
PROCEDURE

CHAPTER 211

S. B. No. 185—(Streibel and Kehoe)
(Senate Interim Committee)

BENEFICIARIES OF ANOTHER PERSON'S DISPOSITION OF PROPERTY

An Act providing for the disposition of property where there is no sufficient evidence that persons having died otherwise than simultaneously, and to make uniform the law with reference thereto.

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

§ 1. NO SUFFICIENT EVIDENCE OF SURVIVORSHIP.] Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of such person shall be disposed of as if he had survived, except as provided otherwise in this act.

§ 2. BENEFICIARIES OF ANOTHER PERSON'S DISPOSITION OF PROPERTY.] Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

§ 3. JOINT TENANTS OR TENANTS BY THE ENTIRETY.] Where there is no sufficient evidence that two joint tenants or tenants by entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

§ 4. INSURANCE POLICIES.] Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

§ 5. ACT NOT RETROACTIVE.] This act shall not apply to the

distribution of the property of a person who has died before it takes effect.

§ 6. ACT DOES NOT APPLY IF DECEDENT PROVIDES OTHERWISE.] This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this act.

Approved March 17, 1943.

CHAPTER 212

S. B. No. 156—(Streibel and Kehoe)
Members of Interim Committee

DISTRICT COURT TO ACT AS JUVENILE COURT

An Act Relating to the Juvenile Court and the Protection, Control, and Custody of Children; and amending and re-enacting Chapter 23 of the Code of Criminal Procedure, consisting of Sections 11402 to 11427, inclusive, of the Compiled Laws of North Dakota of 1913; Sections 11412a, 11428a1, 11428a2, 11428a3, 11428a4 and 11428a5 of the Supplement to the 1913 Compiled Laws of North Dakota; and Chapter 113 of the Laws of 1929.

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

§ 1. DISTRICT COURT TO ACT AS JUVENILE COURT.] The district courts of the several counties of this State shall have original jurisdiction in all cases coming within the provisions of this chapter. The court for convenience shall be called "The Juvenile Court". As far as possible, said court shall be held at chambers.

§ 2. JUVENILE COMMISSIONERS; APPOINTMENT; POWERS. The judges of each judicial district may appoint not more than two suitable and discreet persons of good moral character as juvenile commissioners for each county of the judicial district, provided, however, that the number of said juvenile commissioners so appointed shall be based upon the need therefor as determined by the judges of each judicial district. Each juvenile commissioner so appointed shall have the same powers generally conferred upon referees as provided by Sections 7645-7651, inclusive, of the Compiled Laws of North Dakota for the year 1913; and shall also have power to:

- (1) Administer oaths;
- (2) Take acknowledgments of instruments for the purpose of this act;

- (3) Receive complaints and have warrants issued within the provisions of this act;
- (4) Examine fully into the merits of each case;
- (5) Issue summons and subpoenas for hearings within the provisions of this act; said hearings may be held at any place within the county where the proceeding is commenced.
- (6) Compel the attendance of witnesses before him and report any witness or witnesses to one of the judges of the judicial district for non-attendance or refusal to be sworn or testify as provided by Section 8200 of the Compiled Laws of North Dakota for the year 1913.
- (7) Make such temporary order for the custody and control of the child as he may deem proper.

§ 3. JUVENILE COMMISSIONERS'; COMPENSATION.] Each juvenile commissioner shall receive as full compensation for his services such amount as may be fixed and approved by one of the judges of the judicial district, either upon a per diem basis of the time actually and necessarily employed in the duties of his office, or upon a salary basis. In no event, however, shall the amount paid exceed \$200.00 in any one month nor more than \$8.00 per day, if paid on a per diem basis. Such commissioner shall also be paid mileage and expenses for trips made for investigation or to conduct hearings within the judicial district and away from the place where such commissioner maintains his office. Mileage shall be at the rate fixed by law for county officials. The salary or per diem and expenses shall be paid by the county or shall be equitably apportioned among the several counties of the judicial district by the judge or judges thereof. Such compensation shall be paid monthly by the county treasurers of such counties, respectively, on bills duly made out and verified as other bills and accounts against the county, and upon the order of one of the judges of the judicial district;

Provided, however, that in a judicial district having not less than two cities with a population in excess of 20,000 each, as determined by the last federal census, and employing not more than two juvenile commissioners for said judicial district, the judges of said judicial district may fix a maximum salary, which shall not exceed \$250.00 in any one month, for either or both of said juvenile commissioners; and provided, further, that, in such judicial district, the judges thereof may provide for the employment of a reporter or assistant at a monthly compensation not to exceed \$150.00 in any one month, the amount thereof to be dependent upon the amount and nature of the work performed by such reporter or assistant.

