

PROBATE CODE

- CHAPTER**
1. THE CODE AND ITS OPERATION, §§ 8509, 8513.
 2. THE COUNTY COURT, §§ 8524-8534.
 - 2A. PROCEDURE IN COUNTY COURTS, §§ 8544a1-8544a50.
 3. PARTIES AND PROCESS, §§ 8549-8620.
 4. SPECIAL PROCEEDINGS FOR THE PROBATE OF WILLS AND OTHER PURPOSES, §§ 8634-8679.
 5. REQUISITES FOR QUALIFICATION, §§ 8682-8704.
 6. SETTLEMENT OF THE ESTATES OF DECEDENTS, §§ 8707-8867.
 7. OF GUARDIAN AND WARD, §§ 8874-8923.
 9. PRACTICE IN COUNTY COURTS WITH INCREASED JURISDICTION, §§ 8930-8970.
 10. TAXATION OF INHERITANCES, DEVICES, BEQUESTS, LEGACIES AND GIFTS, §§ 8976-8999.

CHAPTER 1.

THE CODE AND ITS OPERATION.

- § 8509. Comp. Laws, 1913.
Reichert v. Reichert, 41 N. D. 253, 170 N. W. 621.
- § 8513. Comp. Laws, 1913.
Elton v. Lamb, 33 N. D. 388, 157 N. W. 288.

CHAPTER 2.

THE COUNTY COURT.

ARTICLE 2.—JURISDICTION AND POWERS OF THE COUNTY COURT.

- § 8524. Comp. Laws, 1913.
An heir cannot maintain suit for partition against other heirs and administrator, in district court, after assumption of jurisdiction by county court, and appointment of administrator and before final decree of distribution. Honsinger v. Stewart, 34 N. D. 513, 159 N. W. 12.
- § 8525. Comp. Laws, 1913.
DeLaney v. State, 42 N. D. 630, 174 N. W. 290.
- § 8526. Comp. Laws, 1913.
McEwen v. McEwen, — N. D. —, 197 N. W. 862.
- § 8530. Comp. Laws, 1913.
Cathro v. McArthur, 30 N. D. 337, 152 N. W. 686.
- §§ 8531, 8532. Comp. Laws, 1913.
Knight v. Harrison, 43 N. D. 76, 174 N. W. 632.
- § 8533. Comp. Laws, 1913.
Reichert v. Reichert, 41 N. D. 253, 170 N. W. 621; Knight v. Harrison, 43 N. D. 76, 174 N. W. 632; Fischer v. Dolwig, 29 N. D. 561, 151 N. W. 431; Stenson v. H. S. Halverson Co. 28 N. D. 151, L.R.A.1915A, 1179, 147 N. W. 800.
- § 8534. Comp. Laws, 1913.
Prescribes power of county court to open up and vacate final decree, the grounds
N. D. C. L.—86. 1361

therefor, and limitations of time thereupon. Reichert v. Reichert, 41 N. D. 253, 170 N. W. 621. See also Fischer v. Dolwig, 29 N. D. 561, 151 N. W. 431.

CHAPTER 2A.

PROCEDURE IN COUNTY COURTS.

- ARTICLE 1. GENERAL RULES OF PROCEDURE, §§ 8544a1-8544a7.
- 2. CLAIMS, PRESENTATION, PROOF AND ALLOWANCE, §§ 8544a8-8544a19.
- 3. SALES OF REAL ESTATE, §§ 8544a20-8544a47.
- 4. GUARDIAN AND WARD, SALES OF PROPERTY, §§ 8544a48-8544a50.

ARTICLE 1.—GENERAL RULES OF PROCEDURE.

§ 8544a1. Citation gives jurisdiction; how issued; contents and form. The process by which the court obtains jurisdiction of the parties in each proceeding, who do not appear therein, is by citation. Before issuing a citation the court may examine the applicant and other witnesses under oath concerning the name and postoffice address of each party to be cited. If he is unable to ascertain such name, the party may be designated by his relation to the decedent as nearly as may be. Each party and each guardian, or attorney, for a party, who appears in any proceedings must be required to give his or her name and postoffice address, which shall be entered in the docket and be taken as true until the court is notified of a change. [Laws 1925, ch. 120, § 1.] Process, 32 Cyc. 423-424; Executors and Administrators, 23 C. J. pp. 1056-1057 §§ 148-151.

Acquisition of jurisdiction by courts. 7 R. C. L. 1038 et seq. and Supps. Acquisition of jurisdiction of person as purpose of process. 21 R. C. L. 1262 and Supps.

§ 8544a2. Contents and form. The citation shall contain a brief statement of the matter to be heard, sufficient to fairly inform those interested of the nature of the proposed proceeding and the estate involved; the residence or late residence of the owner of such estate, and the time and place at which such hearing will be held. Any number of different matters may be included in the same citation which may be substantially as follows:

STATE OF NORTH DAKOTA
 County of _____

ss.
 IN COUNTY COURT

IN THE MATTER OF THE ESTATE OF Deceased.

 Petitioner.

CITATION HEARING PETITION
 FOR

vs.

THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED RESPONDENTS:

You and each of you are hereby cited and required to appear before the County Court of the County of in said State, at the office of the County Judge of said County, at the Court House in the city of in said County and State, on the day of A. D. 19...., at the hour of o'clock in the of that day, to show cause, if any you have why

(here give brief statement of the matter to be heard, residence or late residence of owner of the estate, and any other matter necessary to fairly inform the parties interested of the nature of the proceedings).

Let service be made of this citation as required by law.

Dated this day of A. D. 19.....

By the Court

SEAL OF COURT.

.....
Judge of the County Court.

[Laws 1925, ch. 120, § 2.]

Process, 32 Cyc. 428-443; Executors and Administrators, 23 C. J. p. 1057 § 149, 24 C. J. p. 594 § 1508, p. 949 § 2343.

Form and requisites of process. 21 R. C. L. 1265 et seq. and Supps.

§ 8544a3. Citation on petition, application or report. Upon the filing of a petition for letters testamentary, letters of administration, letters of administration with the will annexed, letters of guardianship, petition or application for an order or license to do or perform any act in connection with the administration and settlement of an estate or guardianship, or requiring any person to make a report, or do or perform any act or duty to be by him or her performed; or upon the filing of any petition, application or report upon which a hearing is required by law, and not within the discretion of the court to order, license or allow, the court shall issue a citation fixing the time for hearing such petition, application or report and no other process or order fixing said hearing shall be necessary. [Laws 1925, ch. 120, § 3.]

Executors and Administrators, 23 C. J. pp. 1056-1058 §§ 147-151, p. 119 § 303, p. 1186 § 411, p. 1193 § 432, 24 C. J. pp. 264-265 §§ 852-853, p. 398 § 1116, pp. 512-513 §§ 1363-1364, pp. 591-597 §§ 1506-1514, p. 816 § 2051, pp. 949-950 §§ 2343-2348, p. 952 § 2356, p. 1040 § 2498, p. 1148 § 2740, p. 1165 § 2775, p. 1205 § 2885.

Citation on application for appointment of administrator. 11 R. C. L. 55.

Notice to persons interested on application for appointment of executor. 11 R. C. L. 53 and Supps.

Giving of notice on application for appointment of guardian. 12 R. C. L. 1114 and Supps.

§ 8544a4. Service, how made. A copy of the citation shall be served personally upon all respondents within the county, in the same manner as prescribed by the Code of Civil Procedure for the service of summons in civil actions, at least ten days before the day fixed for said hearing and be served on all respondents outside of the county including non-residents by publishing the same, once each week for two successive weeks, in some newspaper printed in the county, if there be one, and if there be none printed in the county, then in a newspaper printed in an adjoining county in the state, and service shall be deemed to be complete with the last publication, and ten days shall elapse thereafter before the day of hearing.

Provided, however, that citation may be served personally upon all respondents within and without the county or on nonresidents of the state in the manner above set forth and no service by publication shall, in that case, be necessary.

Provided, further, that, except a citation upon a petition for letters of administration, letters testamentary, letters of administration with the will annexed, petition for probate of foreign will, and letters of guardianship, which citation must be served as above set forth, service of every citation required to be made by this code may be made by mailing a copy thereof at least fifteen days before the day fixed therein for hearing, to all respondents, by registered mail: the filing of an affidavit of mailing, accompanied by the registry receipt of the United States Postoffice Department shall be conclusive proof of service upon the respondents to whom said citation was mailed and which service shall be taken in lieu of all other service of such citation.

Service with respect to manner and time of service of all papers of every kind or character and in all proceedings required by this code shall be governed by this section. [Laws 1925, ch. 120, § 4.]

Executors and Administrators, 23 C. J. p. 1056-1058 §§ 148-151; Process, 32 Cyc. 447-495.

Publication of process against married woman in her maiden name. 19 L.R.A. (N. S.) 984.

Right to probate will on service of notice by publication. 35 L.R.A.(N.S.) 1058.

Personal service out of state on nonresident. 50 L.R.A. 585.

Service of writ or process by telephone. L.R.A.1915D, 427.

What constitutes "personal service" of papers. 16 L.R.A. 200.

Manner of personal service of process. 21 R. C. L. 1274.

§ 8544a5. Service upon foreign heirs. The duly accredited representative in the United States of any foreign country may file in any county court in this state the name and address of a representative of such country in the United States, and in any proceeding in such court, if it shall appear to the judge thereof that any person interested therein has heirs, devisees or otherwise in any estate, is probably a citizen of such foreign country, the county judge shall give notice by mail to the representative so designated of the pendency of such proceeding, the name of such person, and his probable citizenship. Provided however a failure to give such notice shall not affect the validity of such proceedings. [Laws 1925, ch. 120, § 5.]

Executors and Administrators, 23 C. J. p. 1056 § 148.

Service of process on nonresidents. 21 R. C. L. 1270.

§ 8544a6. Service upon guardian or attorneys. When a person upon whom service is required is a minor or has been adjudged to be incompetent and has a special or general guardian in the case, service must be made upon the guardian and such service shall be deemed full and sufficient service upon said minor or incompetent person.

Provided, however, that citation upon petition for letters of administration, letters testamentary, letters of administration with the will annexed, and letters of guardianship shall be served upon all persons interested over fourteen years of age;

Provided, further, that when any person upon whom service is required to be made has an attorney of record in the case, service may in all cases be made on such attorney, and such service shall be full and sufficient service on the person represented by the attorney. [Laws 1925, ch. 120, § 6.]

Executors and Administrators, 23 C. J. p. 1056 § 148; Process, 32 Cyc. 466;

Attorney and Client, 6 C. J. p. 644 § 148.

Service of process upon guardian. 14 R. C. L. 284 and Supps.

§ 8544a7. Service; how waived. Every party to any proceeding of any kind in the county court, except actions or proceedings under the increased jurisdiction law in county courts having increased jurisdiction, who is of full age and has not been declared to be incompetent, may enter his appearance in writing and therein waive service of any and all papers of every kind and character and submit to the jurisdiction of the court; and he shall not thereafter be entitled to any further service of citation or notice in connection with such proceeding. Such waiver must be signed by the party executing the same in the presence of two witnesses who must sign the same as witnesses thereto, or he must acknowledge the execution of the same before some official qualified to take acknowledgments.

Provided, however, that a guardian, general or special, may not waive service of citation in any proceeding in which his ward is a party respondent. [Laws 1925, ch. 120, § 7.]

Attorney and Client, 6 C. J. p. 644 § 148; Executors and Administrators, 23 C. J. p. 1056 § 148, p. 1119 § 303, p. 1186 § 411, 24 C. J. p. 398 § 1116, p. 512 § 1363, p. 597 § 1513, p. 817 § 2054, p. 950 § 2347, p. 952 § 2356.

