243-6252. Comp. Laws, 1913.

Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

ARTICLE 3.—COMMON CARRIERS OF PROPERTY.

§ 6253. Comp. Laws, 1913.

Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78; Reeves & Co. v. Russell, 28 N. D. 265, L.R.A.1915D, 1149, 148 N. W. 654.

§§ 6254-6258. Comp. Laws, 1913.

Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

§ 6259. Comp. Laws, 1913.

Station agent cannot contract to transport goods from places distant from such station, and distant from company's line, without express or implied authority. Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co. 34 N. D. 466, 159 N. W. 81.

See also Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78; Assid v. Great Northern R. Co. 38 N. D. 270, 164 N. W. 949.

§ 6260. Comp. Laws, 1913.

Person seeking to recover against initial carrier for loss or injury to goods, while in possession of connecting carrier must show demand for proof on initial carrier, and failure to furnish proof that goods were lost or injured while in

possession of connecting carrier. *Assid v. Great Northern R. Co.* 38 N. D. 270, 164 N. W. 949.

See also *Hanson v. Great Northern R. Co.* 18 N. D. 324, 121 N. W. 78.

§ 6261. Comp. Laws, 1913.
Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

ARTICLE 4.—SHIPMENT OF LIVE STOCK.

§ 6262. Comp. Laws, 1913.
Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

ARTICLE 5.—COMMON CARRIERS OF MESSAGES.

§§ 6263–6270. Comp. Laws, 1913.
Hanson v. Great Northern R. Co. 18 N. D. 324, 121 N. W. 78.

CHAPTER 70.

TRUSTS IN GENERAL.

ARTICLE 1. NATURE AND CREATION OF A TRUST, §§ 6273–6280.
2. OBLIGATIONS OF TRUSTEES, §§ 6282–6292.

ARTICLE 1.—NATURE AND CREATION OF A TRUST.

§ 6273. Comp. Laws, 1913.
Request by dying father, and promise by sons to convey property to wife, held to create an involuntary trust, enforceable against the sons, and superior to liens of sons' judgment creditors. *Arntson v. First Nat. Bank*, 39 N. D. 408, L.R.A.1918F, 1038, 167 N. W. 760.

§ 6274. Comp. Laws, 1913.
Herrmann v. State Bank, 34 N. D. 313, 158 N. W. 986.

§§ 6277, 6278. Comp. Laws, 1913.
Reel v. Hansboro State Bank, — N. D. —, 201 N. W. 861.

§ 6279. Comp. Laws, 1913.
Payment by one of part of purchase price for land; and inadvertent taking of title thereto by another, raises an involuntary trust, to the extent of such payment in favor of the former, upon payment of additional payments, interests, and taxes. *Kernkamp v. Schulz*, 44 N. D. 20, 176 N. W. 108.

§ 6280. Comp. Laws, 1913.
Request by dying father, and promise by sons to convey property to wife, held to create an involuntary trust, enforceable against the sons, and superior to liens of sons' judgment creditors. *Arntson v. First Nat. Bank*, 39 N. D. 408, L.R.A.1918F, 1038, 167 N. W. 760.

Payment by one of part of purchase price for land; and inadvertent taking of title thereto by another, raises an involuntary trust to extent of such payment, in favor of the former, upon payment of additional payments, interest, and taxes. *Kernkamp v. Schulz*, 44 N. D. 20, 176 N. W. 108.

See also *Farmers State Bank v. Anton*, — N. D. —, 199 N. W. 582.

ARTICLE 2.—OBLIGATIONS OF TRUSTEES.

§ 6282. Comp. Laws, 1913.
MacFadden v. Jenkins, 40 N. D. 422, 169 N. W. 151; *DesMoines Mut. Hail & Cyclone Ins. Assn. v. Steen*, 43 N. D. 298, 175 N. W. 195; *Langer v. Fargo Mercantile Co.* 48 N. D. 545, 186 N. W. 104.

§§ 6283, 6290. Comp. Laws, 1913.
MacFadden v. Jenkins, 40 N. D. 422, 169 N. W. 151; *Langer v. Fargo Mercantile Co.* 48 N. D. 545, 186 N. W. 104.

§ 6292. Comp. Laws, 1913.

Des Moines Mut. Hail & Cyclone Ins. Asso. v. Steen, 43 N. D. 298, 175 N. W. 195.

CHAPTER 72.

AGENCY.

ARTICLE 1. DEFINITION OF AGENCY, §§ 6322-6324.

2. AUTHORITY OF AGENTS, §§ 6328-6344.

3. MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS, §§ 6350-6356.

ARTICLE 1.—DEFINITION OF AGENCY.

§§ 6322, 6323. Comp. Laws, 1913.

First Nat. Bank v. Henry, 30 N. D. 324, 152 N. W. 668; Stoffels v. Brown, 37 N. D. 272, 163 N. W. 834; Bernard v. Madsen, — N. D. —, 204 N. W. 196.

§ 6324. Comp. Laws, 1913.

Where principal allows purchaser of realty to believe that agent has authority to receive payment of purchase price, agent has ostensible authority to receive payment. First Nat. Bank v. Henry, 30 N. D. 324, 152 N. W. 668.

Essential features of ostensible agency is belief by third party in existence of authority in supposed agent, resting upon conduct of principal, and a reliance thereon by the third party. Bernard v. Madsen, — N. D. —, 204 N. W. 196.

See also Merritt v. Adams County Land & Invest. Co. 29 N. D. 496, 151 N. W. 11; Buchanan Elevator Co. v. Lees, 37 N. D. 27, 163 N. W. 264; Stoffels v. Brown, 37 N. D. 272, 163 N. W. 834; Farmers Security Bank v. Verry, 42 N. D. 264, 172 N. W. 867.

ARTICLE 2.—AUTHORITY OF AGENTS.

§ 6328. Comp. Laws, 1913.

Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co. 33 N. D. 291, 156 N. W. 1019.

6330. Comp. Laws, 1913.

Oral contract authorizing one to purchase school land, and hold same in trust for others, is within Statute of Frauds, and void. Weber v. Bader, 42 N. D. 142, 172 N. W. 72.

Written contract for sale of land, entered into by agent having only parol authority to sell, is void. Halland v. Johnson, 42 N. D. 360, 174 N. W. 874.

Section does not require written authority to an agent to indorse a negotiable instrument belonging to a corporation. McLeod State Bank v. Vandemark, — N. D. —, 200 N. W. 42.

See also Bunting v. Creglow, 40 N. D. 98, 168 N. W. 727.

§ 6331. Comp. Laws, 1913.

Principal may ratify a voidable contract entered into by agent without authority, but not one which is wholly void. Halland v. Johnson, 42 N. D. 360, 174 N. W. 874.

Ratification to be binding must be shown to have been made with full knowledge of all material facts. Martinson v. Kershner, 32 N. D. 46, 155 N. W. 37.

See also Bunting v. Creglow, 40 N. D. 98, 168 N. W. 727; Eastgate v. Osago School Dist. 41 N. D. 518, 171 N. W. 96; Brotherhood of American Yeomen v. Farmers' Equity State Bank, 45 N. D. 532, 178 N. W. 285.

§ 6332. Comp. Laws, 1913.

Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co. 33 N. D. 291, 156 N. W. 1019.

§ 6335. Comp. Laws, 1913.

Ratification to be binding must be shown to have been made with full knowledge of all material facts. Martinson v. Kershner, 32 N. D. 46, 155 N. W. 37.

§ 6336. Comp. Laws, 1913.

As to liability of wife on promissory note where husband does business in her name under general power of attorney. *Buchanan Elevator Co. v. Lees*, 37 N. D. 27, 163 N. W. 264.

See also *First Nat. Bank v. Henry*, 30 N. D. 324, 152 N. W. 668; *Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co.* 34 N. D. 466, 159 N. W. 81; *Stoffels v. Brown*, 37 N. D. 272, 163 N. W. 834; *Grant County State Bank v. Northwestern Land Co.* 28 N. D. 479, 150 N. W. 736.

§ 6337. Comp. Laws, 1913.

Where agency is denied burden of proof is upon him who asserts it. *Martinson v. Kershner*, 32 N. D. 46, 155 N. W. 37.

Bank held to have actual authority to receive payment of principal of note secured by mortgage. *Bernard v. Madson*, — N. D. —, 204 N. W. 196.

Officers of bank held to have actual authority to give information to prospective sureties as to record of employees in existing employments, where such was practice for period of six years without objection on part of corporation. *McIntosh v. Dakota Trust Co.* — N. D. —, — A.L.R. —, 204 N. W. 818.

See also *First Nat. Bank v. Henry*, 30 N. D. 324, 152 N. W. 668; *Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co.* 34 N. D. 466, 159 N. W. 81; *Stoffels v. Brown*, 37 N. D. 272, 163 N. W. 834; *Grant County State Bank v. Northwestern Land Co.* 27 N. D. 479, 150 N. W. 736.

§ 6338. Comp. Laws, 1913.

Agent held to have ostensible authority to withhold mechanic's lien from record until expiration of ninety day period, thus allowing a mortgage to become a prior lien. *McCaull v. Nichols*, 29 N. D. 405, 150 N. W. 932.

Officer of land company held to have ostensible authority to sell land and receive payment therefor. *Merritt v. Adams County Land & Invest. Co.* 29 N. D. 496, 151 N. W. 11.

Where agency is denied, burden of proof is upon him, who asserts it. *Martinson v. Kershner*, 32 N. D. 46, 155 N. W. 37.

As to liability of wife on promissory note, where husband does business in her name, under general power of attorney. *Buchanan Elevator Co. v. Lees*, 37 N. D. 27, 163 N. W. 264.

See also *First Nat. Bank v. Henry*, 30 N. D. 324, 152 N. W. 668; *Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co.* 34 N. D. 466, 159 N. W. 81; *Stoffels v. Brown*, 37 N. D. 272, 163 N. W. 834; *Grant County State Bank v. Northwestern Land Co.* 28 N. D. 479, 150 N. W. 736.

§ 6339. Comp. Laws, 1913.

Agent held to have ostensible authority to withhold mechanic's lien from record until expiration of ninety day period, thus allowing a mortgage to become a prior lien. *McCaull v. Nichols*, 29 N. D. 405, 150 N. W. 932.

§ 6340. Comp. Laws, 1913.

General agent, of territory comprising several states, having authority to make contracts with local agents, for sale of machinery subject to approval of principal and power to sell machinery from head office, has also authority to do everything necessary to effect purpose of his agency. *Kopan v. Minneapolis Threshing Mach. Co.* 39 N. D. 27, 166 N. W. 826.

Agent held to have ostensible authority to withhold mechanic's lien from record until expiration of ninety day period thus allowing a mortgage to become a prior lien. *McCaull v. Nichols*, 29 N. D. 405, 150 N. W. 932.

See also *Boehm v. Long*, 43 N. D. 1, 172 N. W. 862; *Lake Grovery Co. v. Chiostri*, 34 N. D. 386, 158 N. W. 998; *Grant County State Bank v. Northwestern Land Co.* 28 N. D. 479, 150 N. W. 736.

§ 6344. Comp. Laws, 1913.

Word "quality," imports, "adaptiveness, suitability, and fitness for purpose specified," and in case of a horse adaptiveness and suitability for purposes for which horses are purchased. *Holbert v. Weber*, 36 N. D. 106, 161 N. W. 560.

ARTICLE 3.—MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

§ 6350. Comp. Laws, 1913.

Horswill v. North Dakota Mut. Fire Ins. Co. 45 N. D. 600, 178 N. W. 798.

§ 6352. Comp. Laws, 1913.

Brotherhood of American Yeomen v. Farmers' Equity State Bank, 45 N. D. 532, 178 N. W. 285.

§ 6356. Comp. Laws, 1913.

York v. General Utilities Corp. 41 N. D. 137, 170 N. W. 312; Grant County State Bank v. Northwestern Land Co. 28 N. D. 479, 150 N. W. 736.

CHAPTER 74.

PARTNERSHIP IN GENERAL.

- ARTICLE 1. WHAT CONSTITUTES A PARTNERSHIP, §§ 6386, 6388.
2. PARTNERSHIP PROPERTY, §§ 6389-6392.

ARTICLE 1.—WHAT CONSTITUTES A PARTNERSHIP.

§ 6386. Comp. Laws, 1913.

Several persons leasing land as tenants in common, each person using it as pasturage for his cattle or for his individual benefit, held not to constitute a partnership. Weber v. Bader, 42 N. D. 142, 172 N. W. 72.

Agreement to give compensation, in addition to rate of interest for loan of money, the compensation being dependent upon the amount of money received under a contract to grade roads, does not make the parties to the agreement co-partners in the grading of roads. Napoleon Farmers' Elevator Co. v. Dunahey, 47 N. D. 538, 182 N. W. 926.

See also Meyer v. Burch, 41 N. D. 18, 170 N. W. 126.

§ 6388. Comp. Laws, 1913.

Napoleon Farmers' Elevator Co. v. Dunahey, 47 N. D. 538, 182 N. W. 926.

ARTICLE 2.—PARTNERSHIP PROPERTY.

§ 6389. Comp. Laws, 1913.

F. B. Scott Co. v. Scheidt, 35 N. D. 433, 160 N. W. 502.

§ 6390. Comp. Laws, 1913.

All partners must join as parties plaintiff in action to recover damages to firm from tort. Staley v. Bismarek Bank, 48 N. D. 1264, 189 N. W. 236.

See also F. B. Scott Co. v. Scheidt, 35 N. D. 433, 160 N. W. 502.

§ 6391. Comp. Laws, 1913.

Share of partners in profits and losses equal, in absence of agreement to contrary. Shirley v. Straub, — N. D. —, 198 N. W. 675.

§ 6392. Comp. Laws, 1913.

Meyer v. Burch, 41 N. D. 18, 170 N. W. 126.

CHAPTER 75.

GENERAL PARTNERSHIP.

- ARTICLE 2. POWERS AND AUTHORITY OF PARTNERS, §§ 6402-6404.
3. MUTUAL OBLIGATIONS OF PARTNERS, § 6406.
4. LIABILITY OF PARTNERS, §§ 6410-6413.
5. TERMINATION OF PARTNERSHIP, §§ 6414-6418.
6. LIQUIDATION, §§ 6423, 6425.

ARTICLE 2.—POWERS AND AUTHORITY OF PARTNERS.

§ 6402. Comp. Laws, 1913.

Meyer v. Burch, 41 N. D. 18, 170 N. W. 126.

§ 6403. Comp. Laws, 1913.

Union Nat. Bank v. Western Bldg. Co. 44 N. D. 336, 175 N. W. 628; First Guaranty Bank v. Rex Theatre Co. — N. D. —, 195 N. W. 564.

§ 6404. Comp. Laws, 1913.

Where one sells stock and good will of partnership, under contract not to engage in that business for a certain length of time, he may be enjoined from re-engaging in business, even though the other partners are not bound by the contract. Hansom v. Wirtz, — N. D. —, 204 N. W. 672.

ARTICLE 3.—MUTUAL OBLIGATIONS OF PARTNERS.

§ 6406. Comp. Laws, 1913.

Scott Co. v. Scheidt, 35 N. D. 433, 160 N. W. 502.

ARTICLE 4.—LIABILITY OF PARTNERS.

§ 6410. Comp. Laws, 1913.

Liability of partners is joint, and not joint and several. Continental Supply Co. v. Syndicate Trust Co. — N. D. —, 202 N. W. 404.

See also Meyer v. Burch, 41 N. D. 18, 170 N. W. 126; Union Nat. Bank v. Western Bldg. Co. 44 N. D. 336, 175 N. W. 628.

§ 6412. Comp. Laws, 1913.

Union Nat. Bank v. Western Bldg. Co. 44 N. D. 336, 175 N. W. 628; Napoleon Farmers' Elevator Co. v. Dunahey, 47 N. D. 538, 182 N. W. 926.

§ 6413. Comp. Laws, 1913.

Napoleon Farmers' Elevator Co. v. Dunahey, 47 N. D. 538, 182 N. W. 926.

ARTICLE 5.—TERMINATION OF PARTNERSHIP.

§ 6414. Comp. Laws, 1913.

Union Nat. Bank v. Western Bldg. Co. 44 N. D. 336, 175 N. W. 628.

§§ 6415, 6416. Comp. Laws, 1913.

Oustad v. Hahn, 27 N. D. 334, 146 N. W. 557.

§ 6418. Comp. Laws, 1913.

Union Nat. Bank v. Western Bldg. Co. 44 N. D. 336, 175 N. W. 628.

ARTICLE 6.—LIQUIDATION.

§ 6423. Comp. Laws, 1913.

Gardner Hotel Co. v. Hagaman, 47 N. D. 434, 182 N. W. 685.

§ 6425. Comp. Laws, 1913.

MacFadden v. Jenkins, 40 N. D. 422, 169 N. W. 151; Gardner Hotel Co. v. Hagaman, 47 N. D. 434, 182 N. W. 685.

CHAPTER 76.

SPECIAL PARTNERSHIP.

ARTICLE 2.—POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

§ 6450. Comp. Laws, 1913.

John Miller Co. v. Harvey Mercantile Co. 38 N. D. 531, 165 N. W. 558.

CHAPTER 77.

INSURANCE IN GENERAL.

- ARTICLE 4.** INSURANCE INTEREST, §§ 6466-6471.
 5. CONCEALMENT AND REPRESENTATION, § 6501.
 6. THE POLICY, §§ 6515, 6517.
 7. WARRANTIES, §§ 6519-6528.
 8. PREMIUM, §§ 6530-6533.
 10. NOTICE OF LOSS, §§ 6543-6545.
 11. DOUBLE INSURANCE, §§ 6547, 6548.
 11a. EXCHANGE OF RECIPROCAL OR INTER-INSURANCE CONTRACTS, §§
 6548a1-6548a12.

ARTICLE 4.—INSURABLE INTEREST.

- § 6466. Comp. Laws, 1913.
 One loaning money to business concern, taking as collateral therefor, a pledge of fire insurance policy on goods used in the business, has an insurable interest in the goods. *Hecker v. Commercial State Bank*, 35 N. D. 12, 159 N. W. 97.
- § 6467. Comp. Laws, 1913.
Hecker v. Commercial State Bank, 35 N. D. 12, 159 N. D. 97.
- § 6470. Comp. Laws, 1913.
 One having a part interest in an insured crop cannot recover in excess of his insurable interest, which is the amount of his interest in the crop. *Berglund v. State Farmers' Mut. Hail Ins. Co.* 26 N. D. 17, 142 N. W. 941.
- § 6471. Comp. Laws, 1913.
Hecker v. Commercial State Bank, 35 N. D. 12, 159 N. W. 97.

ARTICLE 5.—CONCEALMENT AND REPRESENTATION.

- § 6501. Comp. Laws, 1913.
 Failure of insured to name one instance when she consulted a physician, and failure to disclose ailment she was suffering from, held to be a representation, and not a warranty voiding the policy. *Plotner v. Northwestern Nat. L. Ins. Co.* 48 N. D. 295, 183 N. W. 1000.
 Section does not change effect of false warranty in contract of insurance as to fact material to risk assumed. *Van Woert v. Modern Woodmen*, 29 N. D. 441, 151 N. W. 224.
 Answers in application for life insurance must be given reasonable interpretation. *Donahue v. Mutual L. Ins. Co.* 37 N. D. 203, L.R.A.1918A, 300, 164 N. W. 50.
 Sureties released from liability on bond, when concealments and misrepresentations for which an employer is responsible, directly relate to transaction which suretyship will attach, and affect surety's liability. *McIntosh v. Dakota Trust Co.* — N. D. —, — A.L.R. —, 204 N. W. 818.
 See also *Berglund v. State Farmers' Mut. Hail Ins. Co.* 26 N. D. 17, 142 N. W. 941.