§ 4. REPORT OF JUVENILE COMMISSIONER.] Each juvenile commissioner from time to time and at least every two years, shall

furnish reports of the administration of his office to the judges of the judicial district, copies of such reports to be sent to the Children's Bureau of the State. Such reports shall contain all information and statistical details required by the judges of the judicial district.

§ 5. RECORDS OF COMMISSIONER; SUPPLIES FURNISHED BY COUNTY.] Each juvenile commissioner shall keep a record of all his proceedings in a suitable docket kept for that purpose. All necessary books, blanks, place for transacting official business, stationery, postage, telephone and necessary office expense for the use of each juvenile commissioner shall be furnished by the county for which he is appointed or by the several counties of the judicial district where the appointment is for more than one county. Said expenses to be paid as provided in Section 3 of this act.

§ 6. CLERK OF JUVENILE COURT; RECORDS; CONFIDENTIAL.] The clerk of the district court shall be the clerk of the juvenile court. He shall file all papers, including the findings and final orders in proceedings had under this chapter and shall note the date of such filing on the papers. Final orders shall be entered in a book known as the "JUVENILE COURT RECORD", which book shall be kept exclusively for that purpose. The records and papers shall be subject to examination by said clerk, the judges of the court and the juvenile commissioner. Others may examine such records and papers only upon the written order of one of the judges of the court.

§ 7. DEFINITIONS.] The following words and phrases as used in this chapter shall, unless the subject matter otherwise requires, be construed as follows:

- (1) "The court" means the juvenile court.
- (2) "The judge" means one of the judges of the juvenile court.
- (3) "Child" means a person less than eighteen years of age.
- (4) "Adult" means a person eighteen years of age or older, except as may be otherwise provided in this chapter.
- (5) The singular includes the plural, the plural the singular, and the masculine the feminine when consistent with the intent of the chapter.

§ 8. JURISDICTION.] Except as herein provided, the courts shall have original jurisdiction in all proceedings:

- (1) Concerning any child residing in or who is temporarily within the county:
 - a. Who has violated any city or village ordinance or law of this state or of the United States;
 - b. Who has deserted his home without sufficient cause or who is habitually disobedient to the reasonable and

- lawful commands of his parents, guardians or other custodians;
- c. Who habitually associates with dissolute, vicious, or immoral persons, or who is leading an immoral or vicious life;
 - d. Who, being required by law to attend school, willfully and habitually absents himself therefrom, who habitually violates the rules and regulations thereof;
 - e. Whose parent or other person legally responsible for the care and maintenance of such child neglects or refuses when able so to do, to provide proper or necessary support, education as required by law, medical, surgical or other care necessary for his health, morals, or well-being, or who is abandoned by his parents, guardian, or other custodian, or who is otherwise without proper custody or guardianship;
 - f. Whose home, by reason of neglect, cruelty, drunkenness, or depravity on the part of the parent or person having the custody or control of such child, is an unfit place for such child to live;
 - g. Who engages in an occupation or is in a situation dangerous or injurious to the health, safety, or morals of himself or others.
- (2) Concerning any person under twenty-one years of age residing within the county charged with having violated any city or village ordinance or law of this State or of the United States prior to having become eighteen years of age;
 - (3) Concurrent jurisdiction with the district court, county court with increased jurisdiction, justice or police magistrate court, over any person between the ages of eighteen and twenty-one years residing within the county charged with having violated any city or village ordinance or any law of this State or of the United States.
 - (4) Concurrent jurisdiction for the care or commitment to the State School at Grafton of any mentally defective or mentally disordered child as provided by Chapter 128 of the Session Laws of North Dakota for the year 1939.

