

of this act, who shall retail, compound or dispense medicines, or who shall take, use or exhibit the title of a registered pharmacist or announce or advertise in any manner that would lead the public to believe that he was a registered pharmacist shall be deemed guilty of a misdemeanor, and upon conviction shall for each and every offense be liable to a penalty not to exceed fifty (50) dollars. Any registered pharmacist or other person who shall permit the compounding and dispensing of prescriptions or the vending of drugs, medicines or poisons in his store or place of business except under the supervision of a registered pharmacist, or any pharmacist who, while continuing business, shall fail or neglect to procure his annual registration, or any person who shall wilfully make any false representation to procure registration for himself or any other person, or who shall violate any other provision of this act shall be deemed guilty of a misdemeanor, and upon conviction shall for each and every offense be liable to a penalty not to exceed fifty (50) dollars; *Provided*, That nothing in this act shall in any manner interfere with the business of any physician in regular practice, nor prevent him from supplying his patients with such articles as may seem to him proper; nor with the making of proprietary medicines or medicines placed in sealed packages with the name of the contents and the pharmacists or physicians by whom prepared or compounded; nor prevent shopkeepers from dealing in and selling the commonly used medicines and poisons, if such medicines are put up by a registered pharmacist, or from dealing in and selling patent or proprietary medicines, nor with the wholesale business of any dealers.

Approved, March 6, 1893.

PRACTICE AND PROCEDURE.

CHAPTER 81.

[H. B. No. 1.]

REGULATING APPEALS FROM DISTRICT COURTS.

AN ACT to Amend Section 3 of Chapter 120 of the Laws of 1891, Regulating Appeals in the Supreme Court.

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

§ 1. AMENDMENT.] That Section 3 of Chapter 120 of the Laws of 1891, be amended to read as follows:

§ 3. TIME FOR APPEALS. The appeal from a judgment may be taken within one year after the entry thereof, and from an order within sixty days after written notice of the same shall have been

given to the party appealing; *Provided*, That in all actions heretofore or hereafter tried, where the appeal from an order is based upon errors assigned or set out in a bill of exceptions or statement of the case submitted to the court or judge thereof for settlement within sixty days after the service of such written notice, and at least eight days prior to the expiration of such time, and the said court or judge neglects to settle such bill or statement within the said sixty days, the party appealing shall have thirty days after such bill or statement shall have been settled in which to make an appeal; and any appeal heretofore taken within said period shall be held to be taken in proper time.

§ 2. EMERGENCY.] Whereas, There is no adequate law for appeals from an order of the court, where said court or judge thereof fails to settle bills of exception or statement of the case within sixty days after written notice of such order has been served, where the same has been presented for settlement prior to the expiration of such time; therefore, an emergency exists, and this act shall take effect and be in force from and after its passage and approval.

Approved, January 9, 1893.

CHAPTER 82.

[H. B. No. 214.]

REGULATING APPEALS FROM DISTRICT COURT OF CAUSES TRIED WITHOUT A JURY.

AN ACT to Provide for the Trial of Causes Tried by the District Court Without a Jury, and for the Hearing of Such Actions on Appeal.

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

§ 1. PROCEDURE.] In all actions tried by the district court without a jury, wherein issue of fact has been joined, all the evidence offered in the trial shall be taken down in writing, or the court may order the evidence or any part thereof to be taken in the form of depositions, or either party may, at pleasure, take his testimony or any part thereof by deposition; *Provided*, That whenever such evidence is taken down in shorthand and written out at length, it shall be deemed to have been taken down in writing, and all testimony so taken in shorthand must, at the request of either party, be so written out at length and filed with the clerk. All evidence taken as provided by this section shall be certified by the judge at any time after the trial, and within one month before the time allowed for the appeal of said cause shall have expired, and shall thereupon become a part of the judgment roll, and the original of such judgment roll shall go on appeal to the Supreme Court, which shall try the cause

anew upon such judgment roll and render final judgment therein, according to the justice of the case, and in the decision of all equitable actions the rules of equity must prevail. And in all actions tried in the district court according to the provisions of this act no exceptions need be taken on findings of fact made. Whenever, from any cause, the judge who tried the cause shall fail or neglect to certify such evidence as aforesaid, within the time herein provided, the same may be authenticated by the affidavit of the stenographer at any time before the time allowed for the appeal of said cause, with the same force and effect as though certified by such judge, and such stenographer must, upon the application of either party, make such affidavit.

