

PROCEDURE

CHAPTER 208

H. B. No. 46—(Swendseid.)

APPEALS CIVIL CASES TRIED WITHOUT JURY

An Act to amend and re-enact Section 7846 of the Supplement to the Compiled Laws of 1913, entitled "Appeals in Civil Cases Tried without a Jury"; and providing that the same shall apply to all actions or proceedings triable to the court without a jury, and also in all actions or proceedings properly triable with a jury and a jury trial has been waived and the same are tried to the Court without a jury, by stipulation or otherwise.

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

§ 1. AMENDMENT.] That Section 7846 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 7846. APPEALS IN ALL ACTIONS OR PROCEEDINGS TRIED TO THE COURT WITHOUT A JURY.] On appeal in the supreme court in any action tried by the court, but without a jury, if it appear to the court that any material evidence was excluded, the court may issue a mandate to the trial court to take such evidence without delay and to certify and return it to the supreme court, and all proceedings in the supreme court shall be stayed pending the return of such evidence. A party desiring to appeal from a judgment in any such action, shall cause a statement of the case to be settled within the time and in the manner prescribed by article 8 of Chapter 11 of the Compiled Laws of North Dakota for the year 1913, and shall specify therein the questions of fact that he desires the supreme court to review, and all questions of fact not so specified shall be deemed on appeal to have been properly decided by the trial court. Only such evidence as relates to the questions of fact to be reviewed shall be embodied in this statement. But if the appellant shall specify in the statement that he desires to review the entire case, all the evidence and proceedings shall be embodied in the statement. The supreme court shall try anew the question of fact specified in the statement or in the entire case, if the appellant demands a retrial of the entire case, and shall finally dispose of the same whenever justice can be done without a new trial, and either affirm or modify the judgment or direct a new judgment to be entered in the district court; the supreme court may, however, if it deem such course necessary to the accomplishment of justice, order a new trial of the action. In actions tried under the provisions of this section, failure of the court to make findings upon all the issues in the case shall not constitute a ground for granting a new trial or reversing the judgment; and provided, that the provisions of this Section shall apply to all actions

or proceedings tried to the court without a jury, and in all actions or proceedings which are properly triable with a jury and a jury trial has been waived and the same are tried to the court without a jury.

§ 2. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 6, 1933.

CHAPTER 209

H. B. No. 45.—(Swendseid.)

DEFENSE GARNISHMENT PROCEEDINGS. CLAIM OF EXEMPTIONS

An Act to amend and re-enact Section 7580 of the Compiled Laws of North Dakota for the year 1913 and all amendatory Acts thereof, entitled and relating to when a defendant may defend garnishment proceedings, and providing method for claim of exemptions in garnishment proceedings.

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

§ 1. AMENDMENT.] That Section 7580 of the Compiled Laws of North Dakota for the year 1913, and all amendatory Acts thereof, is hereby amended and re-enacted to read as follows:

§ 7580. DEFENDANT MAY DEFEND GARNISHMENT PROCEEDINGS. CLAIM OF EXEMPTIONS How MADE.] The defendant may in all cases by answer duly verified, to be served within thirty days from the service of the garnishee summons on him, defend the proceedings against the garnishee upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, or for any other reason is not liable to garnishment; or, upon any ground upon which the garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his interests; and, provided, that when the defendant claims that the indebtedness or property, or a part thereof, is exempt from garnishment or from execution, the defendant at or before the time fixed for appearance or answer in the garnishee summons must serve and file with his answer a schedule of all his personal property made and sworn to as provided in Section 7733 Compiled Laws of 1913. And the garnishee may at his option defend the principal action for the defendant, if the latter does not, but shall be under no obligations to do so.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 1, 1933.

CHAPTER 210

S. B. No. 291—(Matthaei.)

FILING GARNISHMENT SUMMONS AND AFFIDAVIT

An Act to amend and re-enact Section 7571a2 of the Supplement to the Compiled Laws of North Dakota, 1913.