§ 9. CHILD ARRESTED; TRANSFERRED FROM JUSTICE; POLICE MAGISTRATE OR COUNTY COURT OF INCREASED JURISDICTION.] If any child is arrested with or without a warrant, such child instead of being taken before the justice, police magistrate, or county court of increased jurisdiction shall be taken immediately to the Juvenile Court where all proceedings with reference to said child shall be conducted as provided by this chapter.

§ 10. CHILDREN WARDS OF THE STATE.] All children within the provisions of this chapter, for the purposes of this chapter only, shall be considered "wards of the State" and their persons shall be subject to the care, guardianship, and control of the court as hereinafter provided. At the discretion of the court, such care, guardianship, and control may be continued until the ward shall have attained the age of twenty-one years. The provisions of this chapter shall not change the age of minority for any purpose other than that of awarding the custody of the child.

§ 11. INFORMATION GIVEN TO THE COURT; INVESTIGATION.] Any person having information that a child comes within the jurisdiction of the juvenile court as defined by Section 7 of this chapter, may give such information to one of the judges of the judicial district or to a juvenile commissioner. Such judge or juvenile commissioner shall make a preliminary inquiry to determine whether the interests of the child or of the public require that further action be taken. When practicable such inquiries shall include:

- (1) Preliminary investigation of the home and environment of the child; and
- (2) The history, facts, and circumstance of the condition alleged or of the misconduct complained of.

§ 12. FURTHER INVESTIGATION; PETITION.] If, from the preliminary inquiry made by such judge or juvenile commissioner, it appears that it is for the best interests of the child and of the State that a further investigation be had, a petition, which may be made by any person having knowledge of the facts, including the juvenile commissioner, may be filed on order of the court. Such petitions shall be entitled "In The Matter of-----, a child under the age of eighteen years" and shall set forth:

- (1) The particular facts, circumstance, and conditions which bring the child within the provisions of this chapter;
- (2) The name, age and residence of the child;
- (3) The names and residences of the parents of the child, if living;
- (4) The names and residences of the person or persons having custody and control of the child if he is not in the custody of his parents;
- (5) The name and residence of the guardian appointed by legal authority, if there is one;
- (6) The name and residence of the nearest known relative of the child, if no parent or guardian can be found.

If any of the facts herein required are not known or can not be ascertained by the petitioners, the petition shall so state. The petitions

shall be verified by the petitioner and such verification may be upon information and belief of the affiant. Such petitions shall be filed with the clerk of such court only upon the order of one of the judges of such court endorsed thereon.

§ 13. WAIVER OF JURISDICTION.] When any child, fourteen years of age or older, is charged with commission of an offense, a judge of this court may, in his discretion, permit such child to be proceeded against in accordance with the laws or ordinances that may be in force governing such offense.

§ 14. SUMMONS; NOTICE; CUSTODY OF CHILD.] After a petition shall have been filed and after such further investigation as the court may direct, unless the parties hereafter named shall voluntarily appear, the court or juvenile commissioner shall issue a summons, reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. If the person so summoned shall be other than the parent or guardian of the child, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

If it appears that it is for the best interests and the welfare of the child, the judge or the juvenile commissioner may endorse an order upon said summons directing the officer serving the same to take the child from his parents, guardian, or custodian and place him in a place directed in such order to await the return time of the summons.

Or if the judge or juvenile commissioner, upon showing made, is convinced that such summons will be ineffectual to procure the attendance of a child, he may require the petitioners or other interested person to make and file an affidavit setting forth the reasons therefor. Upon filing such affidavit with the clerk of this court, such clerk shall issue a warrant directing the sheriff or other peace officer to arrest the child and bring him before the court forthwith or to hold him in such place as the warrant may direct to await the time of hearing.

§ 15. SERVICE OF SUMMONS; TRAVEL EXPENSE.] Personal service of summons shall be made upon the parents, guardian or custodian in the same manner provided by the code of civil procedure for personal service of summons. If the judge of such court shall determine that personal service within the county is impractical or impossible, he may order service by registered mail to the last known address, or by publication thereof, as such judge may direct. Service of such summons one day before the return time

thereof, or one publication, shall be sufficient to confer jurisdiction upon the court.

Service of summons may be made by any officer authorized by the code of civil procedure or by any suitable person authorized by one of the judges of the judicial district or by a juvenile commissioner. Such service shall be evidenced by the return of the officer or the affidavit of service of the person appointed to serve the same.