ARTICLE 6.—THE POLICY.

- § 6515. Comp. Laws, 1913.
 Upon delivery of a life insurance policy, containing an acknowledgment of receipt of premium, it becomes binding and effective as to payment of the premium on and after date of acknowledgment, even though actual payment of premium is made later. *Donahue v. Mutual L. Ins. Co.* 37 N. D. 203, L.R.A.1918A, 300, 164 N. W. 50.
- § 6517. Comp. Laws, 1913.
Yusko v. Middlewest F. Ins. Co. 39 N. D. 66, 166 N. W. 539.
 N. D. C. L.—76. 1201

ARTICLE 7.—WARRANTIES.

§§ 6519–6521. Comp. Laws, 1913.

Van Woert v. Modern Woodmen, 29 N. D. 441, 151 N. W. 224.

§§ 6522–6524. Comp. Laws, 1913.

Van Woert v. Modern Woodmen, 29 N. D. 441, 151 N. W. 224; Ennis v. Retail Merchants Asso. Mut. F. Ins. Co. 33 N. D. 20, 156 N. W. 234.

§ 6525. Comp. Laws, 1913.

Van Woert v. Modern Woodmen, 29 N. D. 441, 151 N. W. 224.

§§ 6526, 6527. Comp. Laws, 1913.

Van Woert v. Modern Woodmen, 29 N. D. 441, 151 N. W. 224; Ennis v. Retail Merchants Asso. Mut. F. Ins. Co. 33 N. D. 20, 156 N. W. 234.

§ 6528. Comp. Laws, 1913.

Van Woert v. Modern Woodmen, 29 N. D. 441, 151 N. W. 224.

ARTICLE 8.—PREMIUM.

§ 6530. Comp. Laws, 1913.

Yusko v. Middlewest F. Ins. Co. 39 N. D. 66, 166 N. W. 539.

§ 6531a1. **Sale or negotiation of premium note forbidden.** No promissory note taken in settlement of the first premium on any life, health or accident insurance policy, shall be in any manner sold or negotiated prior to the applicant's medical examination, where one is required or unless a binding receipt for such premium signed by an authorized agent of such insurance company has been delivered to the applicant, nor until such application and medical examination has been received by such insurance company. [Laws 1917, ch. 142, § 1.]

Insurance, 32 C. J. pp. 1003–1004, §§ 41–43; Life Insurance, 37 C. J. p. 420, § 112.

Failure of executory consideration for note as affecting purchaser of note with knowledge of the character of the consideration. 46 L.R.A.(N.S.) 871.

Promissory note as payment of insurance premium. 5 B. R. C. 365.

Liability of members of mutual fire insurance company on premium notes. 32 L.R.A. 483.

Failure to pay interest on notes in case of paid-up policy. 15 L.R.A. 452.

Suits on premium notes when foreign corporation has not complied with statute as to doing business in state. 20 L.R.A. 407.

When statute of limitations begins to run against unpaid balance on premium or "stock" notes of mutual insurance company. 1 L.R.A.(N.S.) 914.

Grace for payment of premium after maturity of premium note. L.R.A.1917C, 921.

Application of dividends to payment of interest on premium notes to prevent forfeiture. 6 A.L.R. 1402.

§ 6531a2. **Penalty.** Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and shall for the first offense be punished by a fine of not less than fifty dollars (\$50.00) or by imprisonment in the county jail for a period of not less than ten (10) days nor more than thirty (30) days, or by both fine and imprisonment, in the discretion of the court, and for the second offense shall be punished by fine or imprisonment as provided in the case of the first offense. [Laws 1917, ch. 142, § 2.]

§ 6533. Comp. Laws, 1913.

Yusko v. Middlewest F. Ins. Co. 39 N. D. 66, 166 N. W. 539.

ARTICLE 10.—NOTICE OF LOSS.

§ 6543. Comp. Laws, 1913.

Insurance company must indicate particulars in which it claims requirements

of policy have not been complied with, regarding notice and preliminary proof of loss; mere notice that strict performance of policy is necessary, is not sufficient. *Reineke v. Commonwealth Ins. Co.* — N. D. —, 202 N. W. 657.

§ 6544. Comp. Laws, 1913.

Ennis v. Retail Merchants Asso. Mut. F. Ins. Co. 33 N. D. 20, 156 N. W. 234.

§ 6545. Comp. Laws, 1913.

Horswill v. North Dakota Mut. F. Ins. Co. 45 N. D. 600, 178 N. W. 798; *Ennis v. Retail Merchants Asso. Mut. F. Ins. Co.* 33 N. D. 20, 156 N. W. 234.

ARTICLE 11.—DOUBLE INSURANCE.

§ 6547. Comp. Laws, 1913.

Retention by insurance company of unearned premiums, waiver of provision of forfeiture of policy, providing against additional insurance, and company is estopped to deny its liability on the policy. *Yusko v. Middlewest F. Ins. Co.* 39 N. D. 66, 166 N. W. 539.

§ 6548. Comp. Laws, 1913.

Policy containing provision in policy rendering it void if insured procures additional insurance, without written consent of insurer indorsed on policy, is not rendered void by insured taking out additional insurance without consent, but is merely voidable. *Yusko v. Middlewest F. Ins. Co.* 39 N. D. 66, 166 N. W. 539.

ARTICLE 11a.—EXCHANGE OF RECIPROCAL OR INTER-INSURANCE CONTRACTS.

§ 6548a1. **Authority to exchange.** Individuals, partnerships and corporations of this state, herein designated subscribers, are hereby authorized to exchange reciprocal or inter-insurance contracts with each other or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance. [Laws 1919, ch. 157, § 1.]

Lloyd's Insurance, 38 C. J. p. 115, § 3, p. 116, § 12.

Lloyd's Associations. 14 R. C. L. 859 and Supps.

§ 6548a2. **Who may execute contracts; places for maintaining offices.** Such contracts may be executed by an attorney, agent or other representative herein designated attorney, duly authorized and acting for such subscribers and such attorney may be a corporation. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney. [Laws 1919, ch. 157, § 2.]

Lloyd's Insurance, 38 C. J. p. 117, § 13.

§ 6548a3. **Verified declaration.** Such subscribers so contracting among themselves shall through their attorney file with the commissioner of insurance of this state, a declaration verified by the oath of such attorney, or where such attorney is a corporation, by the oath of a chief officer thereof, setting forth:

(a) The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any name or designation adopted by any attorney or any insurance organization in the United States writing the same class of insurance prior to the adoption of such name or designation by the attorney as to confuse or deceive.

(b) The kind or kinds of insurance to be affected or exchanged.

(c) A copy of the form of policy, contract or agreement under or by which such insurance is to be affected or exchanged.

(d) A copy of the form of power of attorney or other authority of such attorney, under which such insurance is to be affected or exchanged.

(e) The location of the office or offices from which such contracts or agreements are to be issued.

(f) That applications have been made for indemnity upon at least one hundred separate risks aggregating not less than one and one-half million dollars (\$1,500,000.00) as represented by executed contracts or bona fide applications to become concurrently effective; or in case of employer's liability or similar classes of insurance, covering a total pay roll of not less than two and one-half million dollars (\$2,500,000.00).

(g) That there is in the possession of such attorney and available for payment of losses, assets conforming to section 6 hereto. [Laws 1921, ch. 78, § 1; Laws 1919, ch. 157, § 3.]

Lloyd's Insurance, 38 C. J. p. 116, § 12.

§ 6548a4. Filing instrument conditioned on issuance of certificate of authority; service of process; judgment. Concurrently with the filing of the declaration provided for by the terms of section 3, hereof, the attorney shall file with the commissioner of insurance of this state an instrument in writing executed by him for said subscribers conditioned that upon issuance of certificate of authority provided for in section 10 hereof, action may be brought in the county in which the property insured hereunder is located, or in which the accident insured against occurred, and service of process may be had upon the commissioner of insurance of this state in all suits in this state arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through such attorney. Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney and return one copy with his admission of service. A judgment rendered in any such case where service of process has been so had upon the commissioner of insurance of this state shall be valid and binding against all such subscribers, as their liability may appear and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers. [Laws 1919, ch. 157, § 4.]

Lloyd's Insurance, 38 C. J. p. 116, § 12, p. 119, §§ 17, 19, p. 121, § 27, p. 124, § 35.

Action on Lloyd's Fire Insurance policy. 14 R. C. L. 1415.

§ 6548a5. Sworn statement as to maximum indemnity on single risk. There shall be filed with the commissioner of insurance by such attorney whenever the commissioner of insurance shall so require, a statement under the oath of such attorney showing in the case of fire insurance the maximum amount of indemnity upon a single risk and no subscriber shall assume on any single fire insurance risk a greater amount than ten (10%) per centum of the net worth of such subscriber. [Laws 1919, ch. 157, § 5.]

Lloyd's Insurance, 38 C. J. p. 116, § 12.

§ 6548a6. Reserve fund. There shall be maintained at all times assets in cash or securities authorized by the laws of the state in which the principal office of the exchange is located for the investigation of funds of insurance companies doing the same kind of business, an amount equal to fifty (50) per centum of the net annual advance premiums or deposits collected and credited to the accounts of subscribers on policies having one year or less to run and prorate on those for longer periods, or in lieu thereof, one hundred per centum (100%) of the net unearned premiums, or deposits collected and credited to the accounts of subscribers. In addition to the foregoing sum in case of all classes of liability or similar kinds of insurance, there shall be maintained as a reserve in cash or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated on the basis of net premiums or deposits as in this section defined, and in accordance with the laws of the state relating to reserves for companies insuring similar risks. Net premiums or deposits as used in this section shall be construed to mean the advance payments by subscribers after deducting

therefrom the amounts specifically provided in subscribers' agreements for expenses. If at any time the assets on hand are less than the foregoing requirements or less than one hundred thousand dollars (\$100,000.00), whichever is the greater; where the attorney is exchanging contracts covering employers' liability or similar classes of insurance, the subscribers or their attorney for them shall make up the deficiency. Whenever such assets are less than the amount above required or less than one hundred thousand dollars (\$100,000.00), whichever is the greater, if the attorney is exchanging contracts other than those covering employer's liability or similar classes of insurance, the subscribers or their attorney for them shall make up the deficiency. [Laws 1921, ch. 78, § 2; Laws 1919, ch. 157, § 6.]

Lloyd's Insurance, 38 C. J. p. 116, § 12, p. 119, § 19.

§ 6548a7. Reports; visitation and examination; certified copy where principal office in other state. Such attorney shall, within the time limited for filing the annual report by insurance companies transacting the same kind of business, make a report to the commissioner of insurance for each calendar year showing the financial condition of affairs at the office where such contracts are issued and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers and the amounts retained for expenses, provided, however, that such attorney shall not be required to furnish the names and addresses of any subscribers. The business affairs and assets of such organization shall be subject to visitation and examination by the commissioner of insurance of this state at the expense of the office examined. Provided, however, that where the principal office of the attorney is located in another state, the commissioner of insurance of this state, in lieu of an examination conducted by his own department as provided for in this section, may accept a certified copy of the report of examination made by the insurance department of the state where the principal office is located or by the insurance department of any other state. [Laws 1919, ch. 157, § 7.]

Lloyd's Insurance, 38 C. J. p. 116, § 12.

§ 6548a8. Right to exchange contracts. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers and franchises specified in its articles of incorporation have full power and authority as a subscriber to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as fully granted as the rights and powers expressly conferred upon the corporations. [Laws 1919, ch. 157, § 8.]

Lloyd's Insurance, 38 C. J. p. 116, § 12.

§ 6548a9. Penalty for violation. Any attorney who shall exchange any contracts of indemnity of the kind and character specified in this act, or any attorney or representative of such attorney, who shall solicit or negotiate any application for same without the attorney first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than one hundred (\$100.00) dollars or more than one thousand (\$1,000.00) dollars. For the purpose of organization and upon issuance of permit by the Commissioner of Insurance, powers of attorney may be solicited without license, but no attorney, agent or other person shall effect any such contracts of insurance until all the provisions of this act shall have been complied with. [Laws 1919, ch. 157, § 9.]

Lloyd's Insurance, 38 C. J. p. 116, § 12.

§ 6548a10. Certificate of authority. Upon compliance with the foregoing requirements and the payment of the fees and taxes provided for in this act,

the commissioner of insurance of this state shall issue a certificate of authority to the attorney in the name and title mentioned in sub-division "a," section 3 of this act. The commissioner of insurance may revoke or suspend any certificate of authority issued hereunder in case of breach of any of the conditions imposed by this act after reasonable notice has been given such attorney in writing so that he may appear and show cause why such action should not be taken. Any attorney who may have procured a certificate of authority hereunder may have same renewed annually thereafter at the time provided for the issuance of renewal certificates to insurance companies. Provided, however, that any certificate of authority issued shall continue in force and effect until a new certificate of authority is issued or specifically refused. [Laws 1919, ch. 157, § 10.]

Lloyd's Insurance, 38 C. J. pp. 116-117, §§ 12-13.

§ 6548a11. **License fee; tax.** Such attorney, in lieu of all other taxes and fees, state, county or municipal of whatever character in this state, shall pay annually to the state, on account of the transaction of such business in this state, a license fee of fifteen (\$15.00) dollars and a tax of two and one half (2½%) per centum of the gross premiums or deposits collected from subscribers in this state after deducting therefrom all sums returned to such subscribers or credited to their accounts other than for losses. [Laws 1919, ch. 157, § 11.]

Lloyd's Insurance, 38 C. J. pp. 116-117, §§ 12-13.

§ 6548a12. **Nonapplicability of insurance laws.** Except as herein provided no insurance law of this state shall apply to the exchange of such indemnity contracts unless they are therein specifically mentioned. [Laws 1921, ch. 78, § 3; Laws 1919, ch. 157, § 12.]

Lloyd's Insurance, 38 C. J. p. 116, § 12.

Nonapplicability of insurance laws to Lloyd's Associations. 14 R. C. L. 859 and Supps.

CHAPTER 79.

FIRE INSURANCE.

§ 6620. Comp. Laws, 1913.

Waiver of breaches of conditions in fire insurance policy, is question for jury, where defense to action on policy is breach of conditions. *McDowell v. Fireman's Fund Ins. Co.* — N. D. —, 191 N. W. 350.

See also *Rohlik v. Farmers' Ins. Co.* — N. D. —, 191 N. W. 347.

§ 6623. Comp. Laws, 1913.

Standard fire insurance provision that insurer shall not be liable beyond actual loss or damage, is valid as regards fire insurance on personal property, and fixes measure of indemnity in policy on personal property. *Rohlik v. Farmers' Ins. Co.* — N. D. —, 191 N. W. 347.

§ 6624. Comp. Laws, 1913.

Insured held entitled to recover amount of insurance written in policy, where there was no fraud in destruction of property, and loss was total. *Jakober v. Commercial Union Assur. Co.* — N. D. —, 191 N. W. 480.

See also *Horswill v. North Dakota Mut. F. Ins. Co.* 45 N. D. 600, 178 N. W. 798; *Rohlik v. Farmers' Ins. Co.* — N. D. —, 191 N. W. 347.

§ 6625. Comp. Laws, 1913.

Yusko v. Middlewest F. Ins. Co. 39 N. D. 66, 166 N. W. 539; *Horswill v. N. D. Mut. F. Ins. Co.* 34 N. D. 600, 178 N. W. 798; *Rohlik v. Farmers' Ins. Co.* — N. D. —, 191 N. W. 347.

§ 6626. Comp. Laws, 1913.

Policy of insurance cannot be avoided after loss where premium was received

with full knowledge of facts. *Leisen v. St. Paul F. & M. Ins. Co.* 20 N. D. 316, 30 L.R.A.(N.S.) 539, 127 N. W. 837.

See also *Yusko v. Middlewest F. Ins. Co.* 39 N. D. 66, 166 N. W. 539; *Rohlik v. Farmers' Ins. Co.* — N. D. —, 191 N. W. 347.

CHAPTER 80.

LIFE AND HEALTH INSURANCE.

§ 6629. Comp. Laws, 1913.

Farmers State Bank v. Smith, 36 N. D. 225, 162 N. W. 302.

§ 6632. Comp. Laws, 1913.

Agent of insurance company, with authority to solicit application for insurance, is agent of company, and not of insured while soliciting application for reinstatement. *Lechler v. Montana L. Ins. Co.* 48 N. D. 644, 23 A.L.R. 1193, 186 N. W. 271.

CHAPTER 81.

STANDARD FORMS OF INSURANCE POLICIES; PROVISIONS IN LIFE INSURANCE POLICIES.

§ 6635. Comp. Laws, 1913.

Dinnie v. United Commercial Travelers, 41 N. D. 42, 169 N. W. 811.

CHAPTER 82.

POLICIES OF HEALTH OR ACCIDENT INSURANCE.

§ 6637. Comp. Laws, 1913.

Jentz v. National Casualty Co. — N. D. —, 204 N. W. 344.

§ 6638. Comp. Laws, 1913.

Weber v. Interstate Business Men's Acci. Asso. 48 N. D. 307, 16 A.L.R. 1390, 184 N. W. 97.

CHAPTER 83.

INDEMNITY.

§ 6641. Comp. Laws, 1913.

Section does not enlarge liability of third person on bond of indemnity, for negligence, causing injury to pedestrian on streets. *Keller v. Fargo*, — N. D. —, 192 N. W. 313.

CHAPTER 84.

GUARANTY.

ARTICLE 1. DEFINITION OF GUARANTY, § 6651.

2. CREATION OF GUARANTY, §§ 6655, 6656.

6. EXONERATION OF GUARANTORS, §§ 6668, 6673.

ARTICLE 1.—DEFINITION OF GUARANTY.

§ 6651. Comp. Laws, 1913.

Letter of credit, wherein maker agrees to pay for all goods ordered, and not

paid for by another party when due, is a contract of guaranty. *Aluminum Cooking Utensil Co. v. Rohe*, 43 N. D. 433, 175 N. W. 620.

ARTICLE 2.—CREATION OF GUARANTY.

§ 6655. Comp. Laws, 1913.

Promise to see that one got his pay for goods, held to establish promise to pay for debt, default or miscarriage of another, within Statute of Frauds. *Gidley v. Glass*, 41 N. D. 542, 171 N. W. 93.

§ 6656. Comp. Laws, 1913.

Notice of acceptance of letter of credit by creditor must be pleaded and proved. *Aluminum Cooking Utensil Co. v. Rohe*, 43 N. D. 433, 175 N. W. 620.

Guaranty signed by guarantor without previous request, in consideration of future advances to be made to principal debtor, is an offer to guarantee, and is not binding until communication of acceptance to guarantor. *Rogers Lumber Co. v. Clark*, — N. D. —, 204 N. W. 184.

Notice of acceptance of guaranty by guarantor held to be waived by form of guaranty. *W. T. Rawleigh Medical Co. v. Laursen*, 25 N. D. 63, 48 L.R.A.(N.S.) 198, 141 N. W. 64.

ARTICLE 6.—EXONERATION OF GUARANTORS.

§ 6668. Comp. Laws, 1913.

Unauthorized filling of blanks in surety bond by creditor, so as to contain amount of existing indebtedness owing by principal to creditor, is a material alteration, avoiding the instrument. *J. R. Watkins Co. v. Keeney*, — N. D. —, 37 A.L.R. 1389, 201 N. W. 833.

Guarantor exonerated from liability, by extension, without his assent, of time within which principal obligation must be made. *Rogers Lumber Co. v. Clark*, — N. D. —, 204 N. W. 184.