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

§ 1. That Section 7571a-2 of the Supplement to the Compiled Laws for North Dakota, 1913 be amended and re-enacted to read as follows:

§ 7571a-2. FILING OF PAPERS.] The garnishment summons and affidavit of garnishment shall be filed in the office of the clerk of court in which the action is commenced at the time of filing of the summons and complaint in the action.

Approved March 6, 1933.

CHAPTER 211

H. B. No. 102—(Flannigan.)

REDEMPTION EXECUTION SALES

An Act to amend and re-enact Section 7758 of the Supplement to the Compiled Laws of the State of North Dakota, 1913.

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

§ 1. AMENDMENT.] That Section 7758 of the Supplement to the Compiled Laws of the State of North Dakota for 1913 be and same is hereby amended and re-enacted to read as follows:

§ 7758. REDEMPTION; FILING OF CERTIFICATE.] In no case shall the debtor be required to pay more to effect a redemption than the purchase price with six per cent interest from the day of sale and all taxes and assessments paid with six per cent interest thereon from the date of payment, notwithstanding the fact that he seeks to redeem from the redemptioner. If the debtor redeems, the effect of the sale is terminated and he is restored to his estate. Upon a redemption by the debtor the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the register of deeds of the county in which the property is situated, and the register of deeds must note the record thereof in the margin of the record of the certificate of sale. In case the debtor redeems from a redemptioner who has, to effect his redemption, paid liens on the property, other than for taxes or assessments, the redemptioner shall be subrogated to all the rights of the former

holders of such liens, and the filing of written notices of such redemptions as required by Section 7756 shall constitute notice of the rights of such redemptioner in and to all the liens so held by him as equitable assignee as fully as if formal written assignments thereof had been recorded. All the statutes relating to redemptions from execution sales shall govern sales on mortgage foreclosure and these provisions shall apply to all sales hereafter made.

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

Approved March 10th, 1933.

CHAPTER 212

S. B. No. 87—(Whitman, by request.)

EXAMINATION JURORS CRIMINAL CASES

An Act to permit examination of jurors by either party before exercising either peremptory challenges or challenges for cause, repealing Section 10800 of the Compiled Laws of 1913, and all Acts and parts of Acts in conflict herewith.

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

§ 1. Either party prior to exercising either peremptory challenges or challenges for cause, may examine the jurors for the purpose of determining whether or not such party desires to exercise a peremptory challenge or challenge for cause.

§ 2. REPEAL.] Repealing Section 10800 of the Compiled Laws of 1913 and all Acts and parts of Acts in conflict herewith.

Approved February 17th, 1933.

CHAPTER 213

H. B. No. 163—(Aljets.)

DENOMINATIONAL PRESUMPTIONS

An Act to amend and re-enact Subdivision 41 of Section 7936, Compiled Laws of 1913, relating to Denominational Presumptions.

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

§ 1. AMENDMENT.] That Subdivision 41, of Section 7936, Compiled Laws of North Dakota for 1913, be and the same hereby is amended and re-enacted to read as follows:

Subdivision 41, § 7936. That the foreign law will be presumed to be the same as the law of the State of North Dakota in the absence of rebutting evidence.

Approved March 1, 1933.

CHAPTER 214**S. B. No. 284—(Fowler and Matthaei.)****UNDERTAKINGS BY MINORS FOR RELEASE ON BAIL**

An Act to make minors capable of binding themselves by undertakings for the purpose of securing their release on bail in criminal cases.

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

§ 1. Minors shall be capable of binding themselves by undertakings for the purpose of securing their release on bail in like manner and with like effect as persons *sui juris*.

Approved March 6th, 1933.

CHAPTER 215**H. B. No. 174—(Falconer.)****EXECUTION OF WARRANT ISSUED BY MAGISTRATE AND JUSTICE OF PEACE**

An Act amending and re-enacting Section 10541 Compiled Laws 1913, providing the manner in which a warrant issued by a Magistrate, other than the Judge of the Supreme Court or District Court, may be executed by any sheriff, constable, marshal, or policeman in the county or judicial subdivision in which it is issued.