§ 2. REPEAL.] All acts or parts of acts inconsistent with this act are hereby repealed.

Approved, March 6, 1893.

CHAPTER 83.

[H. R. No. 72.]

REGULATING APPEALS.

AN ACT to Amend Subdivision Five (5) of Section Twenty-four (24) of Chapter One Hundred and Twenty (120) of the Laws of 1891, Regulating Appeals from the District Courts to the Supreme Court.

§ 1. AMENDMENT.] That subdivision five (5) of Section twenty-four (24) of Chapter one hundred and twenty (120) of the Laws of 1891, is amended so as to read as follows:

Orders made by the district court or judge thereof, without notice, are not appealable; but orders made by the district court after a hearing is had upon notice, which vacate or refuse to set aside orders previously made without notice, may be appealed to the Supreme Court, where by the provisions of this act an appeal might have been taken from such order so made without notice had the same been made upon notice.

§ 2. EMERGENCY.] Whereas, An emergency exists in that it is uncertain whether or not an appeal can be taken to the Supreme Court from an order of the district court made without notice; therefore, this act shall be in force from and after its passage and approval.

Approved, February 24, 1893.

CHAPTER 84.

[H. B. No. 14.]

DUTY OF COURT CHARGING JURY.

AN ACT to Amend and Re-enact Sections 248 and 249 of the Code of Civil Procedure, Being Sections 5048 and 5049 of the Compiled Laws.

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

§ 1. AMENDMENT.] That Sections 248 and 249 of the Code of Civil Procedure, being Sections 5048 and 5049 of the Compiled Laws, be and the same are hereby amended and re-enacted to read as follows:

§ 248. WRITTEN CHARGE.] The court in charging a jury, shall only instruct as to the law of the case; and no court shall instruct the jury in any case, civil or criminal, unless such instructions are first reduced to writing. Either party may request instructions to the jury. Each instruction so requested must be written on a separate sheet and may be given or refused by the court, and the court shall write on the margin of such requested instruction, given by him the word "given," and on the margin of those which he does not give he shall write "refused," and all instructions asked for by the counsel shall be given or refused by the court without modification or change, unless modified or changed by consent of counsel asking the same. The court may, in its discretion, submit the written instructions which it proposes to give to the jury, to counsel in the case, for examination, and require such counsel after a reasonable examination thereof, to designate such parts thereof as he may deem objectionable, and such counsel must thereupon designate such parts of such instructions as he may deem improper, and thereafter only such parts so designated shall be excepted to by the counsel so designating the same.

§ 249. INSTRUCTIONS—EXCEPTIONS.] All instructions given to the jury must be read to them by the court without disclosing to them whether such instructions were requested or not, and must be signed by the judge and delivered to the jury, and shall be taken by the jury in their retirement and returned with their verdict into court, and upon the close of the trial all instructions given or refused must be filed with the clerk and either party may, within twenty days from the date of such filing, file with clerk exceptions to any of such instructions or refusals to instruct, and the same shall thereupon be deemed duly excepted to; *Provided*, That with the consent of both parties entered in the minutes, the court may instruct the jury orally, in which case such oral instructions shall be taken down by the official stenographer, and

written out at length, and the shorthand notes thereof, together with such instructions so written out, shall be filed in the case with the clerk, and either party may except to any of such instructions within twenty days after the date of such filing, as hereinbefore provided; *Provided*, That the official stenographer shall receive for writing out such instructions the same fees as for making transcripts; and, *Provided, further*, That when oral instructions are given, the jury shall not take the charge in their retirement, unless so ordered by the court.

§ 2. REPEAL.] All acts and parts of acts in conflict, or inconsistent with this act, are hereby repealed.

Approved, March 6, 1893.

CHAPTER 85.

[H. B. No. 205.]

PROCEDURE IN CIVIL ACTIONS.

AN ACT to Amend Section 510 of the Code of Civil Procedure (Compiled Laws 5324.)