The judge of such court may, in all instances where it may be necessary, authorize payment of necessary traveling expense including witness' fees, when demanded by any such person not a parent, guardian or custodian, which have been incurred by any person summoned or otherwise required to appear at any hearing within the provisions of this chapter. Such expense, when approved by the judge, shall be paid by the county in the manner provided in Section 3 of this act.

§ 16. FAILURE TO COMPLY WITH SUMMONS OR ORDER.] Any person who fails to comply with the summons, or order, or who is otherwise required to appear before the court, may be proceeded against as for civil contempt.

§ 17. WHO MAY APPEAR AT HEARING.] At any hearing held under the provision of this chapter, any parent, guardian, custodian or other person having an interest in such proceeding may appear and be heard upon the merits of the case.

§ 18. HEARINGS.] On any hearing within the provision of this chapter, the court may receive the report of the juvenile commissioner, made orally or in writing, of testimony taken before him. Such report may be received in evidence and be considered by the court with such other evidence that may be presented at the hearing. Provided, that if the testimony taken by the juvenile commissioner has been taken under oath by a competent reporter it shall be unnecessary to have such testimony given by the same witness at such hearing. The Court may conduct the hearing in an informal manner. Such hearings shall be reported as in civil cases. The general public shall be excluded and only such persons admitted as have a direct interest in the case. The Court shall hear and determine all cases without a jury.

§ 19. HEARINGS CONTINUED; WHERE CHILD PLACED.] At any time pending the final disposition of a proceeding under the provisions of this chapter, the juvenile court may continue the hearing from time to time and may:

- (1) Allow the child to remain in possession of its custodian, or in its own home, subject to the friendly visitation of a juvenile commissioner or to report to the court at such time as the court may require;

- (2) Order the child to be placed in the custody of a juvenile commissioner or in the custody of any suitable person appointed by the court; or
- (3) Order the child to be kept in some suitable place provided by the city or county authorities.

§ 20. PROCEEDING PENDING UNTIL FINAL DISPOSITION.] Any proceeding commenced under the provisions of this chapter shall be deemed pending from the time the judge of such court shall endorse his order for hearing upon the petition and until such judge or his successor shall order the same closed or until the child shall have attained his twenty-first birthday. All orders made by the judges of such court, either for commitment of the child to any State institution, except the State Training School, or otherwise shall be subject to change by such judge or his successor either upon further hearing or upon the motion of the court.

§ 21. DECREE.] If the court shall find that the child is within the provisions of this chapter, it shall so decree and may, by order duly entered, proceed as follows:

- (1) Place the child under supervision in his own home or in the custody of a relative or other proper person, upon such terms as the court shall determine;
- (2) Commit the child to a suitable public institution or agency or to any private institution or agency for the care of children approved and licensed by the duly authorized State Board, or place such child in a suitable private home;
- (3) Order such further care and treatment as the court may deem to be for the best interests of the child, except as herein otherwise provided.

No adjudication upon the status of any child within the jurisdiction of this court shall operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment, or application. Whenever the courts shall commit a child to any institution or agency, it shall transmit with the order of commitment, a summary of all of its information concerning such child.

§ 22. RELIGIOUS BELIEF.] Any child placed by such court under the provision of this chapter shall be placed with a family or institution holding or representing the same religious faith as that of parents of said child.

§ 23. SUPPORT OF CHILDREN.] When it shall appear, upon the hearing in any proceeding under the provisions of this chapter, that any person, named in the petition, who is legally liable for the support of such child, is able to contribute to the support of such child, the juvenile court shall enter its order requiring such person to pay to the person appointed or to the institution to which such child may be committed, other than the State Training School, a reasonable sum for such support. The court may, from time to time, make such alteration in the allowance as shall appear reasonable and proper. Should the court find that such person can not contribute to the support of the child, it shall then make an order directing payment for support to be made by the county.