Right of fiduciary to waive service of process by appearing in action. 32 L.R.A. 681.

Waiver of failure to serve, or defects in service of process, by appeal from justice's court to courts where trial must be de novo. 34 L.R.A.(N.S.) 661.

Waiver of service of process. 21 R. C. L. 1263 and Supps.

ARTICLE 2.—CLAIMS, PRESENTATION, PROOF AND ALLOWANCE.

§ 8544a8. **Order for notice to creditors.** Upon granting letters testamentary or of administration the court shall make an order that notice to creditors be given to present their claims against the estate and fixing the time and place when and where proofs will be heard by the court, and all such claims examined and adjusted; which time shall not be less than ten days nor more than thirty days after the time for filing claims has expired. Such order shall designate a newspaper in the county in the state in which such notice shall be published. If there be no newspaper published in the county then the court shall designate some other newspaper published in an adjoining county in the state to publish such notice. [Laws 1925, ch. 120, § 8.]

Executors and Administrators, 24 C. J. pp. 343-346 §§ 973-979.

Notice to present claims. 11 R. C. L. 191.

§ 8544a9. **Notice to creditors.** Within fifteen days after making the order referred to in the preceding section, the executor or administrator must cause to be published in the newspaper designated in such order a notice to the creditors of the decedent, requiring all persons having claims against the estate to exhibit them, with the necessary vouchers, to the executor or administrator or county judge, at a place in the county designated in the notice. Such notice shall also specify the time fixed by the court for hearing and adjusting such claims. The time specified in the notice for filing claims shall be six months from the first publication of such notice. Such notice must be published once a week for three successive weeks. In case the executor or administrator resigns, dies or is removed before the time for filing claims has expired, claims may thereafter be presented to the county judge without a new publication. [Laws 1925, ch. 120, § 9.]

Sunberg v. Sebelius, 38 N. D. 413, 165 N. W. 564; Vance v. Hanson, — N. D. —, 34 A.L.R. 348, 196 N. W. 750.

Executors and Administrators, 24 C. J. pp. 344-346 §§ 974-979.

Notice to present claims. 11 R. C. L. 191.

§ 8544a10. **Presentation of claims, barred.** All claims arising upon contract, whether the same be due, not due, or contingent, must be presented within the time limited in the notice and any claim not so presented is barred forever, provided, however, that nothing in this article contained shall be construed to affect the right or limit the time of foreclosure of mortgages or other liens, except that no balance of the debts secured by such mortgage or other lien and remaining unpaid after the foreclosure shall be a claim against the estate, unless such debts were presented as required by this code. [Laws 1925, ch. 120, § 10.]

Vance v. Hanson, — N. D. —, 196 N. W. 750.

Executors and Administrators, 24 C. J. pp. 363-370 §§ 1020-1035, pp. 317-363 §§ 957-1019.

Effect of failure to present claim against estate of deceased principal to release surety. 25 L.R.A.(N.S.) 139.

Conduct of personal representative presenting filing of claim against estate within time allowed by the statute of nonclaims. 11 A.L.R. 240.

Waiver or tolling of statute of nonclaims by personal representative. L.R.A. 1915B, 1042.

Effect on running of limitations of appointment of temporary administrator. 38 L.R.A.(N.S.) 824.

Statute of nonclaim as equivalent of limitation within rule that running of

the latter against debt secured will bar remedy on the mortgage. 31 L.R.A.(N.S.) 1013.

Is statute of limitations suspended during period allowed administrator to bring action. 13 L.R.A.(N.S.) 1200.

When limitations begin to run in action against representatives of deceased stockholder in insolvent corporations for unpaid stock subscription. 1 L.R.A.(N.S.) 553.

Claim barred by failure to file it in administration proceedings within prescribed time as consideration for note of third person. L.R.A.1917C, 844.

Effect of failure to present claim within the time allowed by the administrator statute of the domicile as a bar to its allowance in the state of the ancillary administration, or vice versa. 19 L.R.A.(N.S.) 553.

Contingency of claim as affecting limitation of time for its presentation. 58 L.R.A. 82.

Vendor under executory contract for sale of land as entitled to claim as creditor of the estate of vendee. 35 A.L.R. 927.

Presentation of claims as condition precedent to action on contingent claim. 34 A.L.R. 372.

Presentation of claims. 11 R. C. L. 192 and Supps.

§ 8544a11. Proof of claim; how made. Every claim which is due when presented to the executor or administrator must be supported by the affidavit of the claimant or some one in his behalf, that the amount is justly due, that no payments have been made which are not credited, and that there are no offsets to the same, to the knowledge of the claimant or affiant. If the claim be not due when presented or be contingent the particulars of such claims must be stated. When the affidavit is made by a person other than the claimant he must set forth in the affidavit the reason why it is not made by the claimant. The executor or administrator may also require satisfactory vouchers or proof to be produced in support of the claim. If the claim is founded on a bond, bill, note or other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim with his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim, or any part thereof, is secured by mortgage or other lien which has been recorded or filed according to law in the office of the register of deeds of the county in which the land or property affected by it is situated, it is sufficient to describe the mortgage or lien, and refer to the date of its filing and volume and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator or suffered the same to be filed in the court, he may withdraw the same when a copy thereof has been, or is then, attached to his claim. [Laws 1925, ch. 120, § 11.]

Executors and Administrators, 24 C. J. pp. 348-361 §§ 985-1009.

Proof of claims. 11 R. C. L. 195 and Supps.

§ 8544a12. Investigation of claim, hearing and allowance. When a claim, accompanied by the affidavit required in this article is presented to the executor or administrator, he must carefully and faithfully investigate the merits of such claim and endorse thereon his approval, or rejection, in whole or in part, and file the same with the county court before the day set for adjusting claims and the court may, in its discretion, allow the executor or administrator additional time for further proof, and continue the hearing to a future day. If another day is set for hearing claims, the court must cause ten days notice thereof to be given the claimant, by mail. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time though acted upon by the executor or administrator and by the judge, after the expiration of such time. On the day set for adjusting claims, the executor or administrator shall exhibit the claims of the deceased, if any, in offset to the claims of the cred-

itors, and the court shall ascertain and allow the balance if any against the estate; but no claim barred by the statutes of limitations at the time of death of the decedent shall be allowed by the court either in favor or against the estate, as a setoff or otherwise. [Laws 1925, ch. 120, § 12.]

Evidence of presentment of claim, to administrator, and his rejection thereof, held sufficient. *Sunberg v. Sebelius*, 38 N. D. 413, 165 N. W. 564.

See also *Mann v. Redmon*, 27 N. D. 346, 145 N. W. 1031.

Executors and Administrators, 24 C. J. pp. 296-304 §§ 906-921, pp. 372-374 §§ 1036-1042, pp. 376-378 §§ 1051-1056.

Allowance of claims. 11 R. C. L. 198, 199 and Supps.

§ 8544a13. Claims allowed entered in register. Upon the day set for hearing such claims, the court must pass upon and adjudicate the same. All claims adjudicated by the court, whether disputed or not, shall have endorsed thereon by the court the amount allowed, the class to which it belongs, and the date of adjudication, and such claims shall be ranked among the acknowledged debts of the estate to be paid in due course of administration, and shall bear interest at the legal rate. If any claim is rejected in whole or in part, the judge shall forthwith cause notice to be given the claimant, his attorney or agent, by registered mail, of such rejection. A brief description of every claim filed must be entered by the judge in a register for the purpose, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance. [Laws 1925, ch. 120, § 13.]

Executors and Administrators, 24 C. J. p. 377 § 1094.

Allowance of claims by courts. 11 R. C. L. 199 and Supps.

§ 8544a14. Claims rejected, suits instituted; how. When a claim is disallowed by the county court, the holder must bring suit in the proper court against the executor or administrator within ninety days after the date of the notice by the county judge of its disallowance, if it be then due, otherwise the claim is barred forever. If the creditor refuses to accept the amount allowed in satisfaction of his claim, he shall recover no costs in an action therefor, brought against the executor or administrator, unless he recover a greater amount than that allowed. No claim against any estate which has been presented is affected by the statute of limitations, pending the proceedings for the settlement of the estate. [Laws 1925, ch. 120, § 14.]

Burden of proving presentation and rejection of claim against a decedent's estate, and of suit begun within ninety days thereof, is upon plaintiff, regardless of whether defendant has answered, pleading statute of nonclaim. *Mann v. Redmon*, 27 N. D. 346, 147 N. W. 1031.

See also *Sunberg v. Sebelius*, 38 N. D. 413, 165 N. W. 564; *Dow v. Lillie*, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082.

Executors and Administrators, 24 C. J. pp. 737-739 §§ 1820-1821, p. 768 § 1903, pp. 769-771 §§ 1906-1913, pp. 775-795 §§ 1923-1978, p. 918 § 2286.

Limitation running from rejection of claims. 11 R. C. L. 214.

§ 8544a15. Pending actions prosecuted; judgment; how paid. All actions which may be pending against a deceased person at the time of his death, may, if the cause of action survive, be prosecuted to final judgment, and the executor or administrator may defend the same. If any judgment shall be rendered against the executor or administrator the court rendering it shall certify the same to the county court, and the amount thereof shall be paid in the same manner as other claims allowed against the estate. [Laws 1925, ch. 120, § 15.]

Vance v. Hanson, — N. D. —, 196 N. W. 750.

Abatement and Revival, 1 C. J. pp. 153, 254 §§ 247-563; Executors and Administrators, 24 C. J. p. 897 § 2240.

Abatement of action by death of defendant. 1 R. C. L. 20 and Supps.

Parties substituted on death of defendant. 1 R. C. L. 26 and Supps.

§ 8544a16. Executor may prosecute; set-off; judgment; how paid. Nothing in this chapter shall be construed to prevent an executor or administrator

from commencing and prosecuting any action against any other person or from prosecuting any action commenced by the deceased in his lifetime for the recovery of any debt or claim to final judgment, or from having execution on any judgment. In such case the defendant may set off any claim he may have against the deceased, instead of presenting it to the court, and all mutual claims may be set off in such action. If judgment shall be rendered in favor of the defendant, the same shall be certified by the court rendering it to the county court and be considered the true balance, and paid as other claims allowed against the estate. [Laws 1925, ch. 120, § 16.]

Executors and Administrators, 24 C. J. pp. 732-737 §§ 1807-1819, pp. 751-761 §§ 1866-1884, p. 897 § 2240.

Set-off as between debt due from decedent and claim arising after decedent's death, out of transaction with executor or administrator. L.R.A.1915A, 299.

Right of bank to set off unmatured claim against deposit of deceased debtor. 27 L.R.A.(N.S.) 812.

Revival of action by personal representative on death of plaintiff. 1 R. C. L. 25 and Supps.

Actions by executors or administrators in behalf of estate. 11 R. C. L. 258 et seq. and Supps.

Set-off in actions by executors or administrators. 11 R. C. L. 264 and Supps.

§ 8544a17. Estate of joint debtor liable for whole. When two or more persons shall be indebted on any joint contract or upon a judgment founded on a joint contract and either of them shall die, his estate shall be liable therefor, and the claim may be allowed by the court as if the contract had been joint and several or as if the judgment had been against him alone, and the other parties to such joint contract may be compelled to contribute or to pay the same if they would have been liable to do so upon payment thereof by the deceased. [Laws 1925, ch. 120, § 17.]

Executors and Administrators, 24 C. J. p. 277 § 877, p. 291 §§ 891-892.