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

§ 1. AMENDMENT.] That Section 510 of the Code of Civil Procedure (Compiled Laws, Section 5324) be and the same is hereby amended so as to read as follows:

§ 510. MOTIONS DEFINED—RULES.] First. An application for an order is a motion.

Second. Motions upon notice may be heard by a judge of a district in which the action or proceeding is not pending in the cases provided by law only either in the district in which the action or proceeding is pending or in an adjoining district; but such motions when heard by the judge of the district in which the action or proceeding is pending, can be heard only in such district.

Third. A motion to vacate or modify a provisional remedy, and an appeal from an order allowing a provisional remedy, shall have preference over all other motions and appeals.

Fourth. No order to stay proceedings for a longer time than twenty days shall be granted, except to stay proceedings under an order or judgment appealed from or upon previous notice to the adverse party. When any party intends to make or oppose a motion in any court, and it shall be necessary for him to have the affidavit of any person who shall have refused to make the same, such court may, by order, appoint a referee to take the affidavit or deposition of such person. Such person may be subpoenaed and compelled to attend and make an affidavit before such referee, the same as before a referee to whom it is referred to try an issue, and the fees for such referee for such service shall be three dollars per day.

Fifth. When an order of the district court is made, which under the laws regulating appeals to the Supreme Court is an appealable order, such order shall upon its face by apt words, briefly describe the affidavits, documents, papers and evidence upon which the order is made, and the judges may at their discretion refuse to sign orders not so framed, and the Supreme Court may at its discretion dismiss any appeal from an order which is not framed substantially in accordance with the requirements of this subdivision.

Sixth. An order of the district court made without notice to the adverse party may be vacated or modified, without notice, by the judge who made it; or the same may be vacated or modified on notice in the manner in which other motions are made.

§ 2. EMERGENCY.] Whereas, an emergency exists in that it is uncertain whether an order of the district court or a judge thereof, made without notice, can be vacated without notice; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved, March 6, 1893.

CHAPTER 86.

[H. B. No. 45.]

JURISDICTION OF DISTRICT COURT.

AN ACT to Define the Jurisdiction of the District Court and the Powers of the Judges Thereof, and to Regulate the Exercise of Such Powers.

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

§ 1. COURT ALWAYS OPEN—PROCEDURE.] The district court is always open for the purpose of hearing and determining all actions, special proceedings, motions and applications of whatever kind or character, and whether of a civil or criminal nature, arising under the laws of the State, and of which such court has jurisdiction, original or appellate, except issues of fact in civil and criminal actions. Such issues must be tried in term time, in the county or judicial district in which the action is brought or to which the place of trial is changed by order of the court upon the written consent of the parties to such action, or upon the grounds provided by law; *Provided*, that issues of fact in civil actions triable by the court without a jury, or in which a jury trial has been waived, may, in the discretion of the court, and upon the consent of the parties in open court entered in the minutes, or in writing filed with the clerk, be tried and determined and judgment given, out of term time, at any place within the district in which such action is pending.

§ 2. JUDGMENTS BY DEFAULT.] *Ex parte* applications may be made, heard and determined and judgments by default given at any place within the State.

§ 3. ACTS OF JUDGE ARE ACTS OF THE COURT.] All orders made, judgments given, or other acts done by any judge of the district court in any action, special proceeding or other matter, civil or criminal, shall be deemed and held to be the orders, judgments and acts of the court, and the several judges of the district court shall have jurisdiction throughout the State to exercise all the powers conferred by law upon the district court or judges thereof, subject to the limitations in this act provided.

§ 4. NO JUDGE TO ACT ON MATTERS NOT PENDING IN HIS DISTRICT—EXCEPTIONS.] No judge of the district court shall hear or determine any action, special proceeding, motion or application, or make any order or give any judgment in any action or proceeding not pending in the judicial district for which he is elected, except in the following cases:

First. Upon the written request of the judge in the district in which such action or proceeding is at the time-pending.

Second. When upon the application of either party to such action or proceeding, and upon due notice to the opposite party, if he shall have appeared and is entitled to such notice, it shall be made to appear by affidavit to the satisfaction of such judge—who shall have power to hear and determine such preliminary application—that the judge of the district in which such action, proceeding, motion or application is pending, or about to be commenced, is absent from his district, or incapacitated or disqualified to act therein; such application shall be made only to the judge of a district adjoining that in which such action or proceeding is pending, and upon the hearing thereof counter affidavits may be used.