§ 24. ORDER RELATING TO SUPPORT; HOW PAID; HOW ENFORCED.] If the person ordered to pay for the support, maintenance, or education of a child is employed for wages, salary, or commission, the juvenile court may also order that the sum to be paid by such person shall be paid to the guardian or institution out of his wages, salary, or commission, and such person shall execute an assignment thereof pro tanto. The court also may order such person so ordered to pay for the support maintenance, or education of any child, to make discovery, from time to time to the court as to his place of employment, and the amount earned by him. Failure to obey such order or orders shall subject such person to be punished as for civil contempt.

§ 25. COURT TO APPOINT GUARDIAN AD LITEM, WHEN.] In any proceeding brought under the provisions of this Chapter, the Court, in any case where the child is not represented by any person, may appoint a guardian ad litem to appear and act on behalf of said child.

§ 26. GUARDIAN AD LITEM, POWERS THEREOF.] A guardian ad litem appointed by the juvenile court may take such other action as may be deemed best for the interests of such ward under the supervision of the court.

§ 27. WHEN CHILD TAKEN FROM PARENTS.] The parent of a child may be found to be unfit by the court for any of the following reasons:

- (1) Depravity;
- (2) Open and notorious adultery or fornication;
- (3) Habitual drunkenness for a period of one year prior to the date of the hearing in juvenile court;
- (4) Extreme and repeated cruelty to the child;
- (5) Abandonment of the child; or
- (6) Desertion of the child for more than six months prior to the date of the hearing in a juvenile court.

- (7) Wilful neglect of child; or
- (8) The parent found to be guilty of contributing to the delinquency of the child.

§ 28. DUTY OF STATE'S ATTORNEY.] It shall be the duty of the State's Attorney of any county to aid the court and the juvenile commissioner in carrying out the provisions of this act.

§ 29. CARE OF CHILD.] When the health or physical condition of any child under the jurisdiction of this court requires medical or surgical care, the court may, by order, have such child placed in a public or private hospital or institution for treatment or special care, subject, however, to the supervision and further order of the court. Expense of such care and treatment shall be paid in the same manner as provided in Section 23 and 24 of this chapter.

§ 30. CONTEMPT OF COURT.] Any person who interferes with the direction or disposition of any child under any order of the juvenile court, or with any juvenile commissioner or other officer of the court in carrying out the directions of the court under such order, shall be subject to be cited for civil contempt and to be punished therefor.

§ 31. PUBLICATION OF NAME OF CHILD.] No publication of the name of any child under the jurisdiction of this court shall be made by any newspaper except as contained in process of the court and published by order of the court. Any violation of the provisions of this section shall subject the news reporter and publisher of any newspaper so violating the same to be cited for civil contempt and to be punished therefor.

§ 32. APPEALS.] Any order made by this court may be reviewed or appealed in the manner provided for the review of civil cases.

§ 33. APPOINTMENT OF JUVENILE OFFICERS.] The judges of the judicial district may appoint juvenile officers to assist in carrying out the provisions of this chapter, and may require any child under the jurisdiction of this court to report regularly to such juvenile officer. A juvenile officer shall receive no compensation, provided, however, that any judge of this court may authorize payment of reasonable expense incurred under the direction of such judge by such juvenile officer.

§ 34. REPEAL.] All acts and parts of Acts in conflict with the provisions of this chapter are hereby repealed.

Approved March 19, 1943.

CHAPTER 213

S. B. No. 157—(Rue and Kehoe)

ESTATES, JOINT TENANCY

An Act to amend and re-enact Chapter 190 of the Laws of North Dakota for the year 1929, providing that the execution of a specified certificate and the recording thereof, shall constitute prima facie evidence of the termination of the estate held by a deceased person, under an estate in joint tenancy; providing for the recording of such certificate; providing for the transfer by an owner to himself and others in joint tenancy with right of survivorship and declaring valid transfers heretofore made by owner to himself and others in joint tenancy with right of survivorship, and declaring an emergency.

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

§ 1. That Chapter 190 of the Laws of North Dakota for the year 1929 is hereby amended and re-enacted to read as follows:

In all cases of joint tenancy in lands, and in all cases where any estate, title or interest in, or lien upon, lands, has been or may be, created, which estate, title or interest or lien was, or is, to continue only during the life of any person named or described in the instrument by which such estate, title, interest or lien was created, a copy of the record of the death of any joint tenant, or of the person upon whose life such estate, title, interest or lien was or is limited, duly certified by any officer who is required by the laws of the state or county in which such record is made, to keep a record of the death of persons occurring within the jurisdiction of such officer, may be recorded in the office of the register of deeds of the county in which such lands are situated, and such certified copy or such record thereof in said office or a duly certified copy of such last mentioned record shall be prima facie evidence of the death of such person and the termination of such joint tenancy and of all such estate, title, interest and lien as was or is limited upon the life of such person.