Liability of estate of joint debtor. 11 R. C. L. 206.

§ 8544a18. When executor or administrator to account and pay debts. Not less than thirty days after the entry of allowance or disallowance of claims as hereinbefore set forth and within sixty days thereafter every executor or administrator shall proceed to the payment of the debts so allowed and shall thereupon make his final report and account of his administration of the estate in the manner prescribed by law, unless it shall satisfactorily appear to the court: (1) That the personal assets in the hands of the executor or administrator are insufficient to pay the debts of the deceased and that there is real estate that can be mortgaged, leased or sold to pay such debts; (2) That an appeal has been taken from some action of the county court or suit has been instituted against the executor or administrator which is still pending and necessarily delays the settlement of the estate; (3) That collectable debts due the estate have not been collected; (4) That a contingent claim has been allowed against the estate of the deceased, and that the final settlement of the estate is necessarily delayed thereby; (5) That the best interests of the estate will be served by continuing the business of the decedent. In such event the executor or administrator shall be allowed in addition to his fees reasonable compensation for managing the business, or (6) That some other good and sufficient cause for delay exists. [Laws 1925, ch. 120, § 18.]

Executors and Administrators, 24 C. J. pp. 55-62 §§ 474-482, p. 446 § 1213, pp. 924-925 §§ 2300-2303, p. 976 § 2400, p. 987 § 2423.

Time for accounting by executors or administrators. 11 R. C. L. 177 and Supps.

Duty of executors or administrators to pay debts. 11 R. C. L. 189.

§ 8544a19. Time to pay debts fixed; extension of. Whenever it shall satisfactorily appear to the county court that any one or more of the causes for delay mentioned in the preceding section exists, such court shall, by order, without notice, fix a time within which the executor or administrator shall pay

the debts and legacies and make a final settlement of his account as executor or administrator. But such time shall not exceed twelve months, except when granted upon the petition of the executor or administrator, under oath, setting forth the assets remaining in his possession belonging to the estate of the deceased, the debts and legacies that remain unpaid, the reasons why the delay in the settlement of the estate prayed for is necessary and that an additional time is deemed requisite for a full settlement of such estate, and upon notice to all parties interested of the time and place of hearing such petition by citation in the manner required by law. On such hearing the court may, in its discretion, grant such further time for the payment of the debts and legacies and the settlement of the estate, as the nature of the case may require, and may again extend the time upon like petition and notice, no single extension shall be for a period of more than two years but in no case shall the time be extended beyond six years from the time of granting letters testamentary or of administration. [Laws 1925, ch. 120, § 19.]

Executors and Administrators, 24 C. J. p. 446 § 1219, p. 925 § 2303.
Time for accounting by executors or administrators. 11 R. C. L. 177 and Supps.

ARTICLE 3.—SALES OF REAL ESTATE.

§ 8544a20. Executor or administrator may sell property. When a sale of property of the state [estate] is necessary to pay the allowance to the family, or the debts outstanding against the decedent or the debts, expenses or charges of administration, or legacies; or when it appears to the satisfaction of the court that it is for the advantage, benefit and best interest of the estate, and those interested therein, that the real estate, or some part thereof, be sold, the executor or administrator may sell any real as well as personal property of the estate, upon the order of the court; and an application for the sale of real property, may also embrace the sale of personal property. [Laws 1925, ch. 120, § 20.]

Gardner Hotel Co. v. Hagaman, 47 N. D. 434, 182 N. W. 685; Dow v. Lillie, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082.

Executors and Administrators, 24 C. J. p. 153 § 630, pp. 545-546 §§ 1439-1440.

Sale of real estate in state other than decedent's domicile to pay debts. L.R.A. 1915D, 754.

Do proceedings for sale of decedent's real property fall within "omnibus" provision of statute of limitations. 25 L.R.A.(N.S.) 1304.

Power of executor or administrator to sell real property of decedent. 11 R. C. L. 317.

§ 8544a21. Verified petition for sale; what to contain. To obtain such order for sale of real property, he must present a verified petition to the court, setting forth (1) the amount of the personal estate that has come to his hands, and (2) how much thereof, if any, remains undisposed of; (3) the debts outstanding against the decedent, as far as can be ascertained or estimated; (4) the amount due on the family allowance, or (5) that will be due after the same has been in force for one year; (6) the debts, expenses and charges of administration already accrued; and (7) an estimate of what will or may accrue during the administration; (8) a general description of all the real property of which the decedent died seized, or in which he had any interest or in which the estate has acquired any interest, and (9) the condition and value thereof, and (10) the names of the legatees and devisees, if known to the petitioners; and if such order for sale of real estate is petitioned for on the ground that it is for the advantage, benefit, and best interests of the estate, and those interested therein that a sale be made, the petition, in addition to the foregoing facts, must set forth in what way an advantage or benefit would accrue to the estate, and those interested therein by such a sale. If any of the matters herein enumerated cannot be ascertained it must be so stated in the petition; but a failure to set forth facts hereinbefore enumerated will not invalidate

the subsequent proceedings, if the defects be supplied by the proofs at the hearing, or the general facts showing that such sale is necessary or that such sale is for the advantage, benefit and best interests of the estate, and those interested therein, be stated in the decree. [Laws 1925, ch. 120, § 21.]

Gardner Hotel Co. v. Hagaman, 47 N. D. 434, 182 N. W. 685; Dow v. Lillie, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082.

Executors and Administrators, 24 C. J. p. 557 § 1460, pp. 582-591 §§ 1496-1505.

Petition for sale of real estate by executor or administrator. 11 R. C. L. 326 et seq. and Supps.

Procedure for sale of real estate by executor or administrator. 11 R. C. L. 319 et seq. and Supps.

§ 8544a22. Notice to persons interested. If it appears to the court, from such petition, that it is necessary or that it would be for the advantage, benefit or best interests of the estate, and those interested therein, to sell the whole or some portion of the real estate, for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed and a citation thereupon issued and served as provided in section 4, hereof. [Laws 1925, ch. 120, § 22.]

Gardner Hotel Co. v. Hagaman, 47 N. D. 434, 182 N. W. 685; Dow v. Lillie, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082.

Executors and Administrators, 24 C. J. pp. 591-597 §§ 1506-1514.

Notice of sale of real estate by executor or administrator. 11 R. C. L. 322 et seq.

§ 8544a23. Assent given, no notice necessary. If all persons interested in the estate including guardians, either general or special, if any, join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with and the hearing may be had at any time. [Laws 1925, ch. 120, § 23.]

Executors and Administrators, 24 C. J. p. 591 § 1506, p. 597 § 1513.

Necessity of notice of sale of real estate by executor or administrator. 11 R. C. L. 322.

§ 8544a24. Guardian; notice to. If it shall appear to the county court by the petition or other competent evidence that any person interested in such estate is a minor or incompetent person and has no general or special guardian residing in the county, the court shall, at or before the time for issuing the citation for hearing the petition, appoint some disinterested freeholder of the county, guardian of such minor or incompetent person or ward for the sole purpose of appearing for him and taking care of his interests in the proceedings, and the service of all citations shall be made on such special guardian. [Laws 1925, ch. 120, § 24.]

Executors and Administrators, 24 C. J. p. 593 § 1507; Infants, 31 C. J. pp. 1118-1148 §§ 262-314.

Notice to minors of sale of real estate by executor or administrator. 11 R. C. L. 325.

§ 8544a25. Hearing after proof of service. The court at the time and place appointed in such citation or at such other time to which the hearing may be postponed, upon satisfactory proof of service of a citation as provided in this code, (if the consent in writing to such sale of all the parties interested is not filed) must proceed to hear the petition and hear and examine the allegations and proofs of the petitioner and of all persons interested in the estate who may oppose the application. [Laws 1925, ch. 120, § 25.]

Executors and Administrators, 24 C. J. pp. 601-605, §§ 1517-1525.

Hearing by court on application for sale of real estate by decedent. 11 R. C. L. 341.

§ 8544a26. Executor, administrator and witnesses may be examined. The executor, administrator and witnesses may be examined on oath by either par-

ty, and the process to compel them to attend and testify may be issued by the court or judge, in the same manner and with like effect as in other cases. [Laws 1925, ch. 120, § 26.]

Executors and Administrators, 24 C. J. p. 601, § 1517, p. 605, § 1525, p. 606, § 1528.

§ 8544a27. To sell real estate or any part; when. If it appears to the satisfaction of the court, that it is necessary or that it is for the advantage, benefit, and best interests of the estate and those interested therein, to sell a part of the real estate and that by sale thereof, the residue of the estate, real and personal, or some specific part thereof, would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate, or any part thereof, as in the judgment of the court is necessary, or for the advantage, benefit, and best interests of the estate, and those interested therein. [Laws 1925, ch. 120, § 27.]

Shane v. Peoples, 25 N. D. 188, 141 N. W. 737.

Executors and Administrators, 24 C. J. p. 545, § 1439, p. 608, § 1532.

Validity of conveyance of property of deceased person before letters testamentary or of administration were granted to the vendor. 26 A.L.R. 1364.

Quantity of land that may be sold by executors or administrators. 11 R. C. L. 44.

§ 8544a28. Order of sale; when to be made. If it appears to the satisfaction of the court, after a full hearing upon the petition and examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this article, or that a sale of the whole or some portion of the real estate is for the advantage, benefit, and best interests of the estate and those interested therein, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition as the court shall judge necessary, or for the advantage, benefit and best interests of the estate and those interested therein. [Laws 1925, ch. 120, § 28.]

Executors and Administrators, 24 C. J. p. 545, § 1439, p. 608, § 1532.

Necessity of order of court for sale of real property by administrator or executor. 11 R. C. L. 334 and Supps.

§ 8544a29. What the order of sale must contain. The order of sale must describe the lands to be sold, and the terms of sale, which may be cash, or may be one-third cash and the balance on a credit not exceeding five years, payable in gross or installments with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. [Laws 1925, ch. 120, § 29.]

Executors and Administrators, 24 C. J. pp. 609-611, §§ 1434-1436, pp. 627-632, §§ 1578-1586.

Contents of order for sale of real property by executor or administrator. 11 R. C. L. 335.

§ 8544a30. May be sold at public or private sale; order compelling sale. Every such sale must be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in

the petition, order or direct such real estate or any part thereof to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate. If the executor or administrator neglects or refuses to make a sale under the order, and as directed therein, he may be compelled to sell by order of the court, made on motion, after due notice, by any party interested. [Laws 1925, ch. 120, § 30.]

Executors and Administrators, 24 C. J. p. 621, § 1558, p. 630, § 1582.

Sale of real property of decedent at public or private sale. 11 R. C. L. 329 and Supps.

§ 8544a31. Notice of sale. When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be published in a newspaper, if there be one printed in the same county, but if none, then in a paper in an adjoining county in the state as the court may direct, once each week for two successive weeks next before the sale. The lands and tenements to be sold must be described with common certainty in the notice. [Laws 1925, ch. 120, § 31.]

Executors and Administrators, 24 C. J. pp. 625-627, §§ 1573-1577.

§ 8544a32. Time and place. Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and six o'clock in the afternoon of the same day, and must be made at the time named in the notice of sale, unless same is postponed. If at the time appointed for the sale, the executor or administrator deems it for the best interests of the estate that the sale be postponed, he may postpone it from time to time not exceeding in all three months. In case of postponement, notice thereof must be given by a public declaration at the time and place first appointed for the sale, and if the postponement is for more than ten days, further notice must be given by publishing the same once each week for two successive weeks next before the sale. [Laws 1925, ch. 120, § 32.]