See also *Brioschi-Minuti Co. v. Elson-Williams Constr. Co.* 41 N. D. 628, 172 N. W. 239.

§ 6673. Comp. Laws, 1913.

Guarantor held not liable on guaranty to pay for building material furnished, after extension of time without his consent, by fact that he was majority stockholder of bank which sold land to principal debtor, on which purchase price was still owing. *Rogers Lumber Co. v. Clark*, — N. D. —, 204 N. W. 184.

CHAPTER 85.

SURETYSHIP.

- ARTICLE 1. WHO ARE SURETIES, §§ 6675, 6676.
 2. LIABILITY OF SURETIES, §§ 6677-6681.
 3. RIGHTS OF SURETIES, §§ 6682-6688.

ARTICLE 1.—WHO ARE SURETIES.

Accommodation indorser, indorsing promissory note before delivery, is not a surety within the meaning of this chapter. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 6675. Comp. Laws, 1913.

Scandinavian American Bank v. Westby, 41 N. D. 276, 172 N. W. 665.

Application of principal and surety rule as to creditors on assumption of debts at dissolution of partnership. 9 L.R.A.(N.S.) 88; 48 L.R.A.(N.S.) 552.

§ 6676. Comp. Laws, 1913.

Scandinavian American Bank v. Westby, 41 N. D. 276, 172 N. W. 665.

ARTICLE 2.—LIABILITY OF SURETIES.

§ 6677. Comp. Laws, 1913.

Surety not obligated beyond express terms of contract. *Stutsman County v. Dakota Trust Co.* 47 N. D. 228, 181 N. W. 586. To be cited with *Northern Light Lodge v. Kennedy*, 7 N. D. 146, 73 N. W. 524.

Fact that recovery on bond, with interest, exceeds penalty of bond, does not render allowance of interest unwarranted. *Dickinson v. White*, 25 N. D. 523, 49 L.R.A.(N.S.) 362, 143 N. W. 754.

See also *State ex rel. Reilly v. Farmers Co-operative Elevator Co.* 39 N. D. 235, L.R.A.1918E, 233, 167 N. W. 223; *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665.

§ 6680. Comp. Laws, 1913.

First Nat. Bank v. Davidson, 48 N. D. 944, 188 N. W. 194.

§ 6681. Comp. Laws, 1913.

In absence of notice, creditor holding real estate mortgage securing indebtedness, not required to exhaust remedies against principal debtor before proceeding against the surety, at peril of exonerating surety under this section. *Bottineau County Bank v. Stafford*, — N. D. —, 194 N. W. 393.

Unauthorized filling of blanks in surety bond by creditor, so as to contain amount of existing indebtedness owing by principal to creditor, is a material alteration, avoiding the instrument. *J. R. Watkins Co. v. Keeney*, — N. D. —, 37 A.L.R. 1389, 201 N. W. 833.

See also *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665; *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

ARTICLE 3.—RIGHTS OF SURETIES.

§ 6682. Comp. Laws, 1913.

Scandinavian American Bank v. Westby, 41 N. D. 276, 172 N.W. 665; *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 6683. Comp. Laws, 1913.

Surety, to avail itself of defense of exoneration, must allege in its answer, reasonable notice and demand to proceed against principal, and resulting prejudice to surety by reason of failure of creditor to do so. *Briosche-Minuti Co. v. Elson-Williams Constr. Co.* 41 N. D. 628, 172 N. W. 239.

In absence of notice, creditor holding real estate mortgage securing indebtedness not required to exhaust remedies against principal debtor before proceeding against surety, at peril of exonerating under § 6681. *Bottineau County Bank v. Stafford*, — N. D. —, 194 N. W. 393.

Accommodation indorser, indorsing promissory note before delivery, not a surety, having right to require creditor to proceed against principal or pursue any other remedies. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

See also *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665; *Northern Trust Co. v. First Nat. Bank*, 25 N. D. 74, 140 N. W. 705.

§ 6685. Comp. Laws, 1913.

Brioschi-Minuti Co. v. Elson-Williams Constr. Co. 41 N. D. 628, 172 N. W. 239.

§ 6686. Comp. Laws, 1913.

Surety upon bond of a bank that failed, having paid to state amount of deposit, held entitled to be subrogated to all rights of the state. *State ex rel. Miller v. Butzville State Bank*, 26 N. D. 196, 144 N. W. 105.

As to rights of surety to subrogation, having paid debt of defaulting county officer. *Northern Trust Co. v. First Nat. Bank*, 25 N. D. 74, 140 N. W. 705.

See also *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665.

§ 6687. Comp. Laws, 1913.

Surety entitled to benefit of every security for performance of principal obligation held by creditor. *State ex rel. Miller v. Butzville State Bank*, 26 N. D. 196, 144 N. W. 105.

See also *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665.

§ 6688. Comp. Laws, 1913.

Scandinavian American Bank v. Westby, 41 N. D. 276, 172 N. W. 665.

CHAPTER 86.

LIENS IN GENERAL.

- ARTICLE 1. DEFINITION OF LIENS, § 6699.
 2. CREATION OF LIENS, §§ 6706, 6707.
 3. EFFECT OF LIENS, §§ 6709-6712.
 4. PRIORITY OF LIENS, §§ 6714, 6716.
 5. REDEMPTION OF LIENS, §§ 6717-6719.
 6. EXTINCTION OF LIENS, § 6721.

ARTICLE 1.—DEFINITION OF LIENS.

§ 6699. Comp. Laws, 1913.

Boehm v. Long, 43 N. D. 1, 172 N. W. 862; Lown v. Casselman, 25 N. D. 44, 141 N. W. 73.

ARTICLE 2.—CREATION OF LIENS.

§ 6706. Comp. Laws, 1913.

Section does not apply to assignment of rights under existing contract, and does not prevent making of a contract for threshing for benefit of third party. International Harvester Co. v. Hanson, 36 N. D. 78, 161 N. W. 608.

Mortgage on unplanted crop may be validly made, which will automatically attach as lien thereon, as soon as it comes into existence. Thompson Yards v. Richardson, — N. D. —, 199 N. W. 863.

See also Minneapolis Iron Store Co. v. Branum, 36 N. D. 355, L.R.A.1917E, 298, 162 N. W. 543; First Guaranty Bank v. Rex Theatre Co. — N. D. —, 195 N. W. 564.

§ 6707. Comp. Laws, 1913.

Mortgage on unplanted crop may be validly made, which will automatically attach as a lien thereon as soon as it comes into existence. Donovan v. St. Anthony & D. Elevator Co. 7 N. D. 513, 75 N. W. 809; Thompson Yards v. Richardson, — N. D. —, 199 N. W. 863.

Not essential that chattel mortgage disclose on its face that it was given for purchase price or rental of land. Teigen v. Occident Elevator Co. — N. D. —, 200 N. W. 38.

See also Minneapolis Iron Store Co. v. Branum, 36 N. D. 355, L.R.A.1917E, 298, 162 N. W. 543.

ARTICLE 3.—EFFECT OF LIENS.

§ 6709. Comp. Laws, 1913.

Execution of mortgage creates lien, and as such transfers no title to property subjected thereto. Hellstrom v. First Guaranty Bank, — N. D. —, 191 N. W. 963.

See also Farmers' Equity Exchange v. Blum, 39 N. D. 86, 166 N. W. 822; Minneapolis Iron Store Co. v. Branum, 36 N. D. 355, L.R.A.1917E, 298, 162 N. W. 543; Lown v. Casselman, 25 N. D. 44, 141 N. W. 73.

§ 6711. Comp. Laws, 1913.

Lown v. Casselman, 25 N. D. 44, 141 N. W. 73.

§ 6712. Comp. Laws, 1913.

Scotfield Implement Co. v. Minot Farmers Grain Assn. 31 N. D. 605, 154 N. W. 527.

ARTICLE 4.—PRIORITY OF LIENS.

§ 6714. Comp. Laws, 1913.

Reeves & Co. v. Russell, 28 N. D. 265, L.R.A.1915B, 1149, 148 N. W. 654.

§ 6716. Comp. Laws, 1913.

Rule as to marshaling securities explained in. Harrison v. Griffin, 32 N. D. 188, 155 N. W. 655.

See also Godman v. Olson, 38 N. D. 360, 165 N. W. 515; Hansboro State Bank v. Imperial Elevator Co. 46 N. D. 363, 179 N. W. 669.

ARTICLE 5.—REDEMPTION OF LIENS.

§ 6717. Comp. Laws, 1913.

Norris v. German-American State Bank, 38 N. D. 276, 165 N. W. 570; Levenson v. Olson, 25 N. D. 624, 142 N. W. 917.

§ 6718. Comp. Laws, 1913.

Section gives to holder of an inferior lien right to satisfy a superior lien when necessary for protection of his interest, and further right to be subrogated to all benefits of superior lien. Anderson v. Kain, 40 N. D. 632, 169 N. W. 501.

See also Norris v. German American State Bank, 38 N. D. 276, 165 N. W. 570; First Nat. Bank v. Zook, — N. D. —, 196 N. W. 507.

§ 6719. **How made.** Redemption from a lien is made by performing the act for the performance of which it is a security, and paying the damages, if any, to which the holder of the lien is entitled for delay, or by offering to perform such act and pay such damages; provided, that if the act requires the delivery of money, property or a conveyance of property the same shall be deposited and notice thereof given as provided in section 5819. [R. C. 1905, § 6143; Civ. C. 1877, § 1716; R. C. 1895, § 4693.]

Norris v. German-American State Bank, 38 N. D. 276, 165 N. W. 570; Harth v. St. Paul Cattle Loan Co. — N. D. —, 191 N. W. 615.

ARTICLE 6.—EXTINCTION OF LIENS.

§ 6721. Comp. Laws, 1913.

Mortgagee maliciously seeking to obtain possession of property under insecurity clause in mortgage, is a trespasser, guilty of wrongful conversion, which action extinguishes lien of mortgage. Steidl v. Aitken, 30 N. D. 281, L.R.A.1915E, 192, 152 N. W. 276.

See also Harvison v. Griffin, 32 N. D. 188, 155 N. W. 655; Auth v. Kuroki Elevator Co. 40 N. D. 533, 169 N. W. 80; John Miller Co. v. Harvey Mercantile Co. 45 N. D. 503, 178 N. W. 802; Krieger v. Schultz, 48 N. D. 274, 183 N. W. 1021.

CHAPTER 87.

MORTGAGE.

ARTICLE 1. MORTGAGE IN GENERAL, §§ 6725–6749.

2. MORTGAGE OF REAL PROPERTY, §§ 6750–6755.

3. MORTGAGE OF PERSONAL PROPERTY, §§ 6757–6765.

3a. CROP MORTGAGES, §§ 6768a1–6768a3.

ARTICLE 1.—MORTGAGE IN GENERAL.

§ 6725. Comp. Laws, 1913.

Godman v. Olson, 38 N. D. 360, 165 N. W. 515; Capital Trust & Sav. Bank v. Wallace, 45 N. D. 182, 177 N. W. 440; Thompson Yards v. Bunde, — N. D. —, 30 A.L.R. 538, 196 N. W. 312.

§ 6726. Comp. Laws, 1913.

Farm Mortg. Loan Co. v. Pettet, — N. D. —, 36 A.L.R. 598, 200 N. W. 497;

Capital Trust & Sav. Bank v. Wallace, 45 N. D. 182, 177 N. W. 440; Thompson Yards v. Bunde, — N. D. —, 30 A.L.R. 538, 196 N. W. 312.

§ 6727. Comp. Laws, 1913.

Godman v. Olson, 38 N. D. 360, 165 N. W. 515; Capital Trust & Sav. Bank v. Wallace, 45 N. D. 182, 177 N. W. 440; Altenbrun v. First Nat. Bank, 47 N. D. 266, 181 N. W. 590.

§ 6729. Comp. Laws, 1913.

Godman v. Olson, 38 N. D. 360, 165 N. W. 515.

§ 6731. Comp. Laws, 1913.

Martin v. Yager, 30 N. D. 577, 153 N. W. 286; Gunsch v. Urban Mercantile Co. 35 N. D. 390, 160 N. W. 69.

§ 6733. Comp. Laws, 1913.

Krueger v. Dulas, — N. D. —, 191 N. W. 1014.

§ 6738. Comp. Laws, 1913.

Geo. B. Clifford & Co. v. Henry, 40 N. D. 604, 169 N. W. 508.

§ 6739. Comp. Laws, 1913.

Execution of mortgage creates a lien and as such, transfers no title to property subjected thereto. Hellstrom v. First Guaranty Bank, — N. D. —, 191 N. W. 963.

§ 6740. Comp. Laws, 1913.

Section does not fix terms or conditions of occupancy. Geo. B. Clifford & Co. v. Henry, 40 N. D. 604, 169 N. W. 508.

Execution of a mortgage does not entitle mortgagee to possession of property mortgaged. Hellstrom v. First Guaranty Bank, — N. D. —, 191 N. W. 963.

See also Capital Trust & Sav. Bank v. Wallace, 45 N. D. 182, 177 N. W. 440; First Nat. Bank v. Bovey, Shute & Jackson Inc. — N. D. —, 191 N. W. 765; Farm Mortg. Loan Co. v. Pettet, — N. D. —, 36 A.L.R. 598, 200 N. W. 497.

§§ 6742, 6743. Comp. Laws, 1913.

Rolette County Bank v. Hanlyn, 48 N. D. 72, 183 N. W. 260.

§ 6749. Comp. Laws, 1913.

Tender and deposit of amount due in a bank, in manner provided by law, extinguishes obligation, entitling mortgagor to certificate of discharge, and renders mortgagee liable for penalty for refusal to execute certificate of discharge. Swallow v. First State Bank, 35 N. D. 608, 161 N. W. 207.

See also Swallow v. First State Bank, 28 N. D. 283, 148 N. W. 630; Lee v. Dolan, 34 N. D. 449, 158 N. W. 1007; Englert v. Dale, 25 N. D. 587, 142 N. W. 169.

ARTICLE 2.—MORTGAGE OF REAL PROPERTY.

§ 6750. **Standard form of mortgage.** A mortgage of real property may be made in substantially the following form:

NORTH DAKOTA STANDARD FORM.

THIS INDENTURE, Made this day of A. D. One thousand nine hundred.... between whose post office address is of the County of and State of North Dakota, part of the first part, and whose postoffice address is of the County of and State of North Dakota, party of the second part:

WITNESSETH, That the said part of the first part, for and in consideration of the sum of dollars to in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents Grant, Bargain, Sell and Convey to the said party of the second part, heirs, executors, administrators, successors and assigns, forever, all the following described real

estate in the County of and State of North Dakota, described as follows, to-wit: (Leave ample space for description)

.....
.....
.....
.....
.....

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, unto the said party of the second part, heirs, executors, administrators, successors and assigns, FOREVER. And the said part of the first part, do covenant with the said party of the second part, heirs, executors, administrators, successors and assigns, as follow: That ..he.. ha.. good right to convey the same, that the same are free from all incumbrances. (Leave ample space for description)

.....
.....
.....
.....

and that the said party of the second part, heirs, executors, administrators, successors and assigns, shall quietly enjoy and possess the same, and that the said part of the first part will warrant and defend the title to the same against all lawful claims, hereby relinquishing and conveying all right of homestead, dower and all contingent claims and rights whatsoever in and to the said premises.

PROVIDED, NEVERTHELESS, That if the said part of the first part, heirs, executors or administrators, shall well and truly pay, or cause to be paid, to the said party of the second part, heirs, executors, administrators, successors or assigns, the sum of dollars and interest according to the conditions of note of even date herewith, as follows

payable at the with interest from date until maturity, at the rate of per cent. per annum, payable annually and after maturity at the rate of per cent per annum and shall also keep and perform all and singular the covenants and agreements herein contained, then this deed to be null and void, and the premises hereby conveyed to be released at the cost of the said part of the first part; otherwise to remain in full force and effect.

And the said part of the first part to do covenant and agree with the said party of the second part, heirs, executors, administrators, successors and assigns to pay the said sum of money and interest thereon as above specified; to pay as a part of the debt hereby secured, in case of each or any foreclosure or commencement of foreclosure of this mortgage, all costs and expenses and statutory attorney's fees in addition to all sums and costs allowed in that behalf by law; to permit no waste, and to do or permit to be done, to said premises, nothing that may in any manner impair or weaken the security under this mortgage; to pay all taxes or assessments that may be assessed against or be a lien on said premises, or any part thereof, or upon this mortgage or note.... or the legal holder thereof, before the same shall become delinquent; to keep the buildings on said premises insured for dollars, in companies acceptable, with loss payable to, the mortgagee or assigns; and in case of failure so to

pay said taxes or assessments, or any of the agreements hereunder, or in case there exists any claim, lien or incumbrance upon said premises, which is prior to this mortgage, the said party of the second part, heirs, executors, administrators, successors or assigns may at option, pay and discharge such taxes or other obligation and the sum or sums of money which may so be paid, with interest from the time of payment at the same rate as said principal sum, shall be deemed and are hereby declared to be a part of the debt secured by this mortgage and shall be immediately due and payable. It is further agreed and understood that this mortgage shall also cover any renewal note for the above described indebtedness or any portion thereof.

But if default shall be made in the payment of said sum of money or interest, or the taxes, or any part thereof, at the time and in the manner hereinbefore or hereinafter specified for the payment thereof, the said part of the first part, in such cases do hereby authorize and fully empower the said party of the second part, heirs, executors, administrators, successors or assigns, to sell the said hereby granted premises and convey the same to the purchaser, in fee simple agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on said note...., and all taxes upon said lands, together with all costs and charges, and statutory attorney's fees, and pay the overplus if any to the said part of the first part heirs, executors, administrators or assigns, And if default be made by the part of the first part in any of the foregoing provisions it shall be lawful for the party of the second part, heirs, executors, administrators, successors or assigns or attorney to declare the whole sum above specified to be due.

IN TESTIMONY WHEREOF, The said part of the first part ha..... hereunto set hand the day and year first above written. Signed and delivered in the presence of

[Laws 1923, ch. 253, § 1.]
Mortgages, 27 Cyc. 1079.

§ 6750a. Recording fee; other forms not forbidden. The register of deeds shall charge and collect for recording such standard form of mortgage and indexing the same, seventy-five cents; provided that if any words are added to such standard form or its arrangement changed, except to fill blanks, the fees for recording such mortgage shall be the same as provided in section 3511 of the Compiled Laws of North Dakota for 1913 and acts amendatory thereof; provided further, that the striking out of any part or portion thereof shall not be considered a change in such standard form, provided further, that the form hereinbefore provided shall not preclude the use of any other form. [Laws 1923, ch. 253, § 2.]

Mortgages, 27 Cyc. 1079; Registers of Deeds, 34 Cyc. 1025.

§ 6755. Comp. Laws, 1913.
Arntson v. First Nat. Bank, 39 N. D. 408, L.R.A.1918F, 1038, 169 N. W. 760.

ARTICLE 3.—MORTGAGE OF PERSONAL PROPERTY.

§ 6757. Comp. Laws, 1913.
Horton v. Wright, B. & S. Co. 36 N. D. 622, 162 N. W. 939.

§ 6758. Comp. Laws, 1913.
Lien of creditor garnishing personal property covered by unrecorded trust agreement executed and delivered prior to service of garnishment process, not superior to that of trustee and beneficiary in trust agreement. Petrie v. Wyman, 35 N. D. 126, 159 N. W. 616.

Section, makes situs of property at time of execution of mortgage, controlling element as to record. *Hansboro State Bank v. Imperial Elevator Co.* 46 N. D. 363, 179 N. W. 669.