§ 2. It shall be lawful for any person, firm or corporation owning a legal or equitable title to or interest in any real property in the State of North Dakota to sell, transfer and convey the same to himself, herself or such firm or corporation and any other person or persons, firm or firms, corporation or corporations, including the spouse or spouses of said grantor or grantors in joint tenancy with right of survivorship without the necessity of any transfer or conveyance to or through any third person.

§ 3. Any transfer of any legal or equitable title to or interest in any real property in the State of North Dakota heretofore made by any person, firm or corporation to himself, herself, or such

firm or corporation and any other person or persons, firm or firms, corporation or corporations, including the spouse or spouses of said grantor or grantors in joint tenancy with right of survivorship is hereby declared legal and valid.

§ 4. This act is hereby declared to be an emergency measure and shall be in full force and effect from and after the date of its passage and approval.

Approved March 5, 1943.

CHAPTER 214

H. B. No. 38—(Shure, Myers, Boulden, and Schnell)

HOMESTEAD EXEMPTIONS

An Act to amend and re-enact Section 5631 and 5632 of the Compiled Laws of North Dakota for the year 1913, as amended by Chapter 236 of the Session Laws of 1941, relating to homestead estate, its exemption from debts and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 5631 of the Compiled Laws of North Dakota for 1913, as amended by Chapter 236 of the Session Laws of North Dakota for 1941 be amended and re-enacted to read as follows:

5631. ESTATE DESCENDS EXEMPT. EXCEPTION.] The real property subjected to such homestead estate shall, subject to the full satisfaction of such estate, descend exempt from decedent's debts except as provided in Section 5607 and be distributed in the same manner as real property not subjected to a homestead estate, or as directed in the decedent's will; provided, that in no case shall the real property constituting the homestead of a decedent, or any part thereof, descend or be distributed to any person other than the surviving husband or wife and decedent's heirs in the direct descending line as prescribed in Chapter 53 until all the decedent's debts are fully paid.

§ 2. RE-ENACTMENT.] That Section 5632 of the Compiled Laws of North Dakota for 1913, be re-enacted to read as follows:

5632. MAY BE DEVISED SUBJECT TO HOMESTEAD ESTATE.] Subject to the homestead estate as defined by law and the payment of decedent's debts, the homestead may be devised to persons other

than those mentioned in Section 563I like other real property of the testator.

§ 3. REPEAL.] That all acts or parts of acts in conflict herewith are hereby repealed.

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

Approved February 16, 1943.

CHAPTER 215

H. B. No. 105—(Ohnstad and Pyle)

JUDGMENTS IN JUSTICE COURT

An Act to amend and re-enact Section 9115 of the Compiled Laws of North Dakota for 1913, relating to the issuance of executions on judgments in Justice Court.

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

§ 1. That Section 9115 of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 9115. EXECUTION, WHEN ISSUED.] The judgment of a justice's court is enforced by process of execution. When the process is not stayed or suspended by any provision of this code, execution may issue at any time within five years after entry of judgment, but not afterwards, on application of the party in whose favor it was rendered or his legal representative to the justice who entered the same, or his successor in office, or other justice who has custody of the docket, provided that if the docket in which any judgment is entered is not in the custody of any justice and is in custody of the Clerk of the District Court as provided by law, execution may be issued on judgments in such docket by any justice of the county, who shall make the appropriate entries on the docket in the clerk's custody.

Approved March 6, 1943.

CHAPTER 216

S. B. No. 188—(Streibel and Kehoe)
Senate Interim Committee

REGULATE PRACTICE IN DIST. COURTS & COUNTY
COURTS OF INCREASED JURISDICTION

An Act to Regulate the Practice in the District Courts and County Courts of Increased Jurisdiction, to Provide for Conferences in Advance of Trial, and the Simplification of issues and other purposes; and Giving the Judge Power to make Orders in Connection with such Conferences.