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

§ 1. That Section 10541 Compiled Laws 1913 be amended and re-enacted to read as follows:

§ 10541. To WHOM. OTHER MAGISTRATE.] If it is issued by any other magistrate including a Justice of the Peace it may be directed generally to any sheriff, deputy sheriff, marshal, or policeman in the county or judicial subdivision in which it is issued, and may be executed by such sheriff or deputy sheriff in any part of the state; but may be executed by a constable, marshal, or policeman only within the county or political subdivision for which such officer was elected or appointed.

§ 2. EMERGENCY.] An emergency is hereby declared to exist, and this Act shall take effect and be in full force from and after its passage and approval.

Approved March 6, 1933.

CHAPTER 216

S. B. No. 287—(Fowler and Matthaei.)

PROSECUTION INSANE OR MENTALLY DEFICIENT CASES

An Act regulating the practice of courts in the prosecution of insane or mentally deficient persons or persons whose mental capacity is in issue; providing for examinations and hearings to determine their mental conditions; providing for commitment of such persons to the State Hospital for the Insane during such disability, and for the resumption of prosecution after the restoration of mental capacity; providing for the appointment and examination of experts by the court and fixing their fees and repealing Sections 11064 to 11071 inclusive of the Compiled Laws of 1913.

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

§ 1. The provisions of this act shall apply in all criminal cases tried in District Courts or County Courts with increased jurisdiction.

§ 2. EXAMINATION OF DEFENDANT'S MENTAL CONDITION TO DETERMINE WHETHER HE SHALL BE TRIED.] (1) If before or during the trial the court has reasonable ground to believe that the defendant, against whom an indictment has been found or information filed, is insane, or mentally defective, to the extent that he is unable to understand the proceedings against him or to assist in his defense, the court shall immediately fix a time for a hearing to determine the defendant's mental condition. The court may appoint two disinterested qualified experts to examine the defendant with regard to his present mental condition and to testify at the hearing. Other evidence regarding the defendant's mental condition may be introduced at the hearing by either party.

(2) If the court, after the hearing, decides that the defendant is able to understand the proceedings and to assist in his defense it shall proceed with the trial. If, however, it decides that the defendant through insanity or mental deficiency is not able to understand the proceedings or to assist in his defense it shall take proper steps to have the defendant committed to the state hospital for the insane. If thereafter the proper officer of such institution is of the opinion that the defendant is able to understand the proceedings and to assist in his defense, he shall report this fact to the court which conducted the hearing. If the officer so reports, the court shall fix a time for a hearing to determine whether the defendant is able to understand the proceedings and to assist in his defense. This hearing shall be conducted in all respects like the original hearing to determine defendant's mental condition. If after this hearing the court decides that the defendant is able to understand the proceedings against him and to assist in his defense it shall proceed with the trial. If, however, it decides that the defendant is still not able to understand the proceedings against him or to assist in his defense it shall recommit him to the state hospital for the insane.

§ 3. APPOINTMENT OF EXPERT WITNESSES BY COURT.] Whenever on a prosecution by indictment or information the existence of insanity or mental defect on the part of the defendant at the time of the alleged commission of the offense charged becomes an issue in the cause, the court may appoint one or more disinterested qualified experts, not exceeding three, to examine the defendant. If the court does so, the clerk shall notify the prosecuting attorney and counsel for the defendant of such appointment and shall give the names and addresses of the experts so appointed. If the defendant is at large on bail, the court in its discretion may commit him to custody pending the examination of such experts. The appointment of experts by the court shall not preclude the State or defendant from calling expert witnesses to testify at the trial and in case the defendant is committed to custody by the court they shall be permitted to have free access to the defendant for purposes of examination or observation. The experts appointed by the court shall be summoned to testify at the trial and shall be examined by the court and may be examined by the counsel for the State and the defendant.