Executors and Administrators, 24 C. J. pp. 628-629, §§ 1579-1580.

Time and place of sale of real property of decedent. 11 R. C. L. 330 and Supps.

§ 8544a33. Private sale of real estate; how made; and notice. When a sale of real estate is ordered to be made at private sale, notice of the same must be published in a newspaper if there be one printed, in the same county, if none, then in a paper in an adjoining county in the state as the court may direct, once each week for two successive weeks before the day on or after which the sale is to be made in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The last day referred to must be at least ten days from the last publication of notice; and the sale must not be made before that day, but must be made within six months thereafter. [Laws 1925, ch. 120, § 33.]

Executors and Administrators, 24 C. J. pp. 625-677, §§ 1573-1577, p. 628, § 1579.

§ 8544a34. Bids; when and how received. The bids or offers must be in writing and may be left at the place designated in the notice, or delivered to the executor or administrator personally or may be filed in the office of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. [Laws 1925, ch. 120, § 34.]

Executors and Administrators, 24 C. J. p. 639, § 1600.

Bidding at sale of real property of decedent. 11 R. C. L. 331.

§ 8544a35. Ninety per cent of the appraised value must be offered. No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless

such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisal is too high or too low, appraisers must be appointed, and they must make an appraisal thereof in the same manner as in case of the original appraisal of an estate. This may be done at any time before the sale or the confirmation thereof. [Laws 1925, ch. 120, § 35.]

Executors and Administrators, 24 C. J. p. 617, § 1543, p. 672, § 1670.

§ 8544a36. Purchase money on sale on credit; how secured. The executor or administrator must, when a sale is made upon a credit, take the notes of the purchaser for the balance of the purchase money with a mortgage on the property to secure their payment. [Laws 1925, ch. 120, § 36.]

Executors and Administrators, 24 C. J. p. 643, §§ 1610-1611.

Sale of real property of decedent on credit. 11 R. C. L. 331.

§ 8544a37. Report; confirmation or vacation of sale. The executor or administrator making such sale shall immediately thereafter make a return of his doings upon the order of sale, in pursuance of which it is made, to the county court granting the order. Said court shall thereupon examine the proceedings and may also examine the executor, administrator and any other persons on oath touching the same. If such court shall be of the opinion that the proceedings were unfair or that the sum bid is disproportionate to the value of the land sold and that a sum exceeding such bid, exclusive of the expense of a new sale, may be obtained, said court may vacate such sale and direct another to be had, of which notice shall be given and the sale shall in all respects be conducted as if no previous sale had taken place. If it shall appear to the county court that the sale was legally made and fairly conducted and that the sum bid thereon was not disproportionate to the value of the property sold, or if disproportionate that a greater sum as above specified cannot be obtained, said court shall make an order forthwith confirming such sale and directing conveyance to be executed. [Laws 1925, ch. 120, § 37.]

Executors and Administrators, 24 C. J. pp. 649-659, §§ 1631-1646.

Confirmation of sale of real property of decedent. 11 R. C. L. 366 et seq. and Supps.

Vacation of sale of real property of decedent. 11 R. C. L. 369 et seq.

§ 8544a38. Proceeds of sale; use of and liability for. The proceeds arising from mortgage, lease or sale of real estate or from the sale of the interest of any deceased persons in real estate, held under contract, as provided in this chapter, shall be deemed assets in the hands of the executor or administrator in like manner as if the same had been originally part of the goods and chattels of the deceased; and the executor or administrator and sureties on his administration bond shall be accountable and liable therefor unless otherwise provided by law. [Laws 1925, ch. 120, § 38.]

Executors and Administrators, 24 C. J. p. 703, § 1730, p. 706, §§ 1733-1734, p. 707, § 1736.

Use of proceeds of sale of real property of decedent. 11 R. C. L. 354 and Supps.

§ 8544a39. Sale to pay legacy. When a testator shall have given any legacy by a will that is effectual to pass or charge real estate and his goods, chattels, rights and credits, shall be insufficient to pay such legacy, together with the debts and charges of administration, the executor or administrator with the will annexed may be licensed to sell, mortgage or lease the real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a sale, mortgage or lease for the payment of debts. [Laws 1925, ch. 120, § 39.]

Executors and Administrators, 24 C. J. p. 554, § 1457.

Sale of real property to pay legacies. 11 R. C. L. 317.

§ 8544a40. Mortgaging property; when. The county court may make an order directing an executor or administrator to mortgage any property of a

decedent for either of the following purposes: (1) the payment of an existing lien or mortgage; (2) for any other purposes for which a sale may be ordered; (3) to authorize a renewal or extension of an existing mortgage; (4) to mortgage the homestead when the person entitled thereto and the guardian of minors consents, but if the minor is under fourteen years of age then the guardian's consent only shall be sufficient; (5) whenever upon application to sell the court finds it would be for the best interests of the estate to mortgage instead. [Laws 1925, ch. 120, § 40.]

Executors and Administrators, 24 C. J. p. 193, § 696.

§ 8544a41. Order for mortgage. Such order must be based upon a verified petition setting forth at least one of the reasons set forth in the foregoing section and further showing the amount of money necessary to be raised, together with such further particulars as are required in a petition for the sale of real property. Upon filing such petition the citation must be issued and served on all persons interested in the estate as required in section 4 of this act. [Laws 1925, ch. 120, § 41.]

Executors and Administrators, 24 C. J. p. 193, § 696.

§ 8544a42. Order for mortgaging. The order must fix the amount for which the mortgage may be given, the rate of interest that may be paid thereon, the number of years which the mortgage is to run, and may direct that the whole or any part of the money so secured, be paid from time to time out of the income of the mortgaged property. [Laws 1925, ch. 120, § 42.]

Executors and Administrators, 24 C. J. p. 193, § 696.

§ 8544a43. Duties of an executor, administrator and guardian. After the making of the order to mortgage the executor, administrator or guardian of a minor or of an incompetent person shall execute and deliver a promissory note or notes for the amount and period specified in the order, and shall execute, acknowledge, and deliver a mortgage of the premises, setting forth in the mortgage that it was made by authority of the court's order, and giving the date of such order. The note or notes and mortgage shall be signed by the executor, administrator, or guardian as such, and shall create no personal liability against the person so signing. [Laws 1925, ch. 120, § 43.]

Executors and Administrators, 24 C. J. p. 193, § 696, p. 196, §§ 698-699.

§ 8544a44. Effect of said notes and mortgages. Every note or notes and mortgages so made shall be effectual to mortgage and hypothecate all the right, title, interest and estate which the decedent, minor, or incompetent person had in the premises described therein at the time of the death of such decedent, or at the time of the appointment of the guardian of such minor or of such incompetent person, or prior thereto, and any right, title or interest in said premises acquired by the estate of such deceased, minor or incompetent person, by operation of law or otherwise, since the time of the death of such decedent, or the appointment of such minor or incompetent person, subject however to any unpaid mortgage, previously authorized by the court. [Laws 1925, ch. 120, § 44.]

Executors and Administrators, 24 C. J. pp. 193-196, §§ 696-701.

§ 8544a45. Report; confirmation. The executor, administrator or guardian making such mortgage shall immediately thereafter make a report of his doings upon the order to mortgage in pursuance of which it was made, to the county court. Said court shall thereupon examine the proceedings and if the same are in accordance with the order of license to mortgage, said court shall make an order forthwith confirming such mortgage. [Laws 1925, ch. 120, § 45.]

§ 8544a46. Sale of personal property; how made. All personal property of any estate may be sold by the representative without notice and without secur-

ing an order of the court, provided, however, that such representative shall not sell any personal property at private sale for less than ninety per cent of its appraised value, except that any personal property having a market value may be sold in any usual market therefor, at any time, in the usual manner and at the market price thereof. A complete and detailed account of all sales of personal property shall be made by the representative in his first report to the court after such sale or sales, such report to set forth a description of the property sold, the name and address of the purchaser and the price received. [Laws 1925, ch. 120, § 46.]

Magoffin v. Watros, 45 N. D. 406, 178 N. W. 134; *In re Murphy's Will*, 48 N. D. 1267, 189 N. W. 497; *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.

Executors and Administrators, 24 C. J. pp. 207-226, §§ 716-752.

Validity of sales of property of deceased person before letters testamentary or of administration have been granted to the vendor. 26 A.L.R. 1364.

Power of administrator to sell personal property. 11 R. C. L. 347 and Supps.

Necessity of order of court for sale of personal property by executor or administrator. 11 R. C. L. 347.

Manner of sale of personal property by executor or administrator. 11 R. C. L. 348.

§ 8544a47. Notice of final settlement; how served. Whenever a final report and account and petition for distribution of the estate to the parties entitled thereto are presented by any executor or administrator and the estate be ready for distribution, a citation must be issued thereon directing all persons interested in the estate to appear and show cause, if any there be, why such final report and account should not be allowed and distribution made. Such citation must be served as required in section 4 of this act and on the confirmation of the final account a final decree of distribution shall be entered immediately and without further notice of the proceedings. [Laws 1925, ch. 120, § 47.]

Elton v. Lamb, 33 N. D. 388, 157 N. W. 288; *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732.

Executors and Administrators, 24 C. J. pp. 947-951, §§ 2341-2351, p. 1023, § 2481.

Notice of final settlement of estate. 11 R. C. L. 185 and Supps.

ARTICLE 4.—GUARDIAN AND WARD, SALES OF PROPERTY.

§ 8544a48. Law of estates governs guardians unless otherwise declared. All the proceedings under petition of guardians for sale or mortgaging of property of their wards, giving notice, and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale, confirmation thereof, orders rejecting or confirming such sale, and reports of sale, ordering and making conveyances of property sold, accounting and settlement of accounts must be had and made the same as required by the administrator of an estate unless otherwise herein specially provided. [Laws 1925, ch. 120, § 48.]

Christenson v. Grandy, 46 N. D. 418, 180 N. W. 18; *Gronna v. Goldammer*, 26 N. D. 122, 143 N. W. 394; *Guardian and Ward*, 28 C. J. pp. 1169-1207, §§ 286-362.

Notice of application by guardian for leave to sell infant's real estate as jurisdictional. 8 L.R.A.(N.S.) 1215.

Constitutionality of statute authorizing guardian to sell or lease land of ward. 4 A.L.R. 1552.

Subsequent appointment of guardian as curing invalidity of prior sale of ward's property. 2 A.L.R. 1565.

Reimbursement or subrogation of purchaser on annulling sale by guardian. 69 L.R.A. 45.

Estoppel of guardian to deny that he received the amount stated in his report of a sale. L.R.A.1916A, 639.

Applicability of rule caveat emptor to sales by guardian of minors as regards ward's title. L.R.A.1915E, 834.

Sale of real property by guardian. 12 R. C. L. 1137 et seq. and Supps.

§ 8544a49. **Terms of sale; security.** All sales of real estate of wards must be for cash, or for part cash and part deferred payments, the credit in no case to exceed five years from date of sale, as in the discretion of the court is most beneficial to the ward. Guardians making sale must demand, and receive, from the purchaser, in case of deferred payments, notes and a mortgage on the real estate sold, with such additional security as the court deems necessary and sufficient to secure the prompt payment of the amounts so deferred with interest thereon. [Laws 1925, ch. 120, § 49.]

Guardian and Ward, 28 C. J. p. 1187, § 324.

Sale of real property by guardian. 12 R. C. L. 1137 et seq. and Supps.