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

§ 1. In any action, a judge of the district court or of a county court of increased jurisdiction, in his discretion, may direct the attorneys for the parties to appear before him for a conference in advance of trial to consider:

- (a) The simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary foundation proof and the expense and trouble of securing the same;
- (d) In personal injury cases, the arrangement for physical examination of either the plaintiff or defendant if required, a stipulation of maps or charts of the location involved and such other facts as measurements, widths of streets, distances, dates, time and weather conditions;
- (e) The limitation of the number of expert and character witnesses known to or contemplated by the litigants at the time of the conference;
- (f) The disposal of all preliminary motions including that for continuance.

§ 2. Following the conference and preceding the trial of the case therein involved, the judge presiding shall make his order, reciting the action taken at the conference as to any of the matters mentioned in subdivisions (a) to (f) inclusive in the preceding section and such order shall control the subsequent course of the action unless the ends of justice require its modification.

§ 3. It shall be the privilege of any party to a civil case to petition the court for a pre-trial conference at any time after issue as joined. The petition therefor shall briefly state the reasons upon which the same is based. Such case shall thereupon be placed on the pre-trial conference calendar in the county of the venue of the

action. A copy of such petition and a notice of the time of such pre-trial conference shall be served upon the counsel of the opposing party at least ten days before the pre-trial conference.

- § 4. The pre-trial conference judge shall have authority:
- (a) To hear and decide any objections or motions regarding the pleadings;
 - (b) Upon motion of either party, to render judgment on the stipulation of the parties, or on the pleadings if the complaint does not state a cause of action or if the defense is sham or not sustainable;
 - (c) Upon failure of the counsel for the plaintiff to appear, to grant a dismissal or non-suit on motion of counsel for the defendant;
 - (d) Upon failure of the counsel for the defendant to appear, to proceed with the conference within the limitations specified in section one of this act.

Approved March 12, 1943.

CHAPTER 217

H. B. No. 140—(Graham)

REQUIREMENTS FOR DISSOLUTION OF MARRIAGE

An Act to amend and re-enact Section 4398, of the 1925 Supplement relating to the residence requirements for dissolution of marriage and declaring an emergency.

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

§ I. AMENDMENT.] That Section 4398, of the 1925 Supplement be and the same is hereby amended and re-enacted to read as follows:

§ 4398. TERM OF RESIDENCE.] A divorce must not be granted unless the plaintiff has in good faith been a resident of the state for twelve months next preceding the commencement of the action, and is either a citizen of the United States or has declared his intention to do so, or who is a citizen of the Phillipine Islands or Puer-to-Rico and who under present law is ineligible to become a citizen of the United States, or is an Indian. Provided, however, that where the defendant is an Indian a copy of the Summons and Complaint of such divorce action shall be served upon the superintendent of

the reservation on which the defendant resides in like manner as upon the defendant.

§ 2. EMERGENCY.] Whereas, an emergency exists in that actions were started by certain persons who were under misapprehension as to their status, and in order that they may proceed with their actions, therefore, this Act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1943.

CHAPTER 218

S. B. No. 204—(Streibel and Kehoe)
By Permission of the Delayed Bills Committee

TRUSTS, UNIFORM ADMINISTRATION ACT, AMENDMENT

An Act to amend and reenact section 21 of Chapter 250 of the Session Laws of 1935.

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

§ 1. That Section 21 of Chapter 250 of the Session Laws of 1935 be and the same is hereby amended and reenacted to read as follows:

"a" APPEALS. Any trustee, beneficiary, or person interested in such trust, feeling aggrieved by any order of the district court made in such proceedings may appeal from the same or any part thereof to the supreme court within six months after the filing of such order with the clerk of the district court. Such appeal shall be taken in the manner, and upon the record and notice provided by the terms of this chapter, and a single appeal may include any number of orders made appealable by this section.

"b" APPEAL. HOW TAKEN. Within the time prescribed by this chapter, any interested person may take an appeal to the supreme court from any order or orders entered by the district court, by the service of notice of appeal and filing the same with return or affidavit of service or admission thereof, together with a bond for costs in the sum of two hundred and fifty dollars, (\$250), with the clerk of the district court. The bond for costs shall be executed by the appellant, with the sureties to be approved by the clerk of the district court, and conditioned to the effect that the appellant will pay to the parties entitled thereto all costs that may be awarded against the appellant upon such appeal.