§ 4. FEES FOR EXPERT WITNESSES.] When expert witnesses are appointed by the court as provided in Sections 2 and 3, they shall be allowed such fees as the court in its discretion deems reasonable, having regard to the service performed by the witnesses. The fees so allowed shall be paid by the county where the indictment was found or the information filed.

§ 5. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 6, 1933.

CHAPTER 217

S. B. No. 141—(Whitman, by request.)

ATTENDANCE WITNESSES WITHIN AND WITHOUT THIS STATE

An Act to secure the attendance of witnesses from without the state and to provide for the attendance without the state of witnesses residing within this state, in criminal cases and providing for the exemption of such witnesses, while in attendance, from arrest and service of process.

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

**§ 1. SUMMONING WITNESS IN THIS STATE TO TESTIFY IN
ANOTHER STATE.]** If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in criminal prosecution in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, that a person being within this

state is a material witness in such prosecution, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall notify the witness of such time and place.

If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution in the other state, and that the laws of the state in which the prosecution is pending and of any other state through which the witness may be required to pass by ordinary course of travel will give him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending at a time and place specified in the summons.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

§ 2. WITNESS FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE.] If a person in any state, which by its laws has made provisions for commanding persons within its borders to attend and testify in criminal prosecutions in this state, is a material witness in a prosecution pending in a court of record in this state, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in the criminal prosecution in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate.

§ 3. EXEMPTION FROM ARREST AND SERVICE OF PROCESS.] If a person comes into this state in obedience to a summons directing him to attend and testify in a criminal prosecution in this state he shall not while in this state pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection

with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in a criminal prosecution in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

§ 4. UNIFORMITY OF INTERPRETATION.] This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§ 5. SHORT TITLE.] This Act may be cited as "Uniform Act to Secure the Attendance of Witnesses from without the State in Criminal Cases."

§ 6. INCONSISTENT LAWS REPEALED.] All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Approved March 3, 1933.

CHAPTER 218

S. B. No. 215—(Bangert, by request.)

INVESTIGATION CLAIMS, ETC. ESTATES OF DECEASED PERSONS

An Act to amend and re-enact Sections 8544a12 and 8544a13 of the Supplement to the Compiled Laws of the State of North Dakota for 1913, relating to investigation of claims, hearing and allowance of claims in connection with estates of deceased persons, and to the registration of claims against estates of deceased persons, and waiving notice.

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

§ 1. AMENDMENT.] That Section 8544a12 of the Supplement to the Compiled Laws of the State of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 8544a12. INVESTIGATION OF CLAIMS, 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 if he disallows the same, in whole or in part, he must notify the claimant of such disapproval, by registered mail, addressed to said claimant, or by personally serving a copy of said notice upon said claimant, said notice to be served as now provided for service of a citation, at least five days before the day set for adjustment of claims, and file such claim, with proof of such notice of disapproval, if any, and proof of

service, with the county judge on or before the day set for adjustment of 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 limit 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 setoff to the claims of creditors, and the court shall ascertain and allow the balance, if any, against the estate; but no claim barred by the statutes of limitation at the time of the death of the deceased shall be allowed by the court, either in favor of or against the estate, as setoff or otherwise.

§ 2. AMENDMENT.] That Section 8544a13 of the Supplement to the Compiled Laws of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 8544a13. CLAIMS ALLOWED ENTERED IN REGISTER: NOTICE OF REJECTION: WAIVER BY APPEARANCE.] 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 claim shall be ranked among the acknowledged debts of the estate to be paid in the 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; provided, that if the claimant, his attorney or agent, appear at such hearing, and the adjudication of such rejection be then and there announced, no further notice need be given. A brief description of every claim filed must be entered by the judge in a register for that purpose, showing the name of the claimant, the amount and character of the claim, rate of interest, and the date of allowance.

Approved March 3, 1933.

CHAPTER 219

H. B. No. 34—(Jones, by request.)

DISPOSITION SMALL ESTATE

An Act providing for the disposition of estates of less than \$300.00 which are under the jurisdiction of the Public Administrator.