See also *Turton v. Bingenheimer Mercantile Co.* 45 N. D. 98, 176 N. W. 661; *Merchants' State Bank v. Sawyer Farmers' Co-op. Asso.* 47 N. D. 375, 14 A.L.R. 1353, 182 N. W. 263; *Farmers State Bank v. First Nat. Bank*, — N. D. —, 199 N. W. 961.

§ 6759. Comp. Laws, 1913.

Turton v. Bingenheimer Mercantile Co. 45 N. D. 98, 176 N. W. 661; *Hansboro State Bank v. Imperial Elevator Co.* 46 N. D. 363, 179 N. W. 669.

§ 6762. Comp. Laws, 1913.

Roether v. National Union F. Ins. Co. — N. D. —, 200 N. W. 818.

§ 6763. Comp. Laws, 1913.

Incorporation in body of mortgage, receipt required to be surrendered, to mortgagee by mortgagor, and mortgagor signing at end of instrument, is not a substantial compliance with statute, and filing thereof is not notice to anyone. *Stoffel v. Sullivan*, — N. D. —, 193 N. W. 45.

§ 6765. Comp. Laws, 1913.

Person entitled to thresher's lien must include in statement to be filed debtor's name correctly spelled, in order to file and index the lien, under first letter of surname. *Schatz v. Kintyre Farmers' Co-op. Elevator Co.* — N. D. —, 202 N. W. 855.

ARTICLE 3a.—CROP MORTGAGES.

§ 6768a1. **Application.** Any elevator company doing business in this state may annually make written application to the register of deeds for an abstract of all mortgages and liens upon grains grown during the year within the county. Such application shall be made prior to June 1st in each year and shall state the name of the elevator and the post office address thereof and shall be accompanied by a fee, in counties wherein the number of such liens so abstracted in the preceding calendar year did not exceed 2,500, of \$5.00; in counties where more than 2,500 and not to exceed 5,000 were so abstracted a fee of \$10.00; and in counties where more than 5,000 liens were so abstracted a fee of \$15.00, to be turned over by the register of deeds to the county treasurer, who shall credit the same to the county general fund. [Laws 1923, ch. 343, § 1; Laws 1921, ch. 89, § 1.]

Registers of Deeds, 34 Cyc. 1025.

§ 6768a2. **Abstracts of mortgages and liens; how and when furnished.** Each register of deeds shall, on or before the 15th day of July of each year, mail to each and every applicant having paid such fee for such year, an abstract of all existing mortgages and liens upon grain or crops raised or to be raised during such year, showing the name of the person against whom the lien is claimed, arranged alphabetically, the name of the person holding or claiming such lien, a description of the land upon which the grain is raised, upon which said lien is claimed, the kind of grain and the amount of the lien claimed. Such abstract shall further contain a list of all mortgages and liens filed against crops or grain grown in such crop year which have been satisfied. At least once a week during the balance of the calendar year the register of deeds shall mail to each of such applicants a similar abstract covering the liens, mortgages and releases thereon filed in his office since the date of furnishing such prior abstract. [Laws 1921, ch. 89, § 2.]

Registers of Deeds, 34 Cyc. 1020.

§ 6768a3. **Certain crop mortgages declared void and not entitled to be filed of record.** No mortgage given upon crops, other than mortgages to secure the rental or the purchase price of the premises upon which such crop mortgage

is given, shall be valid as a lien or encumbrance upon the crop sought to be so mortgaged or encumbered, nor shall the same be entitled to be filed for record in the office of the register of deeds of the county in which such land is situated, if the instrument evidencing such crop mortgage shall contain any provision by which a mortgage is claimed upon any personal property other than such crop. [Laws 1923, ch. 249, § 1.]

Chattel Mortgages, 11 C. J. p. 510, § 187, p. 541, § 229; Records, 34 Cyc. 588.

Mortgage of future and growing crops. 23 L.R.A. 449; L.R.A.1917C, 8.

Mortgage of crops to be grown on land on which mortgagor has no present interest. 19 L.R.A.(N.S.) 910; L.R.A.1917C, 14.

CHAPTER 88.

PLEDGE.

§ 6772. Comp. Laws, 1913.

Michigan City Bank v. First State Bank, — N. D. —, 201 N. W. 176.

§ 6786. Comp. Laws, 1913.

Actual notice must be given of foreclosure of pledge. McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6790. **Evidence of debt.** A pledgee may collect when due any evidence of debt pledged to him; he may also sell any evidence of debt pledged to him to secure the performance of an original obligation, if at the time of making such original obligation the pledgor shall have authorized in writing such sale. Before such evidence of debt can be sold and after the maturity of the original obligation, the pledgee must demand, in writing, the performance thereof from the debtor if he can be found. Notice of the sale of such evidence of debt must be given by publication once, and at least ten days prior to such sale, in a newspaper published at the place of sale, if there is one, otherwise in a newspaper in the county in which such sale is to be made, and by service of such notice upon the pledgor and the makers of the securities, by registered mail addressed to them at their postoffice address as shown upon the securities to be sold, and if not so shown, at their last known postoffice address, and if there is no newspaper in the county, or upon the written request of the pledgor, notice shall be given by posting the same in five public places in such county for at least ten days prior to such sale. The notice of sale must specify the names of the pledgor and pledgee and the assignee, if any, the date, maturity and amount of the original obligation and the amount claimed to be due thereon, a description of the evidence of debt to be sold, which shall contain the names of the makers, the date and maturity of such obligation to be sold, and the time and place of sale. Such sale may be made by the pledgee, his agent or attorney. A report of such sale must be made and filed, substantially as required by Section 8128 in chattel mortgage foreclosures, and when so filed shall have the same force and effect. [Laws 1923, ch. 267, § 1.]

Farmers' Bank v. Riedlinger, 27 N. D. 318, 146 N. W. 556.

Pledges, 31 Cyc. 829, 832, 849, 863, 873-877.

Effect of application to indebtedness of proceeds of sale of collateral security upon running of statute of limitations. L.R.A.1916A, 734.

Rights inter se of customers whose securities have been repledged by broker and sold by pledgee. 1 A.L.R. 664.

Evidence of debt as subject of pledge. 21 R. C. L. 634 and Supps.

Sale of pledge by pledgee. 21 R. C. L. 671 and Supps.

Necessity for demand to redeem and notice of sale of pledge. 21 R. C. L. 690 and Supps.

Manner and sale of pledge. 21 R. C. L. 691 and Supps.

§ 6790a. **Redemption from sale.** Any pledgor of personal property, or his assignee, may redeem the same from a sale upon foreclosure of any pledge

within ten days after such sale, exclusive of the day of sale, by paying or tendering to the owner of the pledge at the time of sale, his agent or attorney, or the person making the sale, the amount for which said property was sold with the cost of sale and interest at the rate of seven per centum per annum from the date of sale. The pledger or his assignee desiring to redeem such property shall at the time of sale give written notice to the person making the sale of his desire to make such redemption; otherwise he shall be deemed to have waived his right to do so. In case such notice is served, the person making such sale shall retain the possession of the property sold until the expiration of said ten days and shall be entitled to his reasonable expenses in caring for the same. In case a part only of the property sold is redeemed the redemptioner shall pay or tender in addition to the price for which such part was sold such proportion of the costs of sale as said price bears to the entire price of all the property sold and also the reasonable expense of caring for the property redeemed and interest. [Laws 1923, ch. 267, § 2.]

Pledges, 31 Cyc. 858-859.

Validity of agreement clogging equity of redemption from pledge. 24 A.L.R. 822.

Right to have trust property wrongfully pledged by a trustee for his individual benefit redeemed by money belonging to his insolvent estate. 6 L.R.A.(N.S.) 487.

Demand and notice for pledged property where term of redemption is indefinite. 43 L.R.A. 752.

Redemption of pledge. 21 R. C. L. 683, 684 and Supps.

CHAPTER 91.

MECHANICS' LIENS.

Explanatory note. Criminal liability of contractor or subcontractor, see § 6814. Improperly using proceeds of payments, see §§ 9922a1, 9922a2, post.

§ 6814. Comp. Laws, 1913.

Section contemplates not only lien upon building erection or improvement but also lien upon land, upon which improvement was made, or to improve which, work was done. Word "and," means and expresses relation of addition. McCaull-Webster Elevator Co. v. Adams, 39 N. D. 259, L.R.A.1918D, 1036, 167 N. W. 330.

See also State Loan Co. v. White Earth Coal Min. Brick & Tile Co. 34 N. D. 101, 157 N. W. 834; Sox v. Miracle, 35 N. D. 458, 160 N. W. 716; Sleeper v. Elliott, 36 N. D. 280, 162 N. W. 305; Colter v. Dill, 39 N. D. 462, 167 N. W. 720; MacPherson v. Crum, 43 N. D. 219, 174 N. W. 751; Robertson Lumber Co. v. Clarke, 24 N. D. 134, 138 N. W. 984; Meyers Lumber Co. v. Tompkins, 29 N. D. 76, 149 N. W. 955.

§ 6818. Comp. Laws, 1913.

Authorizes filing of lien against two or more buildings and land upon which they stand, where labor or material is furnished under entire contract. Robertson Lumber Co. v. Clarke, 24 N. D. 134, 138 N. W. 984.

See also State Loan Co. v. White Earth Coal Min. Brick & Tile Co. 34 N. D. 101, 157 N. W. 834; MacPherson v. Crum, 43 N. D. 219, 174 N. W. 751; Colter v. Dill, — N. D. —, 193 N. W. 662.

§ 6820. Comp. Laws, 1913.

Moreau Lumber Co. v. Johnson, 29 N. D. 113, L.R.A.1915F, 1132, 150 N. W. 563; Sleeper v. Elliott, 36 N. D. 280, 162 N. W. 305; MacPherson v. Crum, 43 N. D. 219, 174 N. W. 751; Colter v. Dill, 39 N. D. 462, 167 N. W. 720.

§ 6822. Comp. Laws, 1913.

State Loan Co. v. White Earth Coal Min. Brick & Tile Co. 34 N. D. 101, 157 N. W. 834; Colter v. Dill, 39 N. D. 462, 167 N. W. 720.

§ 6823. Comp. Laws, 1913.

State Loan Co. v. White Earth Coal Min. Brick & Tile Co. 34 N. D. 101, 157 N. D. C. L.—77.

W. 834; *Sox v. Miracle*, 35 N. D. 458, 160 N. W. 716; *MacPherson v. Crum*, 43 N. D. 219, 174 N. W. 751.

§ 6824. Comp. Laws, 1913.

Moreau Lumber Co. v. Johnson, 29 N. D. 113, L.R.A.1915F, 1132, 150 N. W. 563; *MacPherson v. Crum*, 43 N. D. 219, 174 N. W. 751.

§ 6825. Comp. Laws, 1913.

Failure to give notice of intention to enforce lien, not fatal where party appears and defends. *Atlas Lumber Co. v. Canadian-American Mortg. & T. Co.* 36 N. D. 39, 161 N. W. 604.

Defendant, in mechanics' lien foreclosure, may by answer or cross complaint, assert and procure foreclosure of a lien upon premises in suit, even though defendant admits plaintiff's claim. *Dakota Sash & Door Co. v. Brinton*, 27 N. D. 39, 145 N. W. 594.

See also *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503; *McCaul-Webster Elevator Co. v. Adams*, 39 N. D. 259, L.R.A.1918D, 1036, 167 N. W. 330.

§ 6826. **Requiring suit to be commenced; limitations thereon.** Upon the written demand of the owner, his agent or contractor, served on the person holding the lien, such suit shall be commenced within thirty days thereafter, if the debt for which the lien is security is due, and, if not due, within thirty days after the same becomes due or the lien shall be forfeited. But no lien shall be valid or effective as such, nor shall the same be enforced in any case, and the clerk of the said district court shall cancel of record any such lien, unless the holder thereof shall assert the same either by complaint or answer within six years after the date of the last item of his claim as set forth in the recorded lien account, or within six years after the same becomes due, if such lien account shows that the same is not then due; provided, however, that all mechanics' liens or claims, that may be filed therefor and which have existed for the full term of six years prior to the taking effect of this act, may be enforced and may be asserted either by complaint or answer at any time within one year after the taking effect thereof; provided, further, in case a summons and complaint or answer, asserting the validity of such lien, is not filed in the office of the clerk of court in which the lien is filed within the limitation herein provided, then the clerk of court shall upon request of any interested person cancel said lien of record. [Laws 1915, ch. 186, § 1.]

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503; *Sleeper v. Elliott*, 36 N. D. 280, 162 N. W. 305.

Mechanics' Liens, 27 Cyc. 325, 335-341; *Clerks of Courts*, 11 C. J. p. 886, § 69. Limitation of action to enforce mechanics' lien. 18 R. C. L. 981 and Supps.

§ 6827. Comp. Laws, 1913.

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6828. Comp. Laws, 1913.

Sox v. Miracle, 35 N. D. 458, 160 N. W. 716; *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6829. Comp. Laws, 1913.

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6829a. **Duty of the clerk of the district court as to filing satisfactions; penalty for violation.** Whenever there shall be filed with the clerk of the district court a satisfaction of a mechanic's lien as provided in section 6829 of the compiled laws of North Dakota for the year 1913, it shall be the duty of such clerk to enter such satisfaction directly opposite the abstract of such lien in the book, provided for by section 6821 of the Compiled Laws of North Dakota for the year 1913, and any failure of any clerk so to do, or for any error, omission or neglect of such clerk in so entering such satisfaction, such clerk shall be liable for any damages sustained by reason of any failure,

error, omission or neglect, to be recovered in a civil action. [Laws 1917, ch. 154, § 1.]

Mechanics Liens, 27 Cyc. 304; *Clerks of Courts*, 11 C. J. p. 886, § 69, pp. 915-916, §§ 152-154.

§ 6830. *Comp. Laws*, 1913.

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6831. *Comp. Laws*, 1913.

Sleeper v. Elliott, 36 N. D. 280, 162 N. W. 305; *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

CHAPTER 92.

BONDS FOR LABOR AND MATERIAL FOR PUBLIC BUILDINGS.

§ 6832. **Bonds from contractors on public improvements.** It shall be the duty of every public officer or board authorized to enter into a contract for the erection, repair, alteration or betterment of any public building or any other public improvements, except municipal improvements, before entering into any such contract, to take from the contractor a good and sufficient bond for an amount at least equal to the price stated in the contract, conditioned to be void if the contractor and all sub-contractors shall pay all bills and claims on account of labor or materials furnished in and about the performance of said contract, including all demands of sub-contractors, said bond to stand as security for all such bills, claims and demands until the same are fully paid. The obligee in said bond shall be the state of North Dakota; but any person having any lawful claim against the contractor, or any sub-contractor, on account of labor or materials, or both, furnished in and about the performance of said contract, may institute any action to recover the same in his own name upon said bond in the manner and with like effect as though the said bond were made payable to him. [Laws 1915, ch. 67, § 1.]

Section is directory as to time, and contractor must furnish bonds securing materialmen and laborers, before he is entitled to his compensation. Section makes officers involuntary sureties of contractor's liabilities to third parties. *Crane & O. Co. v. Sykeston School Dist.* 36 N. D. 254, 162 N. W. 413.

As to release or exoneration from liability of surety on contractor's bond, from his obligation thereon, without consent of materialmen or laborers. *Brioschi-Minuti Co. v. Elson-Williams Constr. Co.* 41 N. D. 628, 172 N. W. 239.

See also *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

Validity of condition of contractor for public work which is beyond requirements of statute or ordinance, with respect to claims of third persons. 18 A.L.R. 1227.

Nature of labor or materials which will support an action upon a contractor's bond. L.R.A.1915F, 951.

Personal liability of public officer for failure to take bond, or for taking insufficient bond, from contractor, conditioned for payment of claims of subcontractors, materialmen and laborers. 49 L.R.A.(N.S.) 1199.

Applicability to public bodies of statute requiring building contractor's bond for protection of subcontractor's labors, etc. 50 L.R.A.(N.S.) 469.

Right of subcontractor, materialmen, or laborer to maintain action on contractor's bond taken for benefit of public. 49 L.R.A.(N.S.) 1175.

Constitutionality of statute requiring bond to protect laborers and materialmen upon entering into a building contract. L.R.A.1918A, 1199.

Liability of public for failure to take bond, or for taking insufficient bond, from contractor, conditioned for payment of claims of subcontractors, materialmen, and laborers. L.R.A.1915F, 629.

Right of surety upon contractor's bond to have payments made by contractor applied to the contract. L.R.A.1917C, 637.

Right of sureties who perform contract on abandonment by contractor. L.R.A. 1918A, 937.

Right of surety on contractor's bond as against assignee of fund. L.R.A.1918D, 736.

Release of surety on building contractor's bond by making payments not authorized by the contract. L.R.A.1915B, 407.

Right of citizen to enforce contractor's bond taken for benefit of public. 49 L.R.A.(N.S.) 1175.

Contractor's bond for the payment of claims for labor and material as a contract of indemnity against liability, or against loss. L.R.A.1918D, 1074.

Effect of insertion of unauthorized provisions in contractor's bond. L.R.A. 1917B, 990.

§ 6833. Comp. Laws, 1913.

Crane & O. Co. v. Sykeston School Dist. 36 N. D. 254, 162 N. W. 413; McCann v. Carlson, 26 N. D. 191, 144 N. W. 92; McCarty v. Goodsman, 39 N. D. 389, L.R.A. 1918F, 160, 167 N. W. 503.

§§ 6834, 6835. Comp. Laws, 1913.

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

CHAPTER 93.

MINER'S LIEN.

§§ 6836-6839. Comp. Laws, 1913.

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6840. **Account to be made and filed with clerk.** Any person entitled to a lien under this chapter shall make an account in writing of the items of labor, skill, machinery and material furnished, as the case may be, and after making oath thereto shall within sixty days from the time of completing such labor or furnishing the last item of machinery, materials or other things, file the same in the office of the clerk of the district court of the county or subdivision in which the lode, lead, ledge, mine, deposit, bank or tunnel may be situated, for or upon which labor, skill, machinery or material shall have been furnished; and also file at the same time a correct description of the property to be charged with such lien, which account and description so made and filed shall be recorded in a separate book to be provided for that purpose by such clerk of court, and thereupon the same shall from the time of the completion of the work of furnishing the last item of machinery or material, and for one year thereafter, operate as a lien on the property charged in such description; when any work and labor has been performed or materials furnished as aforesaid under a written contract, the same or a copy thereof shall be filed with such account and description; provided, that all lien claims for labor performed or materials furnished shall be concurrent liens upon the property charged, and shall be paid pro rata out of the proceeds arising from the sale thereof, if the same shall be sold or upon settlement without sale. [R. C. 1905, § 6260; Laws 1879, ch. 41, § 5; R. C. 1899, § 4809.]

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6841. Comp. Laws, 1913.

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

CHAPTER 94.

LIENS FOR KEEPING AND PASTURING STOCK.

§§ 6844, 6845. Comp. Laws, 1913.

Herder of sheep at monthly wage, entitled to herder's lien, upon sheep in his

care, as against owner who consented to employment. *Mead v. Backorny*, — N. D. —, 121 N. W. 626.

§ 6846. *Comp. Laws, 1913.*

Hope Nat. Bank v. Smith, 38 N. D. 425, 165 N. W. 550.

CHAPTER 95.

LIENS FOR SERVICE OF SIRES.

§§ 6847–6850. These sections are superseded by § 2775, ante, at least as to stallions and jacks.

§§ 6849, 6850. *Comp. Laws, 1913.*

McCarty v. Goodsman, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

CHAPTER 96.

SEED LIEN.

§ 6851. *Comp. Laws, 1913.*

Plaintiff to recover for conversion of grain upon which he claims seed lien, must show that the grain was produced from the seed furnished by him. *Stiehm v. Guthrie Farmers' Elevator Co.* 40 N. D. 648, 169 N. W. 318.