§ 8544a50. **Repeal.** Sections 8549, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8557, 8558, 8559, 8565, 8734, 8736, 8737, 8740, 8741, 8742, 8743, 8744, 8747, 8748, 8752, 8754, 8771, 8772, 8774, 8775, 8776, 8777, 8780, 8790, 8791, 8833, 8834, 8909, 8911, 8767, 8769 and 8770 of the Compiled Laws of North Dakota for 1913, and all acts and parts of acts in conflict herewith be and the same are hereby repealed. [Laws 1925, ch. 120, § 50.]

CHAPTER 3.

PARTIES AND PROCESS.

- ARTICLE 1. **GENERAL RULES OF PROCEDURE, §§ 8549, 8550.**
 2. **SERVICE OF CITATIONS AND OTHER PAPERS, §§ 8551-8559.**
 2a. **HEARING PETITIONS FOR LETTERS OF ADMINISTRATION AND PROBATING OF WILLS, § 8559a1.**
 3. **MANNER AND EFFECT OF APPEARANCE, § 8565.**
 6. **DECREES AND ORDERS, §§ 8579, 8581.**
 7. **MISTAKES, OMISSIONS AND AMENDMENTS, §§ 8590, 8591.**
 8. **REHEARINGS, §§ 8595-8597.**
 9. **APPEALS, §§ 8599-8620.**

ARTICLE 1.—GENERAL RULES OF PROCEDURE

§ 8549. Repealed by § 8544a50, ante. See §§ 8544a1, 8544a2, ante.

§ 8550. Repealed by § 8544a50, ante.

ARTICLE 2.—SERVICE OF CITATIONS AND OTHER PAPERS.

§§ 8551-8559. Repealed by § 8544a50, ante. See §§ 8544a4-8544a7, ante.

ARTICLE 2a.—HEARING PETITIONS FOR LETTERS OF ADMINISTRATION AND PROBATING OF WILLS.

§ 8559a1. **Time of hearing.** When a petition has been presented to the county court for the probating of a will, or for letters of administration of the estate of an intestate, if all of the persons who must be cited to appear in each case join in the petition or signify in writing their assent thereto the hearing upon such petition may be had at any time. [Laws 1919, ch. 189, § 1.]

Executors and Administrators, 23 C. J. p. 1056, § 148; Wills, 40 Cyc. 1263.

ARTICLE 3.—MANNER AND EFFECT OF APPEARANCE.

§ 8565. Repealed by § 8544a50, ante.

Fischer v. Dolwig, 39 N. D. 161, 166 N. W. 793.

ARTICLE 6.—DECREES AND ORDERS.

§ 8579. Comp. Laws, 1913.

Keller v. Reichert, — N. D. —, 189 N. W. 690.

- § 8581. Comp. Laws, 1913.
Tyvand v. McDonnell, 37 N. D. 251, 164 N. W. 1.

ARTICLE 7.—MISTAKES, OMISSIONS AND AMENDMENTS.

- §§ 8590, 8591. Comp. Laws, 1913.
Cathro v. McArthur, 30 N. D. 337, 152 N. W. 686.

ARTICLE 8.—REHEARINGS.

- § 8595. Comp. Laws, 1913.
Power of county court to grant rehearing limited to causes enumerated, and must be exercised within time prescribed. *Re Hafey*, — N. D. —, 202 N. W. 138.
Prescribes power of county court to open up and vacate final decree, the grounds therefor, and limitations of time thereupon. *Reichert v. Reichert*, 41 N. D. 253, 170 N. W. 621.
See also *Fischer v. Dolwig*, 29 N. D. 561, 151 N. W. 431.
- § 8596. Comp. Laws, 1913.
Prescribes power of county court, to open up, and vacate final decree, the grounds therefor, and limitations of time thereupon. *Reichert v. Reichert*, 41 N. D. 253, 170 N. W. 621.
Power of county court to grant rehearing limited to causes enumerated, and must be exercised within time prescribed. *Re Hafey*, — N. D. —, 202 N. W. 138.
See also *Kranz v. Tavis*, — N. D. —, 192 N. W. 176; *Fischer v. Dolwig*, 29 N. D. 561, 151 N. W. 431.
- § 8597. Comp. Laws, 1913.
Power of county court to grant rehearing limited to causes enumerated, and must be exercised within time prescribed. *Re Hafey*, — N. D. —, 202 N. W. 138.

ARTICLE 9.—APPEALS.

- § 8599. Comp. Laws, 1913.
Order of county court denying application for entry of decree approving a final account and ordering final distribution of estate, on ground that inheritance tax, was not paid, is appealable. *Strauss v. Costello*, 29 N. D. 215, 150 N. W. 874.
See also *Keller v. Reichert*, — N. D. —, 189 N. W. 690; *Re Hafey*, — N. D. —, 202 N. W. 138; *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.
- § 8600. Comp. Laws, 1913.
Order of county court denying application for entry of decree approving a final account and ordering final distribution of estate, on ground that inheritance tax, was not paid, is appealable. *Strauss v. Costello*, 29 N. D. 215, 150 N. W. 875.
See also *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.
- § 8601. Comp. Laws, 1913.
Fischer v. Dolwig, 29 N. D. 561, 151 N. W. 431; *Re Hafey*, — N. D. —, 202 N. W. 138.
- § 8604. Comp. Laws, 1913.
Re Hafey, — N. D. —, 202 N. W. 138.
- § 8615. Comp. Laws, 1913.
District court will not lose jurisdiction of the action when appeal has been taken to it, and case has been regularly docketed, because case has been continued over the term on account of illness of counsel. *Kramer v. Heins*, 34 N. D. 507, 158 N. W. 1061.
- § 8620. Comp. Laws, 1913.
State ex rel. Shaw v. Frazier, 39 N. D. 430, 167 N. W. 510; *Riedlinger v. Feil*, 48 N. D. 908, 187 N. W. 963; *Keller v. Reichert*, — N. D. —, 189 N. W. 690; *Dow v. Lillie*, 26 N. D. 513, L.R.A.1915D, 754, 144 N. W. 1082.
N. D. C. L.—87. 1377

CHAPTER 4.

SPECIAL PROCEEDINGS FOR THE PROBATE OF WILLS AND OTHER PURPOSES.

- ARTICLE 2. SPECIAL PROCEEDINGS FOR THE PROBATE OF A WILL, §§ 8634, 8643.
 3. SPECIAL PROCEEDINGS FOR THE APPOINTMENT OF ADMINISTRATORS, §§ 8657-8663.
 4. APPOINTMENT OF SPECIAL ADMINISTRATORS, §§ 8668a1, 8668a2.
 5. FOREIGN WILLS AND LETTERS OF ADMINISTRATION, § 8672.
 6. SPECIAL PROCEEDINGS FOR PROBATE OF HEIRSHIP, §§ 8673-8679.

ARTICLE 2.—SPECIAL PROCEEDINGS FOR THE PROBATE OF A WILL.

§ 8634. Comp. Laws, 1913.

Keller v. Reichert, — N. D. —, 189 N. W. 690.

§ 8643. Comp. Laws, 1913.

Proof that will was in existence at death of testator, or that it was fraudulently destroyed during his lifetime, prerequisite to probate of will, as lost or destroyed will. Merrick v. Prescott, 48 N. D. 195, 183 N. W. 1011.

ARTICLE 3.—SPECIAL PROCEEDINGS FOR THE APPOINTMENT OF ADMINISTRATORS.

§ 8657. Comp. Laws, 1913.

Appointment of disinterested third person, instead of petitioning parties, as administrator, discretionary with county court, in exercise of its probate jurisdiction. Ellis v. Ellis, 42 N. D. 535, 174 N. W. 76.

See also Grunow v. Simonitsch, 21 N. D. 277, 130 N. W. 835.

§ 8659. Comp. Laws, 1913.

Shane v. Peoples, 25 N. D. 188, 141 N. W. 737; Johnson v. Rutherford, 28 N. D. 87, 147 N. W. 390.

§ 8662. Comp. Laws, 1913.

Maixner v. Zumpf, — N. D. —, 199 N. W. 183.

§ 8663. Comp. Laws, 1913.

Appointment of disinterested third person, instead of petitioning parties, as administrator, discretionary with county court, in exercise of its probate jurisdiction. Ellis v. Ellis, 42 N. D. 535, 174 N. W. 76.

ARTICLE 4.—APPOINTMENT OF SPECIAL ADMINISTRATORS.

§ 8668a1. **Special administrator; appointment to discharge mortgage or judgment; amount of bond.** Whenever it shall appear, by affidavit or verified petition, to the county court that an inhabitant of such county has died, leaving no debts unpaid or that his estate has been fully settled and the executor or administrator thereof has been discharged, and that any mortgage or judgment in favor of such deceased person remains undischarged of record or any other act remains unperformed on the part of such person the performance of which affects or is of importance to petitioner or any other person, the court may appoint a special administrator for the purpose of releasing and discharging such mortgage or judgment of record or performing such other acts as may be deemed necessary in the premises. The county court may in its discretion fix the amount of the bond of such special administrator, which in no case shall exceed twice the value of the property in question, and if it appears that the property is of no value and that it is only necessary to discharge the lien of record the court need not require any bond. [Laws 1917, ch. 217, § 1.]

Executors and Administrators, 24 C. J. p. 991, § 2426, p. 1169, § 2780, p. 1177, § 2797.

§ 8668a2. **Compensation.** The compensation of such special administrator

shall not exceed the sum of ten dollars, to be determined by the county court, and shall be paid out of the assets of such deceased person, provided, however, that should there be no assets, then the costs shall be paid by petitioner. [Laws 1917, ch. 217, § 2.]

ARTICLE 5.—FOREIGN WILLS AND LETTERS OF ADMINISTRATION.

§ 8672. Comp. Laws, 1913.

Applies only in the case of a foreign will. *McEwen v. McEwen*, — N. D. —, 197 N. W. 862.

ARTICLE 6.—SPECIAL PROCEEDINGS FOR PROBATE OF HEIRSHIP.

§§ 8673, 8674. Comp. Laws, 1913.

Grunow v. Simonitsch, 21 N. D. 277, 130 N. W. 835.

§ 8679. **Form and conclusiveness of decree for petitioner.** When the facts are established to the satisfaction of the court a decree shall be given specifying the service of citation on the respondents, and that the decedent died leaving the real property involved in the proceeding within this state which he had not disposed of by will, and that there are no debts of the decedent which are payable to residents of this state; and further specifying who are the heirs of the decedent entitled to succeed and inherit the land under the laws of succession in such cases made and provided, and what are the interest or shares of the parties to the property and declare the right of succession accordingly. Such decree shall also determine the value of the property. Such decree is conclusive upon all creditors of the decedent and upon all parties and their successors having any interest in said property, and such decree shall be final and conclusive upon all parties to the proceedings, including all unknown persons affected thereby and that [sic] no proceedings shall be entertained by the county court or by any court in this state for a reversal or modification or vacation of such decree or for the probate of a will or grant of administration affecting the property described in such decree unless such proceedings are commenced within six months after the date of the rendition of said decree; provided, however, that an appeal may be taken from such decree in the same manner now provided by law for appeal from a decree of the county court in other probate proceedings. [Laws 1911, ch. 220, § 5; R. C. 1905, §§ 8042, 8043; R. C. 1895, § 6343; Laws 1893, ch. 51, § 3.]

CHAPTER 5.

REQUISITES FOR QUALIFICATION.

ARTICLE 1. QUALIFICATIONS, REMOVAL AND DISCHARGE OF EXECUTORS, ADMINISTRATORS AND GUARDIANS, §§ 8682–8685a.