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

That whenever a person dies in North Dakota leaving property of the value of \$300.00 or less, and there does not appear to be any relatives or heirs, the Public Administrator is hereby empowered to take such decedent's property into his possession in the manner now provided by law, and after so doing shall publish one notice in a newspaper published in the County where such property shall be located; which notice shall be entitled in the County Court of said County and shall state the facts as nearly as may be, and further stating that on a day certain not less than ten nor more than thirty days after such publication, exclusive of the date of publication, any heir or legally interested party may appear and claim such property; provided that if no one shall appear on said return date or make any claim, the County Court shall issue an order directing the Public Administrator to sell the property so taken by him, and belonging to such decedent, at public or private sale after publishing one notice of such sale five days before said sale, and to apply the proceeds of such sale; first, costs of administration, and thereafter in the order now provided for by law, any balance then left remaining shall be paid into the County General Fund. Provided that such notice of sale shall also state that any creditors of such decedent shall present and file their claims against said decedent with the County Judge within sixty days after date of publication of said notice and that there will be a hearing on claims on a day not less than seventy days nor more than ninety days from the date of such publication, any claim not presented as herein specified shall not be allowed or paid. Provided that out of such moneys, if any, the Public Administrator shall be paid for his services ten per cent of the sale price and in no event exceeding the sum of \$25.00, provided further that the Public Administrator shall not be allowed any charge for attorney's fees for himself or anyone employed by him in such proceeding.

Provided that if some heir or person legally entitled to said property does make a claim to the same, he shall first pay the expenses then incurred and \$5.00 for the services of the Public Administrator, and thereupon the Public Administrator shall turn over to him such property; providing, however, that such claimant or heirs must provide for the burial of the decedent, and payment of the expense thereof, and expense of last illness.

If the Public Administrator shall not have enough money to pay all debts after expenses of administration, last sickness, and fu-

neral have been paid, he shall pro-rate the balance among all claims filed against said decedent in said proceedings, after which upon his filing a final account and report he shall be discharged as to said estate.

All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 3, 1933.

PUBLIC UTILITIES

CHAPTER 220

S. B. No. 171—(Bonzer and Bangert.)

REDUCTION PUBLIC UTILITY RATES

An Act authorizing patrons and users to petition for reduction of public utility rate, authorizing negotiations touching such rates, providing for summary reduction of the same, relating to hearings and investigations; and relating to revaluation of property of public utility companies and corporations by the Board of Railroad Commissioners; relating to payment of expenses of such hearings, investigations, and revaluations and the method of assessing and collecting the same; and repealing all Acts or parts of Acts in conflict herewith.

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

§ 1. JURISDICTION AND POWERS.] In addition to the powers which they already possess, the Board of Railroad Commissioners of the State of North Dakota is hereby vested with power and jurisdiction to supervise, regulate, and determine rates of all associations, firms, corporations, persons, and agencies which are now or which may hereafter be engaged in the business usually conducted by telephone and telegraph companies; pipe line companies for the transportation of gas, oil, and water; electric light companies and individuals engaged in generating, distributing, and selling light, heat, or power; companies engaged in generating, distributing, and selling gas, natural or artificial; and all heating companies for the distribution of heat, whether incorporated or not, within the state; and to do things necessary and convenient in the exercise of such powers and jurisdiction, and to enforce their orders.

§ 2. PETITIONS FOR REDUCED RATES. SUMMARY REDUCTION.] Whenever twenty-five per cent of the public utility company or corporation patrons or users, within the incorporated limits of any city, village, or town, shall petition the Board of Railroad Commissioners for a revaluation of the property of such public utility company or corporation for the purpose of determining the rate or rates to be charged for the service rendered, said Board of Railroad Commissioners shall forthwith endeavor to arrive at a reasonable rate or rates, through negotiations with said utility company or corporation, and in the event they are unable to agree upon the new rate or rates