See also *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503; *Bovey-Shute Lumber Co. v. Thomas*, 42 N. D. 12, 171 N. W. 859; *Rolette State Bank v. Minnekota Elevator Co.* — N. D. —, 195 N. W. 6.

§ 6852. *Comp. Laws, 1913.*

Section not complied with where statement wholly omits description of land. *Chafee v. Edinger*, 29 N. D. 537, 151 N. W. 223.

Plaintiff, to recover for conversion of grain upon which he claims seed lien, must show that the grain was produced from the seed furnished by him. *Stiehm v. Guthrie Farmers' Elevator Co.* 40 N. D. 648, 169 N. W. 318.

Seed-lien statement, signed by bank officer claiming lien in favor of bank, and containing facts required by section, substantially complies with statute, as against objection that statement does not affirmatively show that bank furnished seed, or possessed any interest in the grain. *Bovey-Shute Lumber Co. v. Thomas*, 42 N. D. 12, 171 N. W. 859.

Seed-lien statement held to substantially comply with statute. *Huether v. McCaull-Dinsmore Co.* — N. D. —, 204 N. W. 614.

See also *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

CHAPTER 97.

THRESHING LIEN.

§ 6854. **Who may have.** Any owner or lessee of a threshing machine who threshes grain therewith shall, upon filing the statement provided for in the next section, have a lien upon such grain for the value of his services in threshing the same from the date of the commencement of the threshing. [Laws 1925, ch. 160, § 1.]

Thresher, is estopped from asserting lien against elevator, where, before filing statement, he accompanies owner to elevator, and remains silent, while owner sells grain and receives payment therefor. *Branthover v. Monarch Elevator Co.* 33 N. D. 454, 156 N. W. 927.

Failure to comply with statute is fatal to lien. *Auth v. Kuroki Elev. Co.* 40 N. D. 533, 169 N. W. 80.

Cropper, threshing grain with his own machine, is entitled to threshing lien upon landowner's share of grain, for pro rata share of threshing bill, must pay.

Mace v. Cole, — N. D. —, 35 A.L.R. 445, 198 N. W. 816.

Gives an inchoate lien to thresher for thirty day period, after completion of threshing though no statement is on file. **Rogers Lumber Co. v. Schatzel**, — N. D. —, 204 N. W. 854.

See also **Stevenson v. Magill**, 35 N. D. 576, L.R.A.1917D, 377, 160 N. W. 700; **Dahlund v. Lorentzen**, 30 N. D. 275, 152 N. W. 684; **Golly v. Kiner**, — N. D. —, 197 N. W. 883; **Hiam v. Andrews Grain Co.** 48 N. D. 250, 183 N. W. 1016; **Lee v. Lee**, 48 N. D. 971, 188 N. W. 43; **Rolette State Bank v. Minnekota Elevator Co.** — N. D. —, 195 N. W. 6.

Agriculture, 2 C. J. p. 1020, § 130, p. 1021, § 132.

Cropper's right to thresher's lien or lien for other work on share of owner. 35 A.L.R. 450.

Thresher's lien. 1 R. C. L. 788 and Supps.

§ 6855. Procedure to obtain lien. Any person entitled to a lien under this chapter shall within fifteen days after the threshing is completed, file in the office of the register of deeds of the county in which the grain was grown a statement in writing, verified by oath, showing the kind and quantity of grain threshed, the price agreed upon for threshing the same, either by the bushel, the hour, or the day; or if no price has been agreed upon then the reasonable value, the name of the person for whom the threshing was done and a description of the land upon which the grain was grown. Unless the person entitled to the lien shall file such statement within the time aforesaid he shall be deemed to have waived his right thereto. [Laws 1925, ch. 160, § 2.]

Thresher is estopped from asserting lien against elevator company, where before filing statement, he accompanies owner to elevator, and remains silent, while owner sells grain and receives payment therefor. **Branthover v. Monarch Elevator Co.** 33 N. D. 454, 156 N. W. 927.

Failure to comply with statute is fatal to lien. **Auth v. Kuroki Elevator Co.** 40 N. D. 533, 169 N. W. 80.

Does not require lien shall show that parties agreed upon certain price per bushel for threshing; payment to thresher per hour does not invalidate lien. **Hiam v. Andrews Grain Co.** 48 N. D. 250, 183 N. W. 1016.

Failure to state amount and quantity of grain threshed, renders statement filed, to perfect thresher's lien, insufficient. **Brodina v. Vranek**, — N. D. —, 196 N. W. 311.

Cropper, threshing grain with his own machine, is entitled to threshing lien upon landowner's share of grain, for pro rata share of threshing bill. **Mace v. Cole**, — N. D. —, 35 A.L.R. 445, 198 N. W. 816.

Person entitled to thresher's lien must include in statement to be filed, debtor's name correctly spelled, in order to file and index the lien, under first letter of surname. **Schatz v. Kintyre Farmers' Co-op. Elevator Co.** — N. D. —, 202 N. W. 855.

Gives an inchoate lien to thresher for thirty day period after completion of threshing, though no statement is on file. **Rogers Lumber Co. v. Schatzel**, — N. D. —, 204 N. W. 854.

Failure of lien claimant, whose lien is satisfied while in inchoate state, to file statement, does not render right of one discharging the claim, subject to inferior liens. **Rogers Lumber Co. v. Schatzel**, — N. D. —, 204 N. W. 854.

See also **Dahlund v. Lorentzen**, 30 N. D. 275, 152 N. W. 684; **Stevenson v. Magill**, 35 N. D. 576, L.R.A.1917D, 377, 160 N. W. 700; **McCarty v. Goodsman**, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

Agriculture, 2 C. J. pp. 1020-1021 §§ 131-133.

Thresher's lien. 1 R. C. L. 788 and Supps.

§ 6856. Priority. Such lien shall have priority over all other liens and incumbrances, including a mortgage upon the crop or grain given by the person claiming the lien, and such lien shall not inure to such mortgagee. [Laws 1925, ch. 160, § 3.]

Stevenson v. Magill, 35 N. D. 576, L.R.A.1917D, 377, 160 N. W. 700; **Mace v. Cole**, — N. D. —, 35 A.L.R. 445, 198 N. W. 816.

Agriculture, 2 C. J. p. 1021 § 132.

CHAPTER 98.

FARM LABORER'S LIEN.

§ 6857. Comp. Laws, 1913.

Owner of farm laborer's lien, may, upon default in payment of debt secured thereby, take possession of property secured thereby. *Wonser v. Walden Farmers' Elevator Co.* 31 N. D. 392, 153 N. W. 1012.

One employed by owner of crop, who performs labor directly connected with harvesting and threshing thereof, is a farm laborer. *Heddan v. Walden Farmers' Elevator Co.* 31 N. D. 392, 153 N. W. 1015.

Woman employed in cooking in cook-car for threshing crew, held entitled to farm laborer's lien. *Stevenson v. Magill*, 35 N. D. 576, L.R.A.1917D, 377, 160 N. W. 700.

Section does not give laborer lien for value of use of his horses and machinery, but where he contracts for his labor, horses, and machinery, and is to be paid under entire contract, he is entitled to lien for reasonable wages. *Lee v. Lee*, 48 N. D. 971, 188 N. W. 43.

See also *Rolette State Bank v. Minnesota Elevator Co.* — N. D. —, 195 N. W. 6; *Mead v. First Nat. Bank*, 24 N. D. 12, 138 N. W. 365.

§ 6858. Comp. Laws, 1913.

Owner of farm laborer's lien, may upon default in payment of debt secured thereby, take possession of property secured thereby. *Wonser v. Walden Farmers' Elevator Co.* 31 N. D. 392, 153 N. W. 1012.

See also *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

§ 6859. Comp. Laws, 1913.

Owner of farm laborer's lien, may upon default in payment, of debt secured thereby, take possession of property secured thereby. *Wonser v. Walden Farmers' Elevator Co.* 31 N. D. 392, 153 N. W. 1012.

§ 6860. Comp. Laws, 1913.

Wonser v. Walden Farmers' Elevator Co. 31 N. D. 382, 153 N. W. 1012.

CHAPTER 99.

OTHER LIENS.

§§ 6861. 6862. Comp. Laws, 1913.

Rolette County Bank v. Hanlyn, 48 N. D. 72, 183 N. W. 260; *Schafer v. Olson*, — N. D. —, 132 N. W. 645.

§ 6864. •Comp. Laws, 1913.

Magnuson v. Stiehm, 40 N. D. 141, 168 N. W. 613.

§ 6865. Comp. Laws, 1913.

Donovan v. Dickson, 37 N. D. 404, 164 N. W. 27.

§ 6868. Repealed by Laws 1919, ch. 176, § 1.

Relates merely to such property as is held by banker as bailee, and not to general deposit made in such bank. *Shuman v. Citizens State Bank*, 27 N. D. 599, L.R.A.1915A, 728, 147 N. W. 388; *Bank of Conway v. Stacy*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 6875. Comp. Laws, 1913.

Section applies to tort actions for personal injuries, and where action is brought, and judgment recovered, or where compromise agreement is made, or where attorney acts on contingent fee, lien attaches. *Greenleaf v. Minneapolis St. P. & S. Ste. M. R. Co.* 30 N. D. 112, 151 N. W. 879.

Requirements of subdivision 4, intended as a substitute for personal notice required to be given under subdivision 3. *Jacobsen v. Miller*, — N. D. —, 34 A.L.R. 317, 198 N. W. 349.

See also *York v. General Utility Corp.* 44 N. D. 51, 176 N. W. 352; *Simon v. Chicago, M. & St. P. R. Co.* 45 N. D. 251, 177 N. W. 107; *Lawn v. Casselman*, 25 N. D. 44, 141 N. W. 73.

§ 6876. Comp. Laws, 1913.

Murphy v. Casselman, 25 N. D. 51, 141 N. W. 75.

§ 6877. **Lien for repairs of personalty.** Any blacksmith or mechanic having an established place of business within the state who makes, alters, or repairs, any personal property, at the request of the owner or legal possessor of the property, shall have a lien upon the same for his reasonable charges for work done and materials furnished, until the charges are paid, and said lien shall have priority over all other liens, chattel mortgages or incumbrances against said personal property; provided, however, that any person entitled to a lien under this section shall, within thirty days after all materials are furnished or labor performed in altering or repairing such personal property, file in the office of the register of deeds of the county, a statement in writing, verified by oath, showing the labor performed, or other materials furnished, the price agreed on for the same, if no price is agreed on then state the reasonable value thereof, the name of the person for whom the work or labor was performed, or to whom materials were furnished, or both, and descriptions of the property upon which lien was claimed; provided, that when the person retains possession of this property so altered or repaired no statement is required to be filed as above provided; provided, that if any person makes, alters or repairs more than one article of the personal property for the same owner or legal possessor thereof, he may include all such articles of personal property so made, altered or repaired, in the same statement and the statement so made shall have the same force and effect to each article enumerated therein as though a separate statement has been filed for each of said articles so made, altered or repaired.

Unless the person entitled to said lien shall file such statement within the time aforesaid, he shall be deemed to have waived his right thereto; provided, further, that the person holding such lien, on property that has been previously encumbered by mortgage, before the foreclosure of same, shall give to the record holder of such mortgage twenty days' notice in writing of his intention to foreclose said lien before beginning action or proceedings for foreclosure of the same, which notice may be served by sending same in a registered letter addressed to such mortgagee at his last known postoffice address; and provided, further that the holder of any mortgage against property on which lien herein provided for, shall have been filed, may at any time previous to sale, pay off the amount due on such lien, the holder thereof shall assign the same to such person, and thereafter he shall be entitled to all rights that the person filing said lien would have, had the same not been paid. [Laws 1917, ch. 182, § 1.]

Does not give lien upon one piece of property for alteration and repair of another. *Barlow v. Ruthenberg*, — N. D. —, 199 N. W. 39.

Artisans' lien is a common-law lien, which has priority over existing mortgage liens, where possession is retained. *Reeves & Co. v. Russell*, 28 N. D. 265, L.R.A. 1915D, 1149, 148 N. W. 654.

See also *Simon v. Chicago, M. & St. P. R. Co.* 45 N. D. 251, 177 N. W. 107.

Bailments, 6 C. J. pp. 1132-1138 §§ 79-90.

Lien upon automobile for repairs or storage. L.R.A.1918D, 330.

Right to lien for repairs or other services under contract with purchaser under conditional sale. L.R.A.1915D, 1141.

Periodical use of vehicle by owner as defeating lien for repairs. 3 A.L.R. 664.

Priority as between lien for repairs and right of seller under conditional contract. 20 A.L.R. 249.

Common-law lien on personalty for work performed thereon, upon the owner's premises. 3 A.L.R. 862.

Priority as between lien for repairs and right of seller under conditional contract. 30 A.L.R. 1227.

Priority as between artisans' lien and chattel mortgage. 32 A.L.R. 1005.

Lien of bailee. 3 R. C. L. 120, 122.

Possession essential to claim of lien by bailee. 3 R. C. L. 123.

Waiver of bailee's lien. 3 R. C. L. 122, 124.

Enforcement of bailee's lien. 3 R. C. L. 125 and Supps.

CHAPTER 100.

FILING AND FORECLOSING LIENS ON PERSONAL PROPERTY.

§ 6878. Comp. Laws, 1913.

Section does not authorize foreclosure of attorney's lien, by advertisement under provision of § 8125. *McCarty v. Goodsman*, 39 N. D. 389, L.R.A.1918F, 160, 167 N. W. 503.

See also *Simon v. Chicago, M. & St. P. R. Co.* 45 N. D. 251, 177 N. W. 107; *Dahlund v. Lorentzen*, 30 N. D. 275, 152 N. W. 684; *Wonser v. Walden Farmers Elevator Co.* 31 N. D. 382, 153 N. W. 1012.

§ 6879. Comp. Laws, 1913.

Person entitled to threshers' lien must include in statement to be filed, debtor's name correctly spelled, in order to file and index the lien, under first letter of surname. *Schatz v. Kintyre Farmers' Co-op. Elevator Co.* — N. D. —, 202 N. W. 855.

CHAPTER 102.

STOPPAGE IN TRANSIT.

§§ 6881-6885. Repealed by § 6002a81, ante. See §§ 6002a59-6002a61, ante.

CHAPTER 103.

NEGOTIABLE INSTRUMENTS.

TITLE I. NEGOTIABLE INSTRUMENTS IN GENERAL.

- ARTICLE 1. FORM AND INTERPRETATION, §§ 6886-6908.
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TITLE III.

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TITLE IV.

- ARTICLE 1. GENERAL PROVISIONS, §§ 7075-7080.

TITLE I. NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE 1.—FORM AND INTERPRETATION.

§ 6886. Comp. Laws, 1913.

Check, a negotiable instrument. *Johanna v. Lennon*, 32 N. D. 71, 155 N. W. 685.

§ 6888. **Unqualified order or promise to pay.** An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional. [R. C. 1905, § 6305; 1899, ch. 113, § 3.]

Warehouse receipt, cannot, "contain an unconditional promise to pay a certain sum in money." *Vannett v. Reilly-Herz Auto. Co.* 42 N. D. 607, 173 N. W. 466.

See also *Merchants Nat. Bank v. Reiland*, — N. D. —, 199 N. W. 945; *McLeod State Bank v. Vandemark*, — N. D. —, 200 N. W. 42; *Hamm v. Mutz*, — N. D. —, 203 N. W. 673.

§ 6888. Unqualified order or promise to pay. An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with: 1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or 2. A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional. [R. C. 1905, § 6305; Laws 1899, ch. 113, § 3.]

§ 6893. Comp. Laws, 1913.

Instrument payable to payee named, but omitting phrase "the order of," or words of similar import, is non-negotiable. *Aamoth v. Hunter*, 33 N. D. 582, 157 N. W. 299.

See also *Hamm v. Mutz*, — N. D. —, 203 N. W. 673.

§ 6901. Comp. Laws, 1913.

Delivery of note upon condition that it be executed by another person as comaker, is unenforceable, against person so executing it, unless executed, by other person as comaker. *First State Bank v. Kelly*, 30 N. D. 84, 152 N. W. 125.

Promissory note has no legal inception or valid existence, until delivery. Performance by makers of acts amounting to delivery, at time of execution of note, prevents them from affecting or divesting title thereto. *Stockton v. Turner*, 30 N. D. 641, 153 N. W. 275; *Guild v. More*, 32 N. D. 432, 155 N. W. 44.

Possession of a negotiable instrument is presumptive evidence that holder has valid title thereto, and that it was delivered to him. *Northern Trading Co. v. Drexel State Bank*, 37 N. D. 521, 164 N. W. 151.

In action between original parties to promissory note, conditional delivery is available as defense thereto. *First Nat. Bank v. Miller*, 46 N. D. 551, 179 N. W. 997; *First Nat. Bank v. Davidson*, 48 N. D. 944, 188 N. W. 194.

Whether there was a conditional delivery, question of fact for jury. *Leonard v. Raleigh Co-op. Mercantile Co.* — N. D. —, 196 N. W. 102.

A promissory note has no valid or legal existence until delivery in accordance with intention of parties, and as between parties to it or others having notice, conditional delivery may be shown. *First Nat. Bank v. Wallace*, — N. D. —, 196 N. W. 303.

§ 6903. Comp. Laws, 1913.

No one is liable on a negotiable instrument whose name does not appear thereon. *McLeod State Bank v. Vandemark*, — N. D. —, 200 N. W. 42; *Baird v. Publishers' Nat. Service Bureau*, — N. D. —, 199 N. W. 757.

§ 6904. Comp. Laws, 1913.

Ostensible authority of agent to act for corporation in issuance of negotiable paper, may be proved, and by not less proof than would be required without the statute. *Grant County State Bank v. Northwestern Land Co.* 28 N. D. 479, 150 N. W. 736.

Signature of any party may be made by duly authorized agent, without particular form of appointment. *McLeod State Bank v. Vandemark*, — N. D. —, 200 N. W. 42.

See also *Embden State Bank v. Schulze*, — N. D. —, 193 N. W. 481.

§ 6905. Comp. Laws, 1913.

Agent signing note not liable as maker, in absence of showing of unauthorized signing. *Jarski v. Jones*, — N. D. —, 201 N. W. 688.

See also *Davis v. Joerke*, 47 N. D. 39, 181 N. W. 68; *Baird v. Publishers Nat. Service Bureau*, — N. D. —, 199 N. W. 757.

§ 6907. Comp. Laws, 1913.

Embden State Bank v. Schulze, — N. D. —, 193 N. W. 481.

§ 6908. Comp. Laws, 1913.

As to liability, of whose name is forged to a negotiable instrument, through estoppel by ratification or adoption. *Olgard v. Lemke*, 32 N. D. 551, 156 N. W. 102.

Word "precluded" is used as synonymous with word "estoppel," and includes ratification or adoption only when elements of an estoppel are involved. *Olgard v. Lemke*, 32 N. D. 551, 156 N. W. 102.

ARTICLE 2.—CONSIDERATION.

§ 6909. Comp. Laws, 1913.

Defense of want of consideration must be established by maker, by preponderance of evidence. *First State Bank v. Radke*, — N. D. —, 35 A.L.R. 1355, 199 N. W. 930.

See also *Stubbins Hotel Co. v. Beissbarth*, 43 N. D. 191, 174 N. W. 217.

§ 6910. Comp. Laws, 1913.

Antecedent or pre-existing debt, constitutes value, and is sufficient to support a sample contract. *Northern Trading Co. v. Drexel State Bank*, 37 N. D. 521, 164 N. W. 151.