§ 5. ORDER OR JUDGMENT—HOW VACATED.] No order or judgment given by the judge of any district, contrary to the limitations of the preceding sections shall for that reason be void, but such order or judgment may be vacated upon application within thirty days from the time the same shall have been made or given to the judge of the district in which the action or proceeding in which the same was made or given is pending, and, if appealable, by the Supreme Court on appeal.

§ 6. REPEAL.] All acts and parts of acts inconsistent with this act, and especially Section 1 of Chapter 81 of the Laws of 1887, and Chapter 61 of the Laws of 1890, are hereby repealed.

§ 7. EMERGENCY.] Whereas, An emergency exists in that there is an uncertainty as to the power of the judges of the district court to act in actions or proceedings not pending within their respective districts, and as to the powers of such judges and courts in divers respects, this act shall be in force and take effect from and after its passage and approval.

Approved, February 24, 1893.

CHAPTER 87.

[H. B. No. 115.]

LIMITING TIME FOR COMMENCEMENT OF CIVIL ACTIONS.

AN ACT to Amend Section 56 of the Code of Civil Procedure, Being Section 4852 of the Compiled Laws of 1887, Providing for Limitation of Time in Which to Commence Certain Civil Actions.

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

§ 1. AMENDMENT.] That Section 56 of the Code of Civil Procedure, being Section 4852 of the Compiled Laws of 1887, be amended so as to read as follows:

§ 4852. Within two years:

1. An action for libel, slander, assault, battery or false imprisonment.
2. An action upon a statute, for a forfeiture or penalty to the people of this State.
3. An action for the recovery of damages resulting from malpractice.

Approved, February 24, 1893.

CHAPTER 88.

[S. B. No. 188.]

DUTIES OF JUSTICES OF THE PEACE.

AN ACT Defining the Duties of Justices of the Peace and Defining Their Powers.

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

§ 1. POWERS AND JURISDICTION.] All village justices of the peace, whether in villages heretofore incorporated under special charter or under the general incorporating act, shall have power to hear and determine all cases involving violations of the ordinances of such villages, and also in addition thereto shall possess the same jurisdiction as is now or may hereafter be given to county justices of the peace.

Approved, March 6, 1893.

CHAPTER 89.

[H. B. No. 46.]

TRIALS AND JUDGMENTS IN CIVIL ACTIONS.

AN ACT to Amend Section 1 of Chapter 25 of the Laws of 1887, Entitled "An Act to Amend Sections 266 and 268 of Chapter 12, of the Code of Civil Procedure, Relating to Trials and Judgments in Civil Actions," the Same being Section 5066 of the Compiled Laws.

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

§ 1. AMENDMENT.] Section 1 of Chapter 25 of the Laws of 1887 is hereby amended so as to read as follows:

§ 1. DECISION COMPULSORY—TIME.] All motions or applications in any action, special proceeding or other matter in the district court must be decided and such decision be reduced to writing and filed with the clerk within thirty days after the same shall have been submitted to the court for decision unless prevented by the sickness of the judge whose duty it is to decide the same or by other unavoidable casualty, and upon the trial of any question or issue of fact by the court, its decision thereon and conclusion of law upon such decision, and direction for entry of judgment in accordance with such conclusions must be given in writing and filed with the clerk within sixty days after the cause has been submitted for decision, unless such decision is prevented for the reason hereinbefore stated, and judgment shall be entered by the clerk in accordance with such direction upon the application of the party entitled thereto and the filing of such decision and conclusion of law. Each judge of the district court shall not less than five nor more than fifteen days before each quarterly installment of his salary becomes due file in the office of Auditor of the State a certificate under his hand stating in effect that no motion, application or question or issue of fact submitted to him remains undecided, contrary to the provisions of this act. And in case any such decision has been prevented by any of the causes enumerated in this section, such certificates shall state the facts constituting the cause of such prevention, and the State Auditor is hereby directed not to sign or issue any warrant for the payment of any quarterly installment of salary to any judge of the district court until after such judge shall have filed such certificate as herein provided.

§ 2. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

Approved, March 6, 1893.