4. REMOVAL, SUSPENSION AND DISCHARGE OF EXECUTORS, ADMINISTRATORS AND GUARDIANS, §§ 8699–8704.

ARTICLE 1.—QUALIFICATIONS, REMOVAL AND DISCHARGE OF, EXECUTORS, ADMINISTRATORS AND GUARDIANS.

§ 8682. Comp. Laws, 1913.

Ellis v. Ellis, 42 N. D. 535, 174 N. W. 76.

§ 8684. Comp. Laws, 1913.

Reichert v. Reichert, 41 N. D. 253, 170 N. W. 621.

§ 8685a. **Surety company bonds.** In all cases where bonds are required of executors, administrators or guardians under section 8685 of the Compiled

Laws of 1913, the court may in its discretion accept a surety company bond in lieu of a personal bond in a sum equal to not less than the aggregate value, as ascertained by the court, of the personal property and the rents, profits and income for one year of the real property belonging to the estate, plus ten per cent. And in all cases where an executor, administrator or guardian is required to give an additional bond as provided by section 8686 of the Compiled Laws of 1913, the court may, in its discretion accept a surety company bond in lieu of a personal bond in a sum equal to not less than the probable amount to be realized upon the sale or mortgage, plus ten per cent. [Laws 1915, ch. 99, § 1.]

Executors and Administrators, 23 C. J. p. 1072, § 195, p. 1074, § 201, p. 1078, § 213, p. 1079, § 215.

ARTICLE 4.—REMOVAL SUSPENSION AND DISCHARGE OF EXECUTORS, ADMINISTRATORS AND GUARDIANS.

§ 8699. Comp. Laws, 1913.

Gronna v. Goldammer, 26 N. D. 122, 14 N. W. 394.

§§ 8703, 8704. Comp. Laws, 1913.

Gronna v. Goldammer, 26 N. D. 122, 14 N. W. 394.

CHAPTER 6.

SETTLEMENT OF THE ESTATES OF DECEDENTS.

- ARTICLE 1. COLLECTION, INVENTORY AND APPRAISEMENT OF THE ESTATE, §§ 8707, 8711.**
2. INVENTORY AND APPRAISEMENT OF THE ESTATE, §§ 8718a, 8719.
 3. POSSESSION OF THE HOMESTEAD AND ALLOTMENT OF EXEMPT PROPERTY, §§ 8723-8729.
 4. PROPERTY CHARGEABLE WITH THE PAYMENT OF DEBTS, §§ 8730-8733.
 5. CLAIMS, PRESENTATION, PROOF AND ALLOWANCE, §§ 8734-8754.
 6. PAYMENT OF DEBTS AND CHARGES, §§ 8755-8762.
 7. SALES BY EXECUTORS AND ADMINISTRATORS, §§ 8767-8791.
 8. SPECIFIC PERFORMANCE, §§ 8793, 8795.
 9. ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS, §§ 8797-8811.
 10. LIABILITY AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS, §§ 8819, 8821.
 11. ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS, §§ 8833-8837.
 13. DISTRIBUTION OF THE ESTATE UPON FINAL SETTLEMENT, §§ 8846-8850.
 14. PROCEEDINGS FOR PARTITION, § 8859.
 15. DISTRIBUTION OF ESTATES OF DECEASED NONRESIDENTS, §§ 8863-8865.
 16. DISPOSITION OF UNCLAIMED SHARES, § 8867.

ARTICLE 1.—COLLECTION, INVENTORY AND APPRAISEMENT OF THE ESTATE.

§ 8707. Comp. Laws, 1913.

Administrator, may maintain an action to determine adverse claims concerning possession, interest, or title of estate. Magoffin v. Watros, 45 N. D. 406, 178 N. W. 134.

An heir cannot maintain suit for partition against other heirs, and administrator, in district court, after assumption of jurisdiction by county court, and ap-

pointment of administrator, and before final decree of distribution. *Honsinger v. Stewart*, 34 N. D. 513, 159 N. W. 12.

See also *Re Murphy*, 48 N. D. 1267, 189 N. W. 497.

§ 8711. Comp. Laws, 1913.

Requirement that surviving partner make inventory and file bond, does not affect interest of survivor and are not conditions precedent to his rights. *Gardner Hotel Co. v. Hagaman*, 47 N. D. 434, 182 N. W. 685.

ARTICLE 2.—INVENTORY AND APPRAISEMENT OF THE ESTATE.

§ 8718a. **Exempting life insurance policies from claims of creditors.** The surrender value of any policy of life insurance, which policy of insurance would upon the death of the insured be payable to the wife or children or any relative of the insured dependent or liable to be dependent upon him for support, shall be absolutely exempt from the claims of creditors of the insured, and no creditor and no court or officer of a court acting for the creditors of such insured shall have the right under any circumstances to elect for the insured to have such policy of insurance surrendered or in anywise converted into money; and no such policy of life insurance and no property right therein belonging to the holder and no value thereof shall, under any circumstance, be subject to seizure under any process of any court. [Laws 1915, ch. 173, § 1.]

Exemptions, 25 C. J. p. 72, § 118.

Exemption of proceeds of life insurance after loss from beneficiary's debts. L.R.A.1915A, 1201.

Statutory exemptions of proceeds or avails of life insurance as insuring to benefit of estate where policy is payable to executors or administrators, or estate. L.R.A.1917F, 1143.

Exemption of life insurance policy. 11 R. C. L. 528 and Supps.

§ 8719. Comp. Laws, 1913.

Life insurance policy payable to estate of decedent, deemed to have been made payable to his heirs, and heirs take proceeds thereof by contract, and not by descent. *Marifjeren v. Farup*, — N. D. —, 199 N. W. 181.

Father, not an "heir," within meaning of this section, so as to share in proceeds of insurance policy payable to his estate, when intestate left a surviving widow, but no lineal descendants. *Maixner v. Zumpf*, — N. D. —, 199 N. W. 183.

Constitutionality of section upheld in. *Farmers State Bank v. Smith*, 36 N. D. 225, 162 N. W. 302.

ARTICLE 3.—POSSESSION OF THE HOMESTEAD AND ALLOTMENT OF EXEMPT PROPERTY.

§ 8723. Comp. Laws, 1913.

Cullen v. Sullivan, — N. D. —, 199 N. W. 760; *Krumenacker v. Andis*, 38 N. D. 500, 165 N. W. 524; *O'Hare v. Bismarck Bank*, 45 N. D. 641, 178 N. W. 1017; *Charlson v. Charlson*, 48 N. D. 851, 187 N. W. 418; *Healy v. Bismarck Bank*, 30 N. D. 628, 153 N. W. 392; *Elhard v. Rott*, 36 N. D. 221, 162 N. W. 302; *Tyvand v. McDonnell*, 37 N. D. 251, 164 N. W. 1.

§ 8724. Comp. Laws, 1913.

Elhard v. Rott, 36 N. D. 221, 162 N. W. 302; *Fischer v. Dolwig*, 39 N. D. 161, 166 N. W. 793; *Krumenacker v. Andis*, 38 N. D. 500, 165 N. W. 524.

§ 8725. Comp. Laws, 1913.

Statute is one of exemption, and not of inheritance; one must, in order to entitle himself to benefits thereof, bring himself within letter or spirit of exemption laws as to residence in state, or show intent, and desire to have residence within this state. *Krumenacker v. Andis*, 38 N. D. 500, 165 N. W. 524.

One passively permitting entry of final decree of distribution, without claiming exemptions, or without seeking to set aside decree or appeal therefrom, cannot

thereafter question validity of decree on grounds which could have been presented on appeal. *Fischer v. Dolwig*, 39 N. D. 161, 166 N. W. 793.

Wife's antenuptial agreement that she should receive out of husband's estate, in case of his death prior to hers, use of homestead for life, and \$2000, and no more, held not to deprive her of statutory exemptions. *Herr v. Herr*, 45 N. D. 492, 178 N. W. 443.

Surviving husband or wife, or in case of her death, minor children, of deceased person entitled to additional allowance of \$1500.00, unaffected by § 7731, allowing to heads of families \$500 in addition to absolute exemptions. *Woods v. Teeson*, 31 N. D. 610, 154 N. W. 797; *Charlson v. Charlson*, 48 N. D. 851, 187 N. W. 418.

See also *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732; *Elhard v. Rott*, 37 N. D. 221, 162 N. W. 302; *Tyvand v. McDonnell*, 37 N. D. 251, 164 N. W. 1.

§ 8726. Comp. Laws, 1913.

Severtson v. Peoples, 28 N. D. 372, 148 N. W. 1054.

§ 8727. Comp. Laws, 1913.

One passively permitting entry of final decree of distribution, without claiming exemptions or without seeking to set aside decree or appeal therefrom, cannot thereafter question validity of decree on grounds which could have been presented on appeal. *Fischer v. Dolwig*, 39 N. D. 161, 166 N. W. 793.

As to validity of order of county court making additional allowance for maintenance of family. *Tyvand v. McDonnell*, 37 N. D. 251, 164 N. W. 1.

See also *Krumenacker v. Andis*, 38 N. D. 500, 165 N. W. 524; *Priewe v. Priewe*, 43 N. D. 509, 175 N. W. 732.

§ 8728. Comp. Laws, 1913.

County court has authority to make additional allowance for maintenance of family, even after expiration of time in which claims may be filed against the estate. *Tyvand v. McDonnell*, 37 N. D. 251, 164 N. W. 1.

§ 8729. Comp. Laws, 1913.

Woods v. Teeson, 31 N. D. 610, 154 N. W. 797.

ARTICLE 4.—PROPERTY CHARGEABLE WITH THE PAYMENT OF DEBTS.

§ 8730. Comp. Laws, 1913.

An heir cannot maintain suit for partition against other heirs and administrator, in district court, after assumption of jurisdiction by county court, and appointment of administrator, and before final decree of distribution. *Honsinger v. Stewart*, 34 N. D. 513, 159 N. W. 12.

See also *Re Murphy*, 48 N. D. 1267, 189 N. W. 497; *Tyvand v. McDonnell*, 37 N. D. 251, 164 N. W. 1; *Dow v. Lillie*, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082; *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.

§§ 8731, 8732. Comp. Laws, 1913.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

§ 8733. Comp. Laws, 1913.

An heir cannot maintain suit for partition against other heirs and administrator, in district court after assumption of jurisdiction by county court, and appointment of administrator, and before final decree of distribution. *Honsinger v. Stewart*, 34 N. D. 513, 159 N. W. 12.

See also *Re Murphy*, 48 N. D. 1267, 189 N. W. 497; *Dow v. Lillie*, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082.

ARTICLE 5.—CLAIMS, PRESENTATION, PROOF AND ALLOWANCE.

§ 8734. Repealed by § 8544a50, ante. See § 8544a9, ante.

§ 8736. Repealed by § 8544a50, ante. See § 8544a10, ante.

§ 8737. Repealed by § 8544a50, ante. See § 8544a11, ante.

§ 8740. Repealed by § 8544a50, ante. See § 8544a12, ante.

§ 8741. Repealed by § 8544a50, ante. See § 8544a13, ante.

§ 8742. Repealed by § 8544a50, ante. See § 8544a14, ante.

§ 8743. Repealed by §§ 8544a50, ante.

§ 8744. Repealed by § 8544a50, ante. See § 8544a15, ante.

§ 8747. Repealed by § 8544a50, ante.

Sunberg v. Sebelius, 38 N. D. 413, 165 N. W. 564; Johnson v. Rutherford, 28 N. D. 87, 147 N. W. 390.

§ 8748. Repealed by § 8544a50, ante.

§§ 8752, 8754. Repealed by § 8544a50, ante.

ARTICLE 6.—PAYMENT OF DEBTS AND CHARGES.