Past-due indebtedness as constituting value. *Hanson v. Johnson*, 42 N. D. 431, 177 N. W. 452.

Issuing negotiable draft, in payment of note, is parting with "value." *Citizens State Bank v. Skeffington*, — N. D. —, 196 N. W. 953.

See also *First Nat. Bank v. Davidson*, 48 N. D. 944, 188 N. W. 194; *Valley v. Devaney*, — N. D. —, 194 N. W. 903; *Luverne State Bank v. Dailey*, — N. D. —, 200 N. W. 793.

§ 6911. Comp. Laws, 1913.

First Nat. Bank v. Davidson, 48 N. D. 944, 188 N. W. 194.

§ 6912. Comp. Laws, 1913.

Earley v. France, 42 N. D. 52, 172 N. W. 3; *Valley v. Devaney*, — N. D. —, 194 N. W. 963.

§ 6913. Comp. Laws, 1913.

Absence or failure of consideration is defense against any person not a holder in due course; partial failure of consideration is defense pro tanto whether in ascertained or liquidated amount or not. *Emerson-Brantingham Co. v. Brennan*, 35 N. D. 94, 159 N. W. 710.

Defense of want of consideration must be established by maker by preponderance of evidence. *First State Bank v. Radke*, — N. D. —, 35 A.L.R. 1355, 199 N. W. 930.

See also *Earley v. France*, 42 N. D. 52, 172 N. W. 73; *Stubbins Hotel Co. v. Beissbarth*, 43 N. D. 191, 174 N. W. 217; *Citizens State Bank v. Skeffington*, — N. D. —, 196 N. W. 953.

§ 6914. Comp. Laws, 1913.

Accommodation maker of promissory note, liable to payee as joint maker, even though payee has, at time of taking notice of accommodation character of the transaction. *First Nat. Bank v. Meyer*, 30 N. D. 388, 152 N. W. 657; *First Nat. Bank v. Burdick*, — N. D. —, 200 N. W. 44; *Luverne State Bank v. Dailey*, — N. D. —, 200 N. W. 793.

Accommodation indorser of instrument, containing stipulation that makers and indorsers waive demand, protest and notice of non-payment, is bound by the waiver. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

Accommodation indorser, who indorses promissory note before delivery, is not a surety, so as to have right to require creditor to exhaust his remedies against principal. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

See also *First Nat. Bank v. Davidson*, 48 N. D. 944, 188 N. W. 194.

ARTICLE 3.—NEGOTIATION.

§ 6915. Comp. Laws, 1913.

Emerson-Brantingham Co. v. Brennan, 35 N. D. 94, 159 N. W. 710; Northern Trading Co. v. Drexel State Bank of Chicago, 37 N. D. 521, 164 N. W. 151; Sweet v. Anderson, 41 N. D. 375, 170 N. W. 869; McLeod State Bank v. Vandemark, — N. D. —, 200 N. W. 42; Routier v. Williams, — N. D. —, 204 N. W. 678.

§ 6916. Comp. Laws, 1913.

Emlden State Bank v. Schulze, — N. D. —, 193 N. W. 481; McLeod State Bank v. Vandemark, — N. D. —, 200 N. W. 42; Routier v. Williams, — N. D. —, 204 N. W. 678.

§ 6919. Comp. Laws, 1913.

Indorsement in blank is one which specifies no indorsee, and an instrument so indorsed, is payable to bearer, and negotiable by delivery. Northern Trading Co. v. Drexel State Bank, 37 N. D. 521, 164 N. W. 151.

See also Northern Sav. Bank v. Kelly, 31 N. D. 582, 154 N. W. 650.

§ 6923. Comp. Laws, 1913.

Qualified indorser, mere assignor of title of instrument. Krueger v. Dulas, — N. D. —, 191 N. W. 1014.

§ 6930. Comp. Laws, 1913.

Northern Sav. Bank v. Kelly, 31 N. D. 582, 154 N. W. 650.

§ 6931. Comp. Laws, 1913.

Emlden State Bank v. Schulze, — N. D. —, 193 N. W. 481.

§ 6933. Comp. Laws, 1913.

Loveland v. Havlena, — N. D. —, 30 A.L.R. 325, 195 N. W. 12.

ARTICLE 4.—RIGHTS OF THE HOLDER.

§ 6936. Comp. Laws, 1913.

Earley v. France, 42 N. D. 52, 172 N. W. 73; Farmers' Bank v. Riedlinger, 27 N. D. 318, 146 N. W. 566.

§ 6937. Comp. Laws, 1913.

Holder in due course of negotiable instrument, holds same free from defenses of fraud, duress and want of consideration. Johanna v. Lennon, 32 N. D. 71, 155 N. W. 685.

In action on promissory note, where defendant shows fraud in inception, plaintiff has burden of proving that he is holder in due course. First Nat. Bank v. Bratsberg, — N. D. —, 204 N. W. 665.

See also Commercial Secur. Co. v. Jack, 29 N. D. 67, 150 N. W. 460; Emerson-Brantingham Co. v. Brennan, 35 N. D. 94, 159 N. W. 710; Advance-Rumely Thresher Co. v. Geyer, 40 N. D. 18, 168 N. W. 731; Earley v. France, 42 N. D. 52, 172 N. W. 73; Emlden State Bank v. Schulze, — N. D. —, 193 N. W. 481; Citizens State Bank v. Skeffington, — N. D. —, 196 N. W. 953.

§ 6938. Comp. Laws, 1913.

Does not relate to rights and liabilities of makers of demand note. Shuman v. Citizens State Bank, 27 N. D. 599, L.R.A.1915A, 728, 147 N. W. 388.

§ 6940. Comp. Laws, 1913.

Immediate negotiation of note by payee held to amount to fraud rendering payee's title defective. Merchants Nat. Bank v. Reiland, — N. D. —, 199 N. W. 945.

See also Commercial Secur. Co. v. Jack, 29 N. D. 67, 150 N. W. 460; First Nat. Bank v. Wallace, — N. D. —, 196 N. W. 303; First Nat. Bank v. Bratsberg, — N. D. —, 204 N. W. 665; Grebe v. Swords, 28 N. D. 330, 149 N. W. 126.

§ 6941. Comp. Laws, 1913.

Advance-Rumely Thresher Co. v. Geyer, 40 N. D. 18, 168 N. W. 731; Citizens State Bank v. Skeffington, — N. D. —, 196 N. W. 953.

§ 6942. Comp. Laws, 1913.

Holder in due course of a negotiable instrument, holds same free from defenses of fraud, duress and want of consideration, even though such defenses existed between the original parties. *Johanna v. Lennon*, 32 N. D. 71, 155 N. W. 685.

See also *First Nat. Bank v. Bratsberg*, — N. D. —, 304 N. W. 665.

§ 6943. Comp. Laws, 1913.

A negotiable instrument taken by one having notice that payee had defective title, is subject to same defenses as if non-negotiable. *Merchant's Nat. Bank v. Reiland*, — N. D. —, 199 N. W. 945.

See also *Emerson-Brantingham Co. v. Brennan*, 35 N. D. 94, 159 N. W. 710; *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665; *Earley v. France*, 42 N. D. 52, 172 N. W. 73; *First Nat. Bank v. Davidson*, 48 N. D. 944, 188 N. W. 194; *Leach v. Nelson*, 48 N. D. 1046, 189 N. W. 251.

§ 6944. Comp. Laws, 1913.

Directed verdict, in favor of plaintiff on note, held erroneous where, defendant introduced evidence tending to establish a defense, which was not met by proof from plaintiff that he was holder in due course. *First Nat. Bank v. Carroll*, 46 N. D. 62, 179 N. W. 664.

As to rebuttal by defendant of presumption that every holder is a holder in due course. *First Nat. Bank v. Wallace*, — N. D. —, 196 N. W. 303.

Holder of a note, who receives same from payee whose title is not defective, is prima facie, a holder in due course, and burden is on defendant to rebut the presumption. *Embden State Bank v. Shea*, — N. D. —, 196 N. W. 307; *Commercial Secur. Co. v. Jack*, 29 N. D. 67, 150 N. W. 460.

Where payee of negotiable instrument has defective title, his transferee has burden of establishing that he is a holder in due course. *Merchants Nat. Bank v. Reiland*, — N. D. —, 199 N. W. 945.

See also *Northern Sav. Bank v. Kelly*, 31 N. D. 582, 154 N. W. 650; *Northern Trading Co. v. Drexel State Bank*, 37 N. D. 521, 164 N. W. 151; *Stubbins Hotel Co. v. Beissbarth*, 43 N. D. 191, 174 N. W. 217; *Embden State Bank v. Boyle*, — N. D. —, 196 N. W. 820; *Grebe v. Swords*, 28 N. D. 330, 149 N. W. 126; *Farmers Bank v. Reidlinger*, 27 N. D. 318, 146 N. W. 566; *First Nat. Bank v. Bratsberg*, — N. D. —, 204 N. W. 665.

ARTICLE 5.—LIABILITIES OF PARTIES.

§ 6948. Comp. Laws, 1913.

Accommodation indorser of instrument containing stipulation that makers and indorsers waive demand, protest and notice of non-payment, is bound by the waiver. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

Accommodation indorser, who indorses promissory note before delivery, is not a surety, so as to have right to require creditor to exhaust his remedies against the principal. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

See also *First Nat. Bank v. Meyer*, 30 N. D. 388, 152 N. W. 657; *MacKay v. Jamestown Gas Co.* 41 N. D. 471, 171 N. W. 92; *Routier v. Williams*, — N. D. —, 204 N. W. 678.

§ 6949. Comp. Laws, 1913.

Accommodation indorser of instrument containing stipulation that makers and indorsers waive demand, protest, and notice of non-payment, is bound by the waiver. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

Accommodation indorser, who indorses promissory note before delivery, is not a surety, so as to have right to require creditor to exhaust his remedies against the principal. *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

See also *MacKay v. Jamestown Gas Co.* 41 N. D. 471, 171 N. W. 92.

§ 6950. Comp. Laws, 1913.

Krueger v. Dulas, — N. D. —, 191 N. W. 1014.

§ 6951. Comp. Laws, 1913.

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408; Routier v. Williams, — N. D. —, 204 N. W. 678.

§ 6953. Comp. Laws, 1913.

Bank of Conway v. Stary, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

ARTICLE 5a.—COLLECTION OF NEGOTIABLE INSTRUMENTS.

§ 6954a1. **Collection of checks, etc.** Any bank, banker or trust company, hereinafter called bank, organized under the laws of, or doing business in, this state, receiving for collection, or deposit, any check, draft, note or other negotiable instrument drawn upon or payable at any other bank located in another city or town whether within or without this state, may forward such instrument for collection directly to the bank on which it is drawn or at which it is made payable, and such method of forwarding direct to the payer shall be deemed due diligence, and the failure of such payer bank, because of its insolvency or other default, to account for the proceeds thereof, shall not render the forwarding bank liable therefor, provided, however, that such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. [Laws 1925, ch. 170, § 1.]

Banks and Banking, 7 C. J. p. 608 § 265, p. 615 § 281.

Diligence required in collecting check taken by collecting bank. 3 L.R.A.(N.S.) 1167.

Bank to which paper is sent for collection at request of obligor as agent of obligor or of holder. 34 L.R.A.(N.S.) 734.

Right of bank to repudiate payment to foreign correspondent. 23 A.L.R. 1232.

Duty of collecting bank as to notices of protest or dishonor which it received from its correspondent. 4 A.L.R. 534.

Effect of banking custom as to sending directly to drawee bank. 21 L.R.A. 443.

Validity of custom of sending directly to drawee bank. 2 L.R.A.(N.S.) 194.

Sending directly to drawee bank. 18 L.R.A.(N.S.) 441.

Liability for taking check or draft in payment of paper held for collection. 3 L.R.A.(N.S.) 1179.

Liability for default of correspondent. 52 L.R.A.(N.S.) 608.

Rule or custom of clearing house relating to time for presentation of checks as affecting liability of collecting bank. 50 L.R.A.(N.S.) 542.

Damages for negligence as to collection of commercial paper. 1 L.R.A.(N.S.) 246.

Liability of bank to obligor of paper for negligence in making collection. 4 A.L.R. 521.

Collecting bank's duty as to notices of protest or dishonor received from correspondent. 4 A.L.R. 534.

Bank's duty as to return of bill or note taken for collection if not paid. 6 A.L.R. 618.

Damages for bank's breach of duty in respect to presentment of paper held for collection. 19 A.L.R. 564.

Liability of bank taking commercial paper for collection for default of correspondent. 36 A.L.R. 1308.

Transmitting paper to drawee or payor. 3 R. C. L. 627 et seq. and Supps.

§ 6954a2. **Emergency.** Whereas there is now no relief provided by law, this act is hereby declared an emergency measure and shall become and be in effect and in force immediately upon its passage and approval by the governor. [Laws 1925, ch. 170, § 3.]

ARTICLE 6.—PRESENTMENT FOR PAYMENT.

§ 6955. Comp. Laws, 1913.

As to rights of irregular indorser. Engen v. Medberry Farmers' Elevator Co. — N. D. —, 39 A.L.R. 915, 203 N. W. 182.

Negotiable instrument made payable at a certain city, is not payable at a "special place." *Corbett v. Ulsaker Printing Co.* — N. D. —, 24 A.L.R. 1047, 190 N. W. 75.

See also *Shuman v. Citizens State Bank*, 27 N. D. 599, L.R.A.1915A, 728, 147 N. W. 388.

§§ 6956–6959. Comp. Laws, 1913.

As to rights of irregular endorser. *Engen v. Medberry Farmers' Elevator Co.* — N. D. —, 39 A.L.R. 915, 203 N. W. 182.

See also *Shuman v. Citizens State Bank*, 27 N. D. 599, L.R.A.1915A, 728, 147 N. W. 388.

§ 6964. Comp. Laws, 1913.

Bank, in whose interest worthless checks are used to swell the assets, is not entitled to presentment and notice of dishonor. *Tonne v. Horace State Bank*, — N. D. —, 193 N. W. 934.

§ 6965. Comp. Laws, 1913.

Bank of Conway v. Stary, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505; *Engen v. Medberry Farmers Equity Elevator Co.* — N. D. —, 39 A.L.R. 915, 203 N. W. 182.

§ 6969. Comp. Laws, 1913.

Bank of Conway v. Stary, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 6972. Repealed by Laws 1921, ch. 90, § 1.

ARTICLE 7.—NOTICE OF DISHONOR.

§§ 6989–6991. Comp. Laws, 1913.

Leonard v. Raleigh Co-op. Mercantile Co. — N. D. —, 196 N. W. 102.

§ 6994. Comp. Laws, 1913.

Farmers & Merchants State Bank v. Behrens Mfg. Co. — N. D. —, 198 N. W. 467.

§ 6995. Comp. Laws, 1913.

Waiver in the body of a note to effect that drawer waives, presentment for payment, protest, notice of protest, and nonpayment, does not include indorser on note. *Farmers & Merchants State Bank v. Behrens Mfg. Co.* — N. D. —, 198 N. W. 467.

See also *Bank of Conway v. Stary*, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 6999. Comp. Laws, 1913.

Bank, in whose interest worthless checks are used to swell the assets, is not entitled to presentment and notice of dishonor. *Tonne v. Horace State Bank*, — N. D. —, 193 N. W. 934.

§ 7000. Comp. Laws, 1913.

Bank of Conway v. Stary, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

§ 7003. Comp. Laws, 1913.

Leonard v. Raleigh Co-op. Mercantile Co. — N. D. —, 196 N. W. 102.

ARTICLE 8.—DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§ 7004. Comp. Laws, 1913.

First Nat. Bank v. Meyer, 30 N. D. 388, 152 N. W. 657; *Helman v. Strong*, 34 N. D. 228, 157 N. W. 986; *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665; *First Nat. Bank v. Burdick*, — N. D. —, 200 N. W. 44; *Leach v. Nelson*, 48 N. D. 1046, 189 N. W. 251.

§ 7005. Comp. Laws, 1913.

First Nat. Bank v. Meyer, 30 N. D. 388, 152 N. W. 657; *Scandinavian American Bank v. Westby*, 41 N. D. 276, 172 N. W. 665.

§ 7007. Comp. Laws, 1913.

Section held inapplicable where mortgagee agreed to look to mortgage lien, instead of collateral note. *Leach v. Nelson*, 48 N. D. 1046, 189 N. W. 251.

See also *First Nat. Bank v. Burdick*, — N. D. —, 200 N. W. 44.

§ 7009. Comp. Laws, 1913.

Eaton v. Delay, 32 N. D. 328, L.R.A.1916D, 528, 155 N. W. 644.

§ 7010. Comp. Laws, 1913.

Insertion by holder of promissory note, of a certain date in margin, as a reference memorandum his promise to the maker to extend time for payment held not a material alteration. *Eaton v. Delay*, 32 N. D. 328, L.R.A.1916D, 528, 155 N. W. 644.

TITLE II. BILLS OF EXCHANGE.

ARTICLE 4.—PROTEST.

§ 7036. Protest for non-payment. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary, and if the same is protested no charge therefor shall be made to any party to the instrument. [Laws 1923, ch. 259, § 1.]

Bills and Notes, 8 C. J. pp. 623-624 §§ 867-868 p. 1103 § 1440.

Necessity of protest of foreign bill of exchange. 3 R. C. L. 1319 and Supps.

ARTICLE 5.—ACCEPTANCE FOR HONOR.

§ 7052. Presentment for payment, how made. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 6989. [R. C. 1905, § 6470; Laws 1899, ch. 113, § 168.]

§ 7053. Delay in making presentment. The provisions of section 6966 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. [R. C. 1905, § 6471; Laws 1899, ch. 113, § 169.]

ARTICLE 7.—BILLS IN A SET.

§ 7065. Comp. Laws, 1913.

Weigel v. Powes Elevator Co. — N. D. —, 198 N. W. 121.

TITLE III.

ARTICLE 1.—PROMISSORY NOTES AND CHECKS.

§ 7068. Comp. Laws, 1913.

Promissory note payable to "ourselves," not complete until indorsed by maker, and of no vital force in holder's hands without such indorsement. *People's State Bank v. Snyder*, — N. D. —, 195 N. W. 436.

§ 7068a1. Renewal notes; what must be contained in. It shall be illegal hereafter for any person or corporation, state or national bank, doing business in the state of North Dakota, to take from any debtor or other person obligated upon a promissory note, any renewal note, therefor without returning the promissory note renewed unless there be written or printed across the

renewed note the words "Renewed note" or words of like import and effect. [Laws 1925, ch. 171, § 1; Laws 1921, ch. 91, § 1.]

Refusal of trial court to exclude renewal note upon ground that it was not marked "renewal," proper. *Farmers State Bk. v. Jeske*, — N. D. —, 197 N. W. 854.

Motion to dismiss suit on note for noncompliance, with chapter properly denied. *State Bk. of Finley v. Dronen*, — N. D. —, 197 N. W. 150.

Note "renewed," when new note evidencing, same obligation, is executed, and delivered by maker to holder of old note. *Douglas County Bank v. Sutherland*, — N. D. —, 204 N. W. 683.

Bills and Notes, 8 C. J. p. 154 § 262, p. 217 § 352.

Surrender of old note as consideration for renewal note. 3 R. C. L. 1217 and Supps.

§ 7068a2. Same; collectability. Any note so renewed, whether so marked or not, shall be uncollectable by any person or corporation, unless such person or corporation shall be in possession of and offer to surrender the new note so taken, or shall indemnify the maker thereof, by good and sufficient bond, as in the case of a lost instrument, against liability thereon. [Laws 1925, ch. 171, § 1; Laws 1921, ch. 91, § 2.]