"c" STATE OF PROCEEDINGS.] Upon the perfecting of an appeal in the manner herein prescribed, no further proceedings under the order or orders appealed from may be taken, pending the appeal, unless the district court or supreme court may direct otherwise upon hearing, and upon such notice thereof as the court by order may prescribe. The court may prescribe the terms and conditions of a supersedeas bond, deposit, or other act in lieu thereof. Otherwise no bond shall be required, except the cost bond in the sum of two hundred and fifty dollars, (\$250), to stay all proceedings from the date of the filing of the notice of appeal together with the undertaking on appeal and the service thereof.

"d" NOTICE OF APPEAL. The notice of appeal shall specify the order, or orders, or parts thereof, from which the appeal is taken, and shall be subscribed by the party taking the appeal, as appellant, or by his attorney. Such notice shall be served on each of the other parties, or their attorneys, who shall have appeared at the hearing or hearings at which the order or orders from which appeal is taken shall have been entered, and such parties shall be named in the notice as respondents. Service of the notice of appeal may be made personally upon, or by registered mail by mailing copies thereof to, the respondents or their attorneys.

"e" PROCEDURE OF APPEAL. The procedure on appeal to the supreme court and for certification of the record and the form of assignment of errors shall be, in so far as applicable and except as herein otherwise provided, as now provided by the statute for appeals in cases properly triable by the court without a jury in which an issue of fact has been joined. Where no testimony was taken by the court reporter at the hearing on which the order or orders appealed from was entered, the original records and files of the district court used upon the hearing, with the original notice of appeal and undertaking, shall be attached together and certified by the clerk of court and shall constitute the record for the purposes of appeal. The time for procuring a transcript of evidence for appeal shall commence to run from the date of the entry of the order from which the appeal is taken.

"f" TRANSMISSION OF RECORD. BRIEFS. Within thirty days after the taking of appeal where no transcript of testimony is to be included in the record, and within thirty days after certification of the record where a transcript is included, the clerk shall transmit the record and briefs to the supreme court. The parties shall serve and file their briefs on appeal as provided by law and by the rules of the supreme court. However, the court may enlarge the time upon proper showing within which any act is to be performed to perfect the record; but the court shall have no power to extend the time within which the appeal must be taken.

Approved March 17, 1943.

CHAPTER 219

H. B. No. 166—(Johnson of Cass, Runck, Morland)

WAGES DECEASED EMPLOYEES

An Act Authorizing Employers to pay to the surviving spouse of a deceased employee, wages owing to the deceased employee for work, labor or services performed for the employer to the extent of Four Hundred Dollars (\$400.00) when no executor or administrator has been appointed, and providing for the discharge of the employer from such obligation by and to the extent of such payment, and providing that such payment shall apply in diminution of allowance to family under Section 8725 Compiled Laws of North Dakota, 1913, and repeal all acts and parts of acts in conflict herewith.

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

§ 1. DEFINITION.] For the purposes of this Act the word "employer" shall include every person, firm, partnership, corporation, the State of North Dakota, and all municipal corporations.

§ 2. EMPLOYER TO PAY SURVIVING SPOUSE WAGES DUE.] If at the time of the death of any person, his employer is indebted to him for work, labor or services performed, and no executor or administrator of his estate has been appointed, such employer shall, upon the request of the surviving spouse, forthwith pay said indebtedness, to such an amount as may be due but not exceeding the sum of Four Hundred Dollars (\$400.00) to the said surviving spouse. The employer shall require proof of the claimant's relationship to the decedent by affidavit and shall require claimant to acknowledge receipt of such payment in writing. Any payments made by an employer pursuant to the provisions of this Act shall operate as a full and complete discharge of the employer's indebtedness to the extent of such payment, and no employer shall thereafter be liable therefor to the decedent's estate or the decedent's executor or administrator thereafter appointed. Provided, however, that any amount so received by a spouse shall be considered in diminution of the allowance provided for by Section 8725 Compiled Laws of North Dakota for 1913.

§ 3. REPEAL.] All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1943.