§ 8755. Comp. Laws, 1913.

As to payment of funeral and burial expenses. Elton v. Lamb, 33 N. D. 388, 157 N. W. 288.

§ 8758. Comp. Laws, 1913.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

§ 8762. Comp. Laws, 1913.

Stay of execution of judgment or sale of property until final judgment in county court as to validity of claimant's claim, against estate, held proper. Johnson v. Rutherford, 28 N. D. 87, 147 N. W. 390.

ARTICLE 7.—SALES BY EXECUTORS AND ADMINISTRATORS.

§ 8767. Repealed by § 8544a50, ante. See § 8544a46, ante.

§ 8768. Comp. Laws, 1913.

Refers to interest of estate in ultimate distribution of partnership assets pursuant to § 6425, and not to sale of specific partnership interest in specific partnership realty or personalty. Gardner Hotel Co. v. Hagaman, 47 N. D. 424, 182 N. W. 685.

§§ 8769, 8770. Repealed by § 8544a50, ante.

§ 8771. Repealed by § 8544a50, ante. See §§ 8544a20-8544a22, ante.

§ 8772. Repealed by § 8544a50, ante. See § 8544a27, ante.

§ 8774. Repealed by § 8544a50, ante. See §§ 8544a31-8544a34, ante.

§ 8775. Repealed by § 8544a50, ante. See §§ 8544a35-8544a37, ante.

§ 8576. Repealed by § 8544a50, ante.

§ 8577. Repealed by § 8544a50, ante. See § 8544a37, ante.

§ 8780. Repealed by § 8544a50, ante.

§ 8790. Repealed by § 8544a50, ante. See § 8544a40, ante.

§ 8791. Repealed by § 8544a50, ante. See §§ 8544a41, 8544a42, ante.

ARTICLE 8.—SPECIFIC PERFORMANCE.

§ 8793. Comp. Laws, 1913.

Priewe v. Priewe, 43 N. D. 509, 175 N. W. 732; O'Hare v. Bismarck Bank, 45 N. D. 641, 178 N. W. 1017.

§ 8795. **Certain sales under this article validated.** All sales of real estate made by any administrator or executor, where his testator or intestate had contracted in writing for the sale thereof in his lifetime, and conveyance of which had been made pursuant to a decree of any county court of this state as provided by article 8 of chapter 6 of the Probate Code of North Dakota, in estates which are closed and such administrator or executor has been dis-

charged, and which conveyances have been otherwise legally made but have not been approved by the judges of the county courts wherein such conveyances were had, pursuant to section 8794 of the Compiled Laws of North Dakota, of 1913, are hereby declared valid and of the same effect as if an order or judgment of approval had been made by the county judge of the court in which such proceedings were had. [Laws 1925, ch. 185, § 1.]

Explanatory note. The above section is a new curative act, manifestly taking the place of original § 8795.

Executors and Administrators, 24 C. J. p. 151 § 628, p. 155, § 635.

ARTICLE 9.—ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

§ 8797. Comp. Laws, 1913.

An heir cannot maintain suit for partition against the other heirs, and administrator, in district court, after assumption of jurisdiction by county court and appointment of administrator, and before final decree of distribution. *Honsinger v. Stewart*, 34 N. D. 513, 159 N. W. 12.

See also *Cathro v. McArthur*, 30 N. D. 337, 152 N. W. 686; *Druey v. Baldwin*, 41 N. D. 473, 172 N. W. 663; *Magoffin v. Watros*, 45 N. D. 406, 178 N. W. 134.

§ 8798. Comp. Laws, 1913.

Magoffin v. Watros, 45 N. D. 406, 178 N. W. 134; *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.

§ 8799. Comp. Laws, 1913.

Magoffin v. Watros, 45 N. D. 406, 178 N. W. 134.

§ 8800. Comp. Laws, 1913.

McDonough v. Russell-Miller Mill. Co. 47 N. D. 237, 182 N. W. 251; *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.

§ 8805. Comp. Laws, 1913.

Gronna v. Goldammer, 26 N. D. 122, 143 N. W. 394.

§ 8809. Comp. Laws, 1913.

Section creates no new remedy, or confers new right of action, but merely recognizes existing rule, that a judgment may be vacated by an equitable action upon certain grounds, and limits time in which such action may be brought. *Kranz v. Tavis*, — N. D. —, 192 N. W. 176.

See also *Fischer v. Dolwig*, 39 N. D. 161, 166 N. W. 793; *Reichert v. Reichert*, 41 N. D. 253, 170 N. W. 621; *Knight v. Harrison*, 43 N. D. 76, 174 N. W. 632; *Moore v. Palmer*, 43 N. D. 99, 174 N. W. 93; *Roether v. National Union F. Ins. Co.* — N. D. —, 200 N. W. 818; *Fischer v. Dolwig*, 29 N. D. 561, 151 N. W. 431.

§ 8811. Comp. Laws, 1913.

Johnson v. Rutherford, 28 N. D. 87, 147 N. W. 390.

ARTICLE 10.—LIABILITY AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

§ 8819. Comp. Laws, 1913.

Priewe v. Priewe, 43 N. D. 509, 175 N. W. 732.

§ 8821. **Expenses and necessary fees allowed; commissions.** He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as are provided in section 8822 of this code; but when the decedent by his will makes some other provision for the compensation of his executor that shall be full compensation for his services unless by a written instrument filed in the county court, he renounces all claims for compensation provided by the will; provided, however, that no compensation shall be allowed for attorneys' services rendered to such executor or administrator unless the same have been so performed by or under the direction of an attorney at law, resident and admitted to practice in this state. [Laws 1915, ch. 2, § 1.]

Executors and Administrators, 24 C. J. pp. 90-114, §§ 513-558, pp. 968-972, § 2393, p. 975, § 2398, p. 989, § 2424.

Right of surviving copartner acting as executor to compensation for services. 17 L.R.A.(N.S.) 406.

Allowance to executor de son tort of disbursements or payments. L.R.A.1915D, 948.

Right of executor to allowance for attorney's fees for services in attempt to establish or resist attack upon will. L.R.A.1917A, 450.

Extra compensation for legal services rendered by executor or administrator. 36 A.L.R. 748.

Preference of legacy to executor as compensation for services as regards abatement of legacies. 34 A.L.R. 1272.

Will limiting amount of fees of executor. 34 A.L.R. 918.

Death of executor or administrator as affecting right of compensation. 7 A.L.R. 1595.

Compensation of executors or administrators. 11 R. C. L. 227 et seq. and Supps.

Legacy as compensation of executor or administrator. 11 R. C. L. 230.

ARTICLE 11.—ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS.

§§ 8833, 8834. Repealed by § 8544a50, ante. See § 8544a47, ante.

§ 8835. Comp. Laws, 1913.

Elton v. Lamb, 33 N. D. 388, 157 N. W. 288; Re Hafey, — N. D. —, 202 N. W. 138.

§ 8836. Comp. Laws, 1913.

Elton v. Lamb, 33 N. D. 388, 157 N. W. 288.

§ 8837. Comp. Laws, 1913.

Johnson v. Rutherford, 28 N. D. 87, 147 N. W. 390; Priewe v. Priewe, 43 N. D. 509, 175 N. W. 732; Re Hafey, — N. D. —, 202 N. W. 138.

ARTICLE 13.—DISTRIBUTION OF THE ESTATE UPON FINAL SETTLEMENT.

§ 8846. Comp. Laws, 1913.

Delaney v. State, 42 N. D. 630, 174 N. W. 290; Re Murphy, 48 N. D. 1267, 189 N. W. 497.

§ 8848. Comp. Laws, 1913.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

§ 8849. Comp. Laws, 1913.

Stenson v. H. S. Halvorson, 28 N. D. 151, L.R.A.1915A, 1179, 147 N. W. 800.

§ 8850. Comp. Laws, 1913.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

ARTICLE 14.—PROCEEDINGS FOR PARTITION.

§ 8859. Comp. Laws, 1913.

Delaney v. State, 42 N. D. 630, 174 N. W. 290.

ARTICLE 15.—DISTRIBUTION OF ESTATES OF DECEASED NONRESIDENTS.

§§ 8863-8865. Comp. Laws, 1913.

Dow v. Lillie, 26 N. D. 512, L.R.A.1915D, 754, 144 N. W. 1082.

ARTICLE 16.—DISPOSITION OF UNCLAIMED SHARES.

§ 8867. Comp. Laws, 1913.

Re Murphy, 48 N. D. 1267, 189 N. W. 497.

CHAPTER 7.

OF GUARDIAN AND WARD.

ARTICLE 1. GUARDIANS AND MINORS, §§ 8874, 8880.

- ARTICLE 2. GUARDIANS OF INSANE AND INCOMPETENT, §§ 8886, 8887.
 4. SALES OF PROPERTY AND DISPOSITION OF PROCEEDS, §§ 8909, 8911.
 6. GENERAL AND MISCELLANEOUS PROVISIONS, §§ 8920-8923.

ARTICLE 1.—GUARDIANS AND MINORS.

§ 8874. **Guardians of persons and estates.** The county court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates or either or both of them, of minors who have no guardian legally appointed by the will or deed, and who are inhabitants or residents of the county, or who reside without the state and have estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of such minor after the person having the custody of such minor, and such of his relatives as the court shall deem proper, have been cited to appear. [R. C. 1905, § 8236; R. C. 1899, § 6537; Pro. C. 1877, § 333.]

§ 8880. Comp. Laws, 1913.
 Gronna v. Goldammer, 26 N. D. 122, 143 N. W. 394.

ARTICLE 2.—GUARDIANS OF INSANE AND INCOMPETENT.

§§ 8886, 8887. Comp. Laws, 1913.
 McGinnity v. Dowd, 47 N. D. 554, 182 N. W. 938.

ARTICLE 4.—SALES OF PROPERTY AND DISPOSITION OF PROCEEDS.

§§ 8909, 8911. Repealed by § 8544a50, ante. See §§ 8544a48, 8544a49, ante.

ARTICLE 6.—GENERAL AND MISCELLANEOUS PROVISIONS.

- § 8920. Comp. Laws, 1913.
 Christenson v. Grandy, 46 N. D. 418, 180 N. W. 18.
- § 8922. Comp. Laws, 1913.
 Reichert v. Reichert, 41 N. D. 253, 170 N. W. 621; Christenson v. Grandy, 46 N. D. 418, 180 N. W. 18; Gronna v. Goldammer, 26 N. D. 122, 143 N. W. 394.
- § 8923. Comp. Laws, 1913.
 Guardianship terminates when minor attains his majority. Limitation prescribed application to suit by ward for recovery of land conveyed by guardian. Christenson v. Grandy, 46 N. D. 418, 180 N. W. 18.
 See also Reichert v. Reichert, 41 N. D. 253, 170 N. W. 621.

CHAPTER 9.

PRACTICE IN COUNTY COURTS WITH INCREASED JURISDICTION.

§§ 8930, 8937. Comp. Laws, 1913.
 State v. Fleming, 20 N. D. 105, 126 N. W. 565.

§ 8938. **Terms of court.** The regular term of the county court shall be held at the county seat, commencing on the first Tuesday of each calendar month, for the trial of such civil and criminal cases as may be brought before such court, and a jury shall be called at any regular term when there is one or more criminal cases in which the defendant is confined in jail and demands a trial ten days before the opening of such term or five or more civil cases in which a jury trial is so demanded for trial. [Laws 1913, ch. 138; Laws 1909, ch. 80, § 9; R. C. 1905, § 8290; R. C. 1899, § 6589; Laws 1895, ch. 32, § 2.]