Bills and Notes, 8 C. J. p. 217 § 352.

Application of usurious payments on previous obligation, as payment of principal on renewal. 13 A.L.R. 1244.

Taking renewal note for purchase price as waiver of reservation of title under conditional sale. 13 A.L.R. 1049.

Consolidated corporation's liability on obligations of predecessor as affected by their renewal. 15 A.L.R. 1178.

Payment or novation of original paper by acceptance of renewal note made or indorsed by personal representative of original obligor. 12 A.L.R. 1546.

Usurious forbearance renewal, or extension as affecting indebtedness originally valid. 3 A.L.R. 877.

Effect of renewal of principal's obligation to release party to a note executed to the creditor as collateral. 23 L.R.A.(N.S.) 141.

Effect of fraudulent reissue of bill or note which has been paid. 28 L.R.A.(N.S.) 1066.

Effect of the reissue of a bill or note that has been paid by or transferred to a party primarily liable thereon. L.R.A.1918E, 170.

When guaranty of commercial paper deemed to cover renewal. 16 L.R.A.(N.S.) 775.

Extent of forfeiture of interest in case of renewals where usury is charged by but not paid to national bank. 56 L.R.A. 683.

Renewal of conditional sale note as affecting right of seller or the intervening rights of third persons to the property. L.R.A.1916A, 927.

Conflict of laws as to usury in renewal contracts. L.R.A.1916D, 756.

Liability on paper given in renewal of forged paper. 23 L.R.A.(N.S.) 1234.

Liability of obligors on original contract as affected by void renewal. 33 L.R.A. 628.

Bona fide character of holder as destroyed by renewal of note after notice of defenses. 35 A.L.R. 1294.

Defenses available against the original as precluded by renewal of bill or note. 35 A.L.R. 1258.

May one not a holder in due course of original note acquire that character as to a renewal note. 35 A.L.R. 1300.

Waiver of usury by renewal of note. 13 A.L.R. 1213.

Effect of renewal of note on collectibility of note. 3 R. C. L. 1217 and Supps.

§ 7068a3. Emergency. Whereas chapter 91 of the laws of North Dakota for the year 1921 is uncertain and confusing, and doubt is thereby being cast upon the integrity of all promissory notes executed in this state, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its approval. [Laws 1925, ch. 171, § 1.]

Explanatory note. Laws 1921, ch. 91 referred to in the section above, was re-enacted by Laws 1925, ch. 171 (§§ 7068a1-7068a3, ante.)

§ 7069. Comp. Laws, 1913.

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

§ 7070. Comp. Laws, 1913.

Acceptance of a check implies an undertaking on part of acceptor to present it for payment within a reasonable time. Lloyd Mortg. Co. v. Davis, — N. D. —, 36 A.L.R. 465, 199 N. W. 869.

TITLE IV.

ARTICLE 1.—GENERAL PROVISIONS.

§ 7075. Comp. Laws, 1913.

Earley v. France, 42 N. D. 52, 172 N. W. 73; Sargent County v. State, 47 N. D. 561, 182 N. W. 270.

§ 7076. Comp. Laws, 1913.

Accommodation maker of promissory note, liable to payee as joint maker, even though payee has notice of the accommodation character of the transaction. First Nat. Bank v. Meyer, 30 N. D. 388, 152 N. W. 657.

§ 7080. Comp. Laws, 1913.

Scandinavian American Bank v. Westby, 41 N. D. 276, 172 N. W. 665; Bank of Conway v. Stary, — N. D. —, 37 A.L.R. 1186, 200 N. W. 505.

CHAPTER 104.

BILLS OF EXCHANGE.

ARTICLE 1.—FORM AND INTERPRETATION OF A BILL.

§ 7081. Comp. Laws, 1913.

State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

CHAPTER 110.

COMPENSATORY RELIEF.

- ARTICLE 1. DAMAGES IN GENERAL, §§ 7139–7145.
 2. MEASURE OF DAMAGES, §§ 7146–7159.
 3. DAMAGES FOR WRONGS, §§ 7165–7175.
 4. GENERAL PROVISIONS, §§ 7178–7184.
 5. SPECIFIC AND PREVENTIVE RELIEF, § 7188.
 6. POSSESSION OF REAL AND PERSONAL PROPERTY, § 7189.
 7. SPECIFIC PERFORMANCE OF OBLIGATIONS, §§ 7192–7201.
 8. REVISION AND RESCISSION OF CONTRACTS, § 7208.
 10. PREVENTIVE RELIEF, §§ 7213–7214a3.

ARTICLE 1.—DAMAGES IN GENERAL.

§ 7139. Comp. Laws, 1913.

Mason v. Underwood, 48 N. D. 130, 183 N. W. 529; Shuman v. Citizens State Bank, 27 N. D. 599, L.R.A.1915A, 728, 147 N. W. 358.

§ 7141. Comp. Laws, 1913.

York v. General Utilities Corp. 41 N. D. 137, 170 N. W. 312; Larson v. Russell, 45 N. D. 33, 176 N. W. 998.

§ 7142. Comp. Laws, 1913.

In action on statutory bond given on warrant for seizure, damages may be recovered in excess of penalty, to extent of legal interest, from date of breach. Krach v. Security State Bank, 43 N. D. 441, 175 N. W. 573.

Legal rate of interest allowable by way of compensation as damages for breach of contract. *Stutsman County v. Dakota Trust Co.* 47 N. D. 228, 181 N. W. 586.

Section does not waive ordinary rules of pleading in matters relating to recovery of interest. *Steen v. Neva*, 37 N. D. 40, 163 N. W. 272.

§ 7143. Comp. Laws, 1913.

In action of tort, return by jury of verdict in excess of the ad damnum, presumed to include interest. *Reichert v. Northern P. R. Co.* 39 N. D. 114, 167 N. W. 127.

See also *Burke v. Minnekota Elevator Co.* 48 N. D. 785, 186 N. W. 948.

§ 7145. Comp. Laws, 1913.

Punitive or exemplary damages allowable in libel actions. *Meyerle v. Pioneer Pub. Co.* 45 N. D. 568, 178 N. W. 792.

Exemplary damages may be recovered for transfer of note obtained from plaintiff by fraud. *Wuest v. Richmond*, 48 N. D. 1081, 188 N. W. 573.

See also *Stringer v. Elsaas*, 37 N. D. 20, 163 N. W. 558; *Weeks v. Great Northern R. Co.* 43 N. D. 426, 8 A.L.R. 1178, 175 N. W. 726; *Mason v. Underwood*, 48 N. D. 130, 183 N. W. 529; *Oster v. Oster*, — N. D. —, 193 N. W. 316.

ARTICLE 2.—MEASURE OF DAMAGES.

§ 7146. Comp. Laws, 1913.

Lynn v. Seby, 29 N. D. 420, L.R.A.1916E, 788, 151 N. W. 31; *Merritt v. Adams County Land & Invest. Co.* 29 N. D. 496, 151 N. W. 11; *Harris v. VanVranken*, 32 N. D. 238, 155 N. W. 65; *O. J. Barnes Co. v. Sheggerud*, 43 N. D. 279, 173 N. W. 950; *Sundry v. Brooklyn School Dist.* 47 N. D. 444, 15 A.L.R. 719, 182 N. W. 689; *Morin v. Divide County Abstract Co.* 48 N. D. 214, 183 N. W. 1006; *Welch Mfg. Co. v. Herbst Dept. Store*, — N. D. —, 204 N. W. 849.

§ 7147. Comp. Laws, 1913.

Hocksprung v. Young, 27 N. D. 322, 146 N. W. 547.

§ 7149. Comp. Laws, 1913.

Stratton v. Rosenquist, 41 N. D. 647, 171 N. W. 621; *Beulah Coal Min. Co. v. Heihn*, 46 N. D. 646, 180 N. W. 787; *Morin v. Divide County Abstract Co.* 48 N. D. 214, 183 N. W. 1006.

§ 7151. Comp. Laws, 1913.

In action for breach of contract for sale of land, allegation in complaint, that plaintiff has sustained damages to a specified amount, sufficient to justify assessment of general damages. *Merritt v. Adams County Land Co.* 29 N. D. 496, 151 N. W. 11.

See also *Cummings v. Deleen*, — N. D. —, 203 N. W. 322.

§ 7152. Comp. Laws, 1913.

Slimmer v. Martin, 42 N. D. 255, 172 N. W. 829.

§§ 7153, 7154. Repealed by § 6002a81, ante. See § 6002a69, subdvs. 2, 3, ante.

§§ 7155, 7156. Repealed by § 6002a81, post. See § 6002a66, subdvs. 2-4, ante.

§§ 7157-7159. Repealed by § 6002a81, ante. See § 6002a71, subdvs. 6, 7, ante.

ARTICLE 3.—DAMAGES FOR WRONGS.

§ 7165. Comp. Laws, 1913.

Measure of damages for breach of obligation not arising out of contract, is amount that will compensate for all detriment proximately caused. *Wilson v. Northern P. R. Co.* 30 N. D. 456, L.R.A.1915E, 991, 153 N. W. 429.

Unwarranted prosecution of proceeding for insanity, is a legal wrong for which party injured is entitled to be compensated. *Pickles v. Anton*, — N. D. —, 189 N. W. 684.

See also *McKindley v. Citizens State Bank*, 36 N. D. 451, 161 N. W. 601; *Hogan v. Bragg*, 41 N. D. 203, 170 N. W. 324; *Weeks v. Great Northern R. Co.* 43 N. D. 426, 8 A.L.R. 1178, 175 N. W. 726; *Morin v. Divide County Abstract Co.*

48 N. D. 214, 183 N. W. 1006; *Overmoe v. J. C. Penney Co.* — N. D. —, 202 N. W. 648.

§ 7168. Comp. Laws, 1913.

As to measure of damages for wrongful conversion of personal property. *Rolette State Bank v. Minnekota Elevator Co.* — N. D. —, 195 N. W. 6.

See also *More v. Western Grain Co.* 31 N. D. 369, 153 N. W. 976; *Skjerseth v. Woodworth Elevator Co.* 35 N. D. 295, 160 N. W. 70; *McKindley v. Citizens State Bank*, 36 N. D. 451, 161 N. W. 601; *Stringer v. Elsaas*, 37 N. D. 20, 163 N. W. 558; *Auth v. Kuroki Elevator Co.* 40 N. D. 533, 169 N. W. 80; *Collard v. Fried*, 41 N. D. 242, 170 N. W. 525; *Littler v. Holla*, 46 N. D. 180, 180 N. W. 717; *Sand v. St. Anthony & D. Elevator Co.* — N. D. —, 191 N. W. 955; *Dearborn Truck Co. v. Nedreloe*, — N. D. —, 193 N. W. 311; *Huether v. McCaull Dinsmore Co.* — N. D. —, 204 N. W. 614.

§ 7175. Comp. Laws, 1913.

Rule that occupancy of house by employee is incidental to operation of farm and ceases with service, not abrogated by this section. *Davis v. Long*, 45 N. D. 581, 14 A.L.R. 796, 178 N. W. 936.

ARTICLE 4.—GENERAL PROVISIONS.

§§ 7178, 7179. Comp. Laws, 1913.

O. J. Barnes Co. v. Sheggerud, 43 N. D. 279, 173 N. W. 950.

§ 7180. Comp. Laws, 1913.

Section has no application to executory contracts for sale of land. *McKindley v. Citizens State Bank*, 36 N. D. 451, 161 N. W. 601.

Federal bonds presumed to be worth par value, until contrary is shown. *Dakota Nat. Bank v. Brodie*, 46 N. D. 247, 176 N. W. 738.

See also *O. J. Barnes Co. v. Sheggerud*, 43 N. D. 279, 173 N. W. 950.

§ 7182. **Cannot recover more than would be gained by performance.** Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides except in the cases specified in the subdivisions on exemplary damages and penal damages and in sections 7164, 7171 and 7172. [R. C. 1905, § 6599; R. C. 1899, § 5014; Civ. C. 1877, § 1984.]

§ 7183. Comp. Laws, 1913.

Mason v. Underwood, 48 N. D. 130, 183 N. W. 529.

§ 7184. Comp. Laws, 1913.

Complaint setting out breach of official bond, good against demurrer, even though there is no express allegation of damages. *Bowman County v. McIntyre*, — N. D. —, 202 N. W. 651.

See also *Meyerle v. Pioneer Pub. Co.* 45 N. D. 568, 178 N. W. 792.

ARTICLE 5.—SPECIFIC AND PREVENTIVE RELIEF.

§ 7188. Comp. Laws, 1913.

Ryan v. Bremseth, 48 N. D. 710, 186 N. W. 818.

ARTICLE 6.—POSSESSION OF REAL AND PERSONAL PROPERTY.

§ 7189. Comp. Laws, 1913.

Orfield v. Harney, 33 N. D. 568, 157 N. W. 124.

ARTICLE 7.—SPECIFIC PERFORMANCE OF OBLIGATIONS.

§ 7192. Comp. Laws, 1913.

Paulson v. Hammond, — N. D. —, 191 N. W. 462.

§ 7193. Comp. Laws, 1913.

Streeter v. Archer, 46 N. D. 251, 176 N. W. 826; *Paul v. Leutz*, 48 N. D. 1121, 188 N. W. 1022.

§ 7194. Comp. Laws, 1913.

Carey v. Campbell, 45 N. D. 273, 177 N. W. 372; Orfield v. Harney, 33 N. D. 568, 157 N. W. 124.

§ 7197. Comp. Laws, 1913.

Section held inapplicable to proceeding to enjoin removal of telephones and discontinuing service, in certain railway depots. Great Northern R. Co. v. Sheyenne Teleph. Co. 27 N. D. 256, 145 N. W. 1062.

Specific performance must be denied when its terms are not sufficiently certain to make the act which is to be done, clearly ascertainable. Beebe v. Hanson, 40 N. D. 559, 169 N. W. 31.

§ 7198. Comp. Laws, 1913.

Specific performance must be denied, when a contract is not in all respects fair, just and reasonable, and based on an adequate consideration. Beebe v. Hanson, 40 N. D. 559, 169 N. W. 31; Carey v. Campbell, 45 N. D. 273, 177 N. W. 372.

See also Ness v. Larson, 41 N. D. 211, 170 N. W. 623; Streeter v. Archer, 46 N. D. 251, 176 N. W. 826.

§ 7200. Comp. Laws, 1913.

Streeter v. Archer, 46 N. D. 251, 176 N. W. 826.

§ 7201. Comp. Laws, 1913.

Boehm v. Long, 43 N. D. 1, 172 N. W. 862.

ARTICLE 8.—REVISION AND RESCISSION OF CONTRACTS.

§ 7208. Comp. Laws, 1913.

Court has power to determine amount which is owing or which must be paid by way of compensation from one maintaining for cancelation of a contract to one against whom it is brought. Donovan v. Dickson, 37 N. D. 404, 164 N. W. 27.

ARTICLE 10.—PREVENTIVE RELIEF.

§ 7213. Comp. Laws, 1913.

Strobeck v. McWilliams, 42 N. D. 30, 171 N. W. 865.

§ 7214. Comp. Laws, 1913.

Term "officers of the law," is synonymous with "peace officers." Barthels Northern Oil Co. v. Jackman, 29 N. D. 236, 150 N. W. 576.

See also State ex rel. v. District Ct. — N. D. —, 186 N. W. 381; State ex rel. Ladd v. District Ct. 17 N. D. 285, 15 L.R.A.(N.S.) 331, 115 N. W. 675.

§ 7214a1. **When injunction not granted.** No restraining order or injunction shall be granted by any court of this state, any judge or judges thereof in any case involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney. [Laws 1919, ch. 171, § 1.]

Sandry v. Brooklyn School Dist. 47 N. D. 444, 15 A.L.R. 719, 182 N. W. 689.

Injunctions, 32 C. J. pp. 162-185 §§ 219-278; Constitutional Law, 12 C. J. p. 825 § 287.

Employer's right to enjoin boycott, as affect by his conduct. 6 A.L.R. 974.

What constitutes irreparable injury within statutes restricting remedy by injunction in industrial disputes. 27 A.L.R. 418.

Injunction against publishing or circulating statements relative to industrial disputes by labor union. 32 L.R.A.(N.S.) 1013.

Statutes restricting remedy by injunction in industrial disputes. 27 A.L.R. 411; 35 A.L.R. 460.

Injunctive relief against boycott in industrial disputes. 6 A.L.R. 969; 16 A.L.R. 238; 27 A.L.R. 657.

Injunctive relief with reference to contracts of service. 14 R. C. L. 385 et seq. and Supps.

Inadequacy of legal remedy. 14 R. C. L. 339 et seq. and Supps.

Irreparable injury. 14 R. C. L. 345 et seq. and Supps.

§ 7214a2. **Same.** No restraining order or injunction shall prohibit any person or persons whether singly or in concert from terminating any relation of employment or from ceasing to perform any work or labor or from recommending, advising or persuading others so to do; or from attending at any place where any person or persons may lawfully be, for the purpose of obtaining or communicating information, or from persuading any such person to work or to abstain from working; or from ceasing to patronize any party to such dispute; or from recommending, advising, or persuading others so to do; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by a single person; nor shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court in this state. [Laws 1919, ch. 172, § 2.]

Is contempt for violation of injunction against interfering with another's employee, civil or criminal. 13 L.R.A.(N.S.) 598.

Law as to picketing. 50 L.R.A.(N.S.) 412.

Injunction against strikes. 28 L.R.A. 464.

Constitutionality of statute restricting remedy by injunction in labor disputes. L.R.A.1916F, 836.

Restraining breach of contract of employment. 14 R. C. L. 390 and Supps.

§ 7214a3. **Same.** In all cases involving the violation of the contract of employment, either by the employer or the employee where no irreparable damage is about to be committed upon the property or property rights of either, no injunction shall be granted, but the parties shall be left to their remedy at law. [Laws 1919, ch. 171, § 3.]

Injunctions, 32 C. J. pp. 199-203 §§ 307-314.

Soliciting former employer's customers. 34 A.L.R. 399.

Right in absence of express contract, to enjoin former employee from soliciting former employer's customers. 23 A.L.R. 423.

Injunctive relief against breach of restrictive covenant in contracts of employment as affected by comparison of injuries to the parties. 9 A.L.R. 1482.

Injunctive relief in reference to contracts of service. 14 R. C. L. 385 et seq. and Supps.

CHAPTER 111.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

ARTICLE 1. GENERAL PRINCIPLES, §§ 7216-7218.

2. FRAUDULENT INSTRUMENTS AND TRANSFERS, §§ 7220-7223.

ARTICLE 1.—GENERAL PRINCIPLES.

§ 7216. Comp. Laws, 1913.

MacDonald v. Fitzgerald, 42 N. D. 133, 171 N. W. 879.

§ 7217. Comp. Laws, 1913.

Turton v. Bingenheimer Mercantile Co. 45 N. D. 98, 176 N. W. 661.

§ 7218. Comp. Laws, 1913.

"Debtor" includes corporations, general partnerships, and individuals, and gives to corporations, equally with individuals and general partnerships, the general right to prefer one creditor above another. *John Miller Co. v. Harvey Mercantile Co.* 38 N. D. 531, 165 N. W. 558.

Transfer of real property by a brother to his sister in payment of a bona fide indebtedness held valid. *Rasmussen v. Chambers*, — N. D. —, 204 N. W. 178.

Insolvent or failing corporation may validly give a mortgage to a creditor to secure an existing indebtedness, even though it constitute a preference. *Farmers' State Bank v. Brown*, — N. D. —, 204 N. W. 673.

See also *Godman v. Olson*, 38 N. D. 360, 165 N. W. 515; *Turton v. Bingenheimer Mercantile Co.* 45 N. D. 98, 176 N. W. 661.

ARTICLE 2.—FRAUDULENT INSTRUMENTS AND TRANSFERS.

§ 7220. Comp. Laws, 1913.

Contrivances to hinder, delay or defraud creditors, void. *Sheridan v. McCormick*, 39 N. D. 641, 8 A.L.R. 523, 168 N. W. 59.

Creditor seeking to set aside a transaction, for fraud, must have a vested and specific lien upon property claimed to have been fraudulently transferred. *Bank of Sanborn v. France*, — N. D. —, 177 N. W. 375.

Where creditor seeks to set aside transaction as fraudulent it must appear that the debtor fraudulently transferred same, and that the transferee co-operated with the debtor in the fraud. *Bank of Sanborn v. France*, — N. D. —, 177 N. W. 375.

Where evidence as to illegal intent of husband and wife, and as to value of land, is meager, and indefinite, remand for statutory appraisal of homestead, is proper. *Farmers State Bank v. Weisenhaus*, — N. D. —, 198 N. W. 673.

Transfer from husband to wife not presumptively fraudulent, but should be scrutinized more closely than where no confidential or intimate relations exist. *Finch, Van Slyke & McConville v. Styer*, — N. D. —, 199 N. W. 444.

See also *Buttz v. James*, 33 N. D. 162, 156 N. W. 547; *Godman v. Olson*, 38 N. D. 360, 165 N. W. 515; *Bernauer v. McCaull-Webster Elevator Co.* 41 N. D. 561, 171 N. W. 282; *MacDonald v. Fitzgerald*, 42 N. D. 133, 171 N. W. 879; *Brugman v. Charlson*, 44 N. D. 114, 4 A.L.R. 400, 171 N. W. 882; *Turton v. Bingenheimer Mercantile Co.* 45 N. D. 98, 176 N. W. 661; *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390; *Phillips v. Phillips*, 46 N. D. 376, 179 N. W. 671; *Ohlquist v. Turner*, — N. D. —, 191 N. W. 481; *Veum v. Stefferud*, — N. D. —, 196 N. W. 104.

§ 7221. Comp. Laws, 1913.

Retention of possession of personal property by the vendor is prima facie evidence of fraud in the transaction. *Godman v. Olson*, 38 N. D. 360, 165 N. W. 515; *MacDonald v. Fitzgerald*, 42 N. D. 133, 171 N. W. 879; *Drinkwater v. Pake*, 33 N. D. 190, 156 N. W. 930; *Moores v. Tomlinson*, 33 N. D. 638, 157 N. W. 685.

Where there is substantial evidence showing actual and continued change of possession, whether there has been such a change of possession, is a question of fact for the jury. *Petrie v. Wyman*, 35 N. D. 126, 159 N. W. 616.

Sale by insolvent son, of threshing machine to aged mother, held void as against creditors, the transfer not being followed by actual and continued change of possession. *Klink v. Kelly*, 39 N. D. 207, 167 N. W. 220.

Whether a purchase was made in good faith and for value, and whether there was an actual change of possession, questions of fact for the jury. *Prickett v. Peterson*, 46 N. D. 459, 179 N. W. 718.

Whether there is a change of possession of personal property sold, is a question of fact for the jury. *Veum v. Stefferud*, — N. D. —, 196 N. W. 104.

Findings of trial court determining that a transfer was fraudulent will not be disturbed unless clearly opposed by a preponderance of the evidence. *Crichton v. Qualley*, — N. D. —, 199 N. W. 858.

See also *Finch, Van Slyke & McConville v. Styer*, — N. D. —, 199 N. W. 444.

§ 7223. Comp. Laws, 1913.

Whether a transfer is made in fraud of creditors is a question of fact. *Godman v. Olson*, 38 N. D. 360, 165 N. W. 515.

Directed verdict held erroneous where issue as presented by evidence and pleadings presented question of fact. *Turton v. Bingenheimer Mercantile Co.* 45 N. D. 98, 176 N. W. 661.

Fraudulent intent, question of fact for the jury. *Veum v. Stefferud*, — N. D. —

—, 196 N. W. 104; Finch, Van Slyke & McConville v. Styer, — N. D. —, 199 N. W. 444.

See also Farmers State Bank v. Weisenhaus, — N. D. —, 198 N. W. 673; Crichton v. Qualley, — N. D. —, 199 N. W. 858; Rasmussen v. Chambers, — N. D. —, 204 N. W. 178; Johnson v. Rutherford, 28 N. D. 87, 147 N. W. 390.

CHAPTER 112.

SALES AND ASSIGNMENTS.

Chapter applies only to merchandise and fixtures, or goods a part of merchandise stock, which are kept for sale as such. Johnson v. Kelly, 32 N. D. 116, 155 N. W. 683.

§ 7224. Comp. Laws, 1913.

Utensils, fixtures, and equipment, used in conducting restaurant business, not part of a stock of merchandise and fixtures within meaning of section. Johnson v. Kelly, 32 N. D. 116, 155 N. W. 683.

Party seeking to set aside sale of stock of merchandise as violation of this section, must show, that at the time of the sale, he was an existing creditor and entitled to notice as such. Ewaniuk v. Rosenberg, 34 N. D. 93, 157 N. W. 691.

See also Greene v. Robbins, 29 N. D. 131, 150 N. W. 561.

§ 7225. Comp. Laws, 1913.

McMillen v. Nelson, 47 N. D. 284, 181 N. W. 618; Ewaniuk v. Rosenberg, 34 N. D. 93, 157 N. W. 691.

§ 7226. Comp. Laws, 1913.

Sale of merchandise in bulk, void as to creditors unless made in prescribed manner, and where not so made, goods become trust fund for benefit of creditors, and purchaser becomes trustee. Minneapolis Drug Co. v. Kearines, 39 N. D. 318, 167 N. W. 326.

See also Ewaniuk v. Rosenberg, 34 N. D. 93, 157 N. W. 691; McMillen v. Nelson, 47 N. D. 284, 181 N. W. 618.

§ 7227. Comp. Laws, 1913.

McMillen v. Nelson, 47 N. D. 284, 181 N. W. 618; Ewaniuk v. Rosenberg, 34 N. D. 93, 157 N. W. 691.

CHAPTER 113.

NUISANCE.

- ARTICLE 1. GENERAL PRINCIPLES, § 7228.
 2. PUBLIC NUISANCE, § 7235.
 3. PRIVATE NUISANCES, § 7240.

ARTICLE 1.—GENERAL PRINCIPLES.

§ 7228. Comp. Laws, 1913.

Baseball game is not a nuisance per se. Riffey v. Rush, — N. D. —, 199 N. W. 523.

ARTICLE 2.—PUBLIC NUISANCE.

§ 7235. Remedies against. The remedies against a public nuisance are:

1. Indictment.
2. Filing an information.
3. Bringing a criminal action before a Justice of the Peace, who shall have authority to bind the defendant over to the District Court.
4. A civil action; or

5. Abatement.

[Laws 1917, ch. 160, § 1.]

Nuisances, 29 Cyc. 1214, 1254, 1278, 1281-1282.

Injunction against operation of pool and billiard rooms and bowling alleys. 29 A.L.R. 42.

Right to enjoin threatened or anticipated nuisance. 32 A.L.R. 724.

Damages for injury by operation of gas, water, or electric light plant. 37 A.L.R. 812.

Character of nuisance as continuing; when cause of action arises; successive actions. L.R.A.1916E, 997.

Remedy for protection from pollution of source of municipal water supply. L.R.A.1918E, 957.

Criminal responsibility of public officers for nuisance. L.R.A.1916F, 582.

Interference with one's use of a highway as a special damage which will sustain an action by him against the wrongdoer. L.R.A.1915D, 142.

Liability of private person for damages to property in abating a nuisance. L.R.A.1917C, 1042.

Statute empowering or requiring public or local authorities to maintain suit to abate public nuisance as affecting the right of an individual peculiarly affected to maintain the suit. L.R.A.1917E, 1009.

Interference with pleasurable use of stream as causing special damage or peculiar injury which will sustain suit for abatement by private individual. L.R.A. 1917F, 208.

Right of one who navigates stream or floats logs therein to abate nuisance arising from bridge. 51 L.R.A.(N.S.) 1172.

Obstruction in highway preventing access to property except by circuitous route as a special injury entitling owner to maintain suit for abatement. L.R.A.1917A, 1155.

Remedy in equity for wrongful issuance of license for sale of intoxicating liquor. L.R.A.1915E, 408.

Validity of statutory provision for attorney's fee in proceeding by statute to abate a liquor nuisance. L.R.A.1915E, 949.

Right of municipality to maintain suit to enjoin a public nuisance. L.R.A. 1916D, 1020.

Injunction against bawdyhouse. L.R.A.1918D, 819.

Injunction to restrain sale of liquor to be shipped into prohibition territory. L.R.A.1917D, 1027.

Doctrine of comparative injury in suit to enjoin nuisance. L.R.A.1916C, 1269.

Injunction at suit of state against public nuisance which is also a crime. 47 L.R.A.(N.S.) 673.

Action for damages from operation of saw of planing mill. 37 A.L.R. 694.

Injunction against gas, water, or electric light plant. 37 A.L.R. 802.

Injunction against saw or planing mill. 37 A.L.R. 689.

Remedies against public nuisances. 20 R. C. L. 460 and Supps.

Right of citizens to abate public nuisance. 20 R. C. L. 490.

Public nuisance as indictable offense. 20 R. C. L. 384 and Supps.

Public nuisance as subject of criminal prosecution. 20 R. C. L. 474 and Supps.

Indictment against public nuisance. 20 R. C. L. 485, 486 and Supps.

Injunction against public nuisance. 20 R. C. L. 474 and Supps.

ARTICLES 3.—PRIVATE NUISANCES.

§ 7240. Comp. Laws, 1913.

Riffey v. Rush, — N. D. —, 199 N. W. 523.

CHAPTER 114.

MAXIMS OF JURISPRUDENCE.

§ 7244. Comp. Laws, 1913.

State ex rel. Langer v. Crawford, 36 N. D. 385, 162 N. W. 710; Froescher v. Tabbert, 48 N. D. 905, 187 N. W. 962.

§ 7245. Comp. Laws, 1913.

Security State Bank v. Kramer, — N. D. —, 198 N. W. 679.

§ 7246. Comp. Laws, 1913.

Mohall State Bank v. Duluth Elevator Co. 35 N. D. 619, 161 N. W. 287; Trott v. State, 41 N. D. 614, 4 A.L.R. 1372, 171 N. W. 827; Boehm v. Long, 43 N. D. 1, 172 N. W. 862; Vance v. Hanson, — N. D. —, 34 A.L.R. 348, 196 N. W. 750.

§ 7248. Comp. Laws, 1913.

Wasem v. Fargo, — N. D. —, 25 A.L.R. 758, 190 N. W. 546; Riffey v. Rush, — N. D. —, 199 N. W. 523.

§ 7249. Comp. Laws, 1913.

Walton v. Olson, 40 N. D. 571, 170 N. W. 107; Chaffee Bros. Co. v. Powers Elevator Co. 41 N. D. 94, 170 N. W. 315; Trott v. State, 41 N. D. 614, 4 A.L.R. 1372, 171 N. W. 827; Vannett v. Reilly-Herz Automobile Co. 42 N. D. 607, 173 N. W. 466; Cohn v. Wyngarden, 48 N. D. 344, 184 N. W. 575; Froescher v. Tabbert, 48 N. D. 905, 187 N. W. 962; Malherek v. Fargo, — N. D. —, 191 N. W. 951.

§ 7250. Comp. Laws, 1913.

Morris v. Occident Elevator Co. 33 N. D. 447, 157 N. W. 486; Walton v. Olson, 40 N. D. 571, 170 N. W. 107; Chaffee Bros. Co. v. Powers Elevator Co. 41 N. D. 94, 170 N. W. 315; Trott v. State, 41 N. D. 614, 4 A.L.R. 1372, 171 N. W. 827; Vannett v. Reilly-Herz Automobile Co. 42 N. D. 607, 173 N. W. 466; Cohn v. Wyngarden, 48 N. D. 344, 184 N. W. 575; Froescher v. Tabbert, 48 N. D. 905, 187 N. W. 962; Malherek v. Fargo, — N. D. —, 191 N. W. 951.

§ 7251. Comp. Laws, 1913.

Cohn v. Wyngarden, 48 N. D. 344, 184 N. W. 575; First Nat. Bank v. Davidson, 48 N. D. 944, 188 N. W. 194.

§ 7254. Comp. Laws, 1913.

Cohn v. Wyngarden, 48 N. D. 344, 184 N. W. 575.

§ 7255. Comp. Laws, 1913.

Langer v. Fargo Mercantile Co. 48 N. D. 545, 186 N. W. 104; First Nat. Bank v. Davidson, 48 N. D. 944, 188 N. W. 194; Burke County v. Gerding, — N. D. —, 191 N. W. 493.

§ 7258. Comp. Laws, 1913.

Red River Valley Land Co. v. Harris, 42 N. D. 76, 172 N. W. 68.

§ 7260. Comp. Laws, 1913.

Hogan v. Bragg, 41 N. D. 203, 170 N. W. 324; Sandry v. Brooklyn School Dist. 47 N. D. 444, 15 A.L.R. 719, 182 N. W. 689.

§ 7262. Comp. Laws, 1913.

Sunberg v. Sebelius, 38 N. D. 413, 165 N. W. 564; Meyers v. Raisty, 48 N. D. 54, 183 N. W. 112; Bull v. Smith, — N. D. —, 25 A.L.R. 1402, 191 N. W. 624; Security State Bank v. Kramer, — N. D. —, 198 N. W. 679; Stavens v. National Elevator Co. 36 N. D. 9, 161 N. W. 558.

§ 7264. Comp. Laws, 1913.

Grand Forks County v. Cream of Wheat Co. 41 N. D. 330, 170 N. W. 863.

§ 7266. Comp. Laws, 1913.

Sunberg v. Sebelius, 38 N. D. 413, 165 N. W. 564; Bull v. Smith, — N. D. —, 25 A.L.R. 1402, 191 N. W. 624.

§ 7268. Comp. Laws, 1913.

Honstain Bros. Co. v. Linden-Invest. Co. 45 N. D. 210, 177 N. W. 114.

§ 7274. Comp. Laws, 1913.

Sleeper v. Elliott, 36 N. D. 280, 162 N. W. 305.

§ 7275. Comp. Laws, 1913.

Burke County v. Gerding, — N. D. —, 191 N. W. 493.

§ 7276. Comp. Laws, 1913.

Interpretation must be reasonable. *Ewaniuk v. Rosenberg*, 34 N. D. 93, 157 N. W. 691.

See also *Burke County v. Gerding*, — N. D. —, 191 N. W. 493.

§ 7277. Comp. Laws, 1913.

Where one of two innocent parties must, by the act of a third, be by whose negligence it happened must be the sufferer. *Stoffels v. Brown*, 37 N. D. 272, 163 N. W. 834.

See also *State Bank v. Edwards*, 45 N. D. 341, 177 N. W. 677; *Mohall State Bank v. Duluth Elevator Co.* 35 N. D. 619, 161 N. W. 287.

CHAPTER 115.

DEFINITIONS AND GENERAL PROVISIONS.

§ 7278. Comp. Laws, 1913.

Grunow v. Simonitsch, 21 N. D. 277, 130 N. W. 835.

§ 7279. Comp. Laws, 1913.

Sox v. Miracle, 35 N. D. 458, 160 N. W. 716; *Grunow v. Simonitsch*, 21 N. D. 277, 130 N. W. 835.

§ 7286. Comp. Laws, 1913.

Forelich v. Northern P. R. Co. 39 N. D. 307, 167 N. W. 366.

§ 7288. Comp. Laws, 1913.

Farmers State Bank v. First Nat. Bank, — N. D. —, 199 N. W. 961.

§ 7289. Comp. Laws, 1913.

Bauer v. National Union F. Ins. Co. — N. D. —, 198 N. W. 546.

§ 7290. Comp. Laws, 1913.

Johanna v. Lennon, 32 N. D. 71, 155 N. W. 685; *Buttz v. James*, 33 N. D. 162, 156 N. W. 547.

§ 7292a. **Coal.** Wherever the word "coal" appears in the constitution and the laws of this state or in the resolutions of the legislative assembly it shall be understood to mean and include all kinds of coal, and include what is known as lignite coal. [Laws 1915, ch. 77, § 1.]

Coal, 11 C. J. p. 934.

§ 7294. Comp. Laws, 1913.

Grunow v. Simonitsch, 21 N. D. 277, 130 N. W. 835.

§ 7297. **Holidays.** Holidays are every Sunday; the first day of January, which is New Year's Day; the twelfth day of February, which is the birthday of Abraham Lincoln; the twenty-second day of February, which is the birthday of George Washington; the fourth day of July, which is the anniversary of the Declaration of Independence; the twenty-fifth day of December, which is Christmas Day; the thirtieth day of May, which is Memorial Day; the first Monday in September, which is Labor Day; the twelfth day of October, which is Discovery Day; the eleventh day of November, which is Armistice Day; every day on which an election is held throughout the State, and every day appointed by the President of the United States or by the governor of this state for a public fast, thanksgiving or holiday. [Laws 1921, ch. 74; Laws 1919, ch. 143.]

Holidays, 29 C. J. p. 761, § 2.

Sunday and holiday defined and distinguished. 25 R. C. L. 1413 and Supps.

§ 7299a. **Temperance day.** The third Friday in January of each year shall be set apart and designated as "Temperance Day," and in every public school in the state of North Dakota not less than one hour of the school day shall be

set apart for instruction and appropriate exercises relative to the history and benefits of prohibition and the prohibition laws of the state of North Dakota. Provided, that the school shall continue its regular work during the remainder of the day. It shall be the duty of all state, county, city and school district officers, and of all public school teachers in the state, to carry out the provisions of this act. [Laws 1917, ch. 234, § 1.]

§ 7300. Comp. Laws, 1913.

Friesz v. Olsness, — N. D. —, 199 N. W. 590.

§ 7304. Comp. Laws, 1913.

State ex rel. Minnehan v. Thompson, 24 N. D. 273, 139 N. W. 960

§ 7308. Comp. Laws, 1913.

Tallmadge v. Walker, 34 N. D. 590, 159 N. W. 71.

§ 7309. Comp. Laws, 1913.

Sox v. Miracle, 35 N. D. 458, 160 N. W. 716.

§ 7311. Comp. Laws, 1913.

Hagen v. Gresby, 34 N. D. 349, L.R.A.1917B, 281, 159 N. W. 3.

§ 7312. Comp. Laws, 1913.

Reeves & Co. v. Russell, 28 N. D. 265, L.R.A.1915D, 1149, 148 N. W. 654.

§ 7314a. **When statute takes effect.** Whereas, the Constitution of this state fails to define time within which laws enacted at any special session shall take effect, and

Whereas, there should be some definite and certain time when such laws take effect,

All acts of any special legislative assembly of the state of North Dakota shall take effect within ten days after the close of any such special session, unless the legislature by a vote of two-thirds of the members present and voting in each house shall declare it to be an emergency measure, in which event it shall take effect and be in force from and after its passage and approval by the governor. [Laws 1919, Sp. Sess., ch. 27, § 1.]

State ex rel. Langer v. Olson, 44 N. D. 614, 176 N. W. 528.

Statutes, 36 Cyc. 1191, 1193, 1196.

Time of statutes taking effect. 25 R. C. L. 796 et seq. and Supps.

§ 7316. Comp. Laws, 1913.

Penalty prescribed by repealed statute must be read into new statute by necessary implication. State v. French, 32 N. D. 362, 155 N. W. 687.