§ 8943. Comp. Laws, 1913.
 Where motion in county court, to vacate county court judgment transcribed
 1386

to district court, and upon stipulation heard therein, party who stipulated for hearing of motion in district court, is precluded from questioning jurisdiction to enter order deciding motion. *Lobe v. Bartaschawich*, 37 N. D. 572, 164 N. W. 276. See also *Winston, H. F. Co. v. Price*, 37 N. D. 554, 164 N. W. 101.

§ 8944. **Requisites of summons.** The summons must contain the title of the action, specifying the court in which the action is brought, the name of the parties to the action, and shall be subscribed by the plaintiff or his attorney, who must add to his signature, his address, specifying a place within the state where there is a post office. The summons shall be substantially in the following form, the blanks being properly filled:

“STATE OF NORTH DAKOTA, }
County of } ss:
In County Court.
A. B. Plaintiff,
vs.
C. D. Defendant.
Summons.

The State of North Dakota to the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer upon the subscriber within twenty days after the service of this summons upon you, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

.....
Plaintiff.
.....
Post Office.

Dated

[Laws 1915, ch. 102, § 1.]

Summons, on which name and address of attorney for plaintiff is typewritten by his clerk at his request, and in accordance with general custom of the office, is sufficient compliance with this section. *Hagen v. Gresby*, 34 N. D. 349, L.R.A. 1917B, 281, 159 N. W. 3.

Process, 32 Cyc. 428-443.

Requisites of summons. 21 R. C. L. 1265 et seq. and Supps.

§ 8945. **Filing and service of pleadings.** A copy of the complaint need not be served with the summons. In such case the summons must state that the complaint is or will be filed with the clerk of the county court in the county in which action is commenced, and if the defendant within twenty days thereafter causes notice of appearance to be given and in person or by attorney demands in writing a copy of the complaint, specifying a place within the state where it may be served, a copy thereof must within twenty days thereafter be served accordingly, and after such service the defendant has twenty days to answer, but only one copy need be served on the same attorney. Where the summons states that the complaint is or will be filed with the clerk of court and the same is not so filed within twenty days after the date of the service of such summons the action will be deemed discontinued. [Laws 1915, ch. 102, § 2.]

G. Somers & Co. v. Wilson, 32 N. D. 14, 155 N. W. 30.

Pleading, 31 Cyc. 125, 591-597; Process, 32 Cyc. 428-443.

Filing of pleadings. 21 R. C. L. 590 and Supps.

Service of pleadings. 21 R. C. L. 591.

§ 8949. **When service complete.** Service by publication is complete upon the expiration of twenty-one days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defend-

ant outside of the state, upon the expiration of twenty days after the date of such service. [Laws 1915, ch. 102, § 3.]

Process, 32 Cyc. 490.

Completion of service of process by publication. 21 R. C. L. 1301.

§ 8952. Garnishment summons. In all garnishment proceedings the plaintiff shall attach to his affidavit for garnishment a garnishment summons, which shall be substantially in the following form:

"STATE OF NORTH DAKOTA, }
County of } ss:

In County Court.

A. B. Plaintiff,

vs.

C. D. Defendant, and

E. F. Garnishee.

The State of North Dakota to said Garnishee:

You are hereby summoned, pursuant to the annexed affidavit, as a garnishee of the defendant, C. D., and required within twenty days after the service of this summons upon you, exclusive of the day of service, to answer according to law, whether you are indebted to or have in your possession or under your control any property, real or personal, belonging to such defendant, and to serve a copy of your answer on the undersigned at in the County of; and in case of your failure so to do, you will be liable to further proceedings according to law; of which the said defendant will also take notice.

Dated

L. M., Plaintiff's Attorney,

P. O. Address County, N. D."

[Laws 1915, ch. 102, § 4.]

Garnishment, 28 C. J. p. 217, § 287, pp. 219-224, §§ 294-303.

Summons or notice to garnishee. 12 R. C. L. 824 and Supps.

§ 8953. Answer of garnishee. The affidavit or answer of the garnishee must be served upon the attorney for the plaintiff within twenty days after the service of the garnishment summons, and such answer must be filed in the office of the clerk of the county court, upon order of the court the same as other pleadings in a civil action. [Laws 1915, ch. 102, § 5.]

Garnishment, 28 C. J. pp. 287-291, §§ 420-428.

Answer of garnishee. 12 R. C. L. 828 and Supps.

§ 8954. Comp. Laws, 1913.

When an action is commenced in county court with increased jurisdiction, and change of venue is thereafter ordered to district court, prevailing party entitled to have costs, as in county court having increased jurisdiction. Butler Bros. v. Schmidt, 32 N. D. 360, 155 N. W. 1092.

§ 8957. Costs. When the prevailing party in a civil action has appeared therein by an attorney duly authorized to practice in the courts of this state, there shall be allowed for his reimbursements and taxed the same costs and disbursements as provided by the Code of Civil Procedure when the amount exclusive of costs exceeds the sum of \$200.00 and no other costs or disbursements, and in all cases where less than \$200.00 is received, exclusive of costs, there shall be taxed and allowed to such prevailing party the same attorneys' fees and costs as are provided for in sections 9107 and 9108 of the Compiled Laws of North Dakota of 1913. [Laws 1915, ch. 101, § 1.]

Costs, 15 C. J. p. 44, § 46.

Amount of costs and items allowable. 7 R. C. L. 790 et seq. and Supps.

§§ 8960, 8961. Comp. Laws, 1913.

Jenson v. Frazer, 21 N. D. 267, 130 N. W. 832.

§ 8962. Comp. Laws, 1913.

Jenson v. Frazer, 21 N. D. 267, 130 N. W. 832; State v. Ramsey, 31 N. D. 626, 154 N. W. 731.

§ 8963. Comp. Laws, 1913.

Jenson v. Frazer, 21 N. D. 267, 130 N. W. 832.

§ 8964. Preliminary examination; change of venue. No preliminary examination shall be necessary before trial in criminal actions in the county court. The judge of a county court having increased jurisdiction may act as a committing magistrate, and hold preliminary examinations in any part of his county. Whenever a person accused of a public offense is brought before a judge of a county court having increased jurisdiction for preliminary examination, and at any time before such examination is commenced, files with said judge of the county court his affidavit stating that by reason of the bias or prejudice of said judge of the county court he believes he cannot have a fair and impartial examination before him, such judge of the county court, acting as such committing magistrate, must transfer such action and all the papers therein, including a certified copy of his docket entries, to a justice of the peace of the same county; provided, that unless the parties agree upon the justice to whom said action shall be transferred, the same shall be sent for preliminary examination to the nearest justice of the county. The state's attorney, or his assistant, may, in the same manner and for the same reasons as the defendant, obtain a transfer of said action from the judge of the county court having increased jurisdiction, and before whom the preliminary hearing was commenced, or from the justice to whom it has been transferred on application of the defendant. When the preliminary hearing has been once transferred by one party, it shall, on motion of the party as herein provided, be transferred to the nearest qualified justice of the same county unless the parties agree upon a justice to whom said action shall be transferred. The place of examination can be changed only once by each party under this section. [Laws 1925, ch. 121, § 1.]

Jenson v. Frazer, 21 N. D. 267, 130 N. W. 832.

Criminal Law, 16 C. J. p. 314, §§ 557, 559, pp. 320-321, §§ 569-570, pp. 201-221, §§ 302-339.

Preliminary examination. 8 R. C. L. 104 and Supps.

Change of venue for bias of judge. 27 R. C. L. 817.

§ 8964a. Emergency. By reason of the fact that it is now declared to be necessary to call in a county judge having increased jurisdiction of another county, in case an affidavit for change of venue is filed, this act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval. [Laws 1925, ch. 121, § 2.]

§§ 8965-8969. Comp. Laws, 1913.

Jenson v. Frazer, 21 N. D. 267, 130 N. W. 832.

§ 8970. Clerk of district court ex-officio clerk of county court. In all counties having county courts with increased jurisdiction the clerk of the district court shall be the clerk of the county court in the same county. Such clerks of the district court and their deputies shall perform all the duties of clerks of such courts, in all actions and proceedings commenced in the county courts by virtue of its increased jurisdiction, in the same manner as they are required to perform the duties of clerks of the district court, so far as the provisions of the law relating to that subject are applicable, and may demand, receive and retain the fees provided for clerks of district courts, except as herein otherwise provided, and the fees so paid shall be retained by the clerk of the district court as and for compensation for the services rendered by him as the clerk of such county court; provided, however, that they shall be entitled to receive no per diem for attendance on court, nor salary from the county on account of services performed in said court. The judge of a county court hav-

ing increased jurisdiction in counties having a population of not less than twenty-five thousand, shall have power to appoint a clerk of such court, whose duties and powers shall be as nearly as may be the same as those of the clerks of the district courts. Such clerk shall hold his office during the pleasure of the judge appointing him; and in counties having a population of less than twenty-eight thousand, the salary of such clerk shall be twelve hundred dollars per year, and in counties having a population of more than twenty-eight thousand such clerk shall receive a salary of fifteen hundred dollars per year, such salary to be paid by the county monthly in the same manner as the salaries of other county officers are paid. He shall charge and receive for acts performed by him the same fees and commissions as are now allowed by law to clerks of district courts, except as modified by the provisions of this act. He shall keep a true account of all commissions and fees received by him in a book of record, to be kept for that purpose, and on the first day of each calendar month, shall pay all such fees and commissions to the treasurer of the county. [Laws 1917, ch. 100, § 1.]

Clerks of Courts, 11 C. J. p. 850, §§ 2-3, p. 851, § 5, p. 857, § 20, p. 859, § 26, pp. 862-864, §§ 31-33, pp. 875-876, §§ 45-47, pp. 884-891, §§ 64-85.

Fees of clerks of courts. 5 R. C. L. 623 and Supps.

Powers and duties of clerks of courts. 5 R. C. L. 25 et seq. and Supps.

CHAPTER 10.

TAXATION OF INHERITANCES, DEVISES, BEQUESTS, LEGACIES AND GIFTS.

§§ 8976-9000. Repealed by § 2346b57, ante. See §§ 2346b1-2346b57, ante. The new law is a re-enactment of the old one, and the change in location is made simply to have the inheritance tax laws with the other taxation and revenue laws. The new sections so far as they correspond with the old ones follow.

§ 8976. See § 2346b1, ante.

As to constitutionality of section. *Strauss v. Costello*, 29 N. D. 215, 150 N. W. 874; *Moody v. Hagen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704.

§ 8977. See §§ 2346b2-2346b4, ante.

As to constitutionality of section. *Strauss v. Costello*, 29 N. D. 215, 150 N. W. 874; *Strauss v. State*, 36 N. D. 594, L.R.A.1917E, 909, 162 N. W. 908; *Moody v. Hagen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704.

§ 8978. See § 2346b5, ante.

§ 8980. See §§ 2346b6, 2346b7, ante.

§ 8982. See § 2346b8, ante.

§ 8983. See § 2346b9, ante.

§ 8986. See § 2346b11, ante.

§ 8986. See §§ 2346b13-2346b16, ante.

§ 8987. See § 2346b18, ante.

§ 8988. See § 2346b27, ante.

§ 8989. See § 2346b28, ante.

§ 8990. See §§ 2346b33-2346b37, ante.

§ 8991. See § 2346b30, ante.

§ 8992. See § 2346b31, ante.

§ 8994. See § 2346b32, ante.

§ 8995. See § 2346b39, ante.

§ 8996. See § 2346b42, ante.

§ 8998. See § 2346b50, ante.

§ 8999. See § 2346b4, ante.