

§ 4764. EVIDENCE OF DEBT.] A pledgee may collect when due any evidence of debt pledged to him, he may also sell any evidence of debt pledged to him to secure the performance of an original obligation, if at the time of making such original obligation the pledgor shall have authorized in writing such sale. Before such evidence of debt can be sold and after the maturity of the original obligation, the pledgee must demand, in writing, the performance thereof from the debtor if he can be found. Notice of the sale of such evidence of debt must be given by publication once, and at least six days prior to such sale, in a newspaper published at the place of sale, if there is one, otherwise in a newspaper in the county in which such sale is to be made, and if there is no newspaper in the county, or upon the written request of the pledgor, notice shall be given by posting the same in five public places in such county for at least ten days prior to such sale. The notice of sale must specify the names of the pledgor and pledgee and the assignee if any, the date, maturity and amount of the original obligation and the amount claimed to be due thereon, a description of the evidence of debt to be sold, which shall contain the names of the makers, the date and maturity of such obligation to be sold, and the time and place of sale. Such sale may be made by the pledgee, his agent or attorney. A report of of such sale must be made and filed, substantially as required by section 5888 in chattel mortgage foreclosures, and when so filed shall have the same force and effect.

Approved March 12th, 1897.

PRESUMPTIVE EVIDENCE.

CHAPTER 110.

[S. B. 122.]

DEFINING LAW OF PRESUMPTIVE EVIDENCE.

AN ACT to Establish, Limit and Define the Law of Presumptive Evidence.

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

§ 1. DUTY OF JURY.] A presumption, unless declared by law to be conclusive, may be controverted by other evidence, direct or indirect; but unless so controverted, the jury are bound to find according to the presumption.

§ 2. PRESUMPTIONS DEEMED CONCLUSIVE.] The following presumptions and no others are deemed conclusive:

1. A malicious and guilty intent from the deliberate commission of an unlawful act, for the purpose of injuring another.

2. The truth of the facts from a recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to a recital of a consideration.

3. When a party has, by his own declaration, act or commission [omission], intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

4. A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation.

5. The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate.

6. The judgment or order of a court when declared by the codes of this state to be conclusive; but such judgment or order must be alleged in the pleadings, if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence.

7. Any other presumption which by statute is expressly made conclusive.

§ 3. DENOMINATIONAL PRESUMPTIONS.] All other presumptions are satisfactory, if uncontradicted. They are denominational disputable presumptions, and may be contradicted by other evidence. The following are of that kind:

1. That a person is innocent of crime or wrong;
2. That an unlawful act was done with an unlawful intent;
3. That a person intends the ordinary consequences of his voluntary act;
4. That a person takes ordinary care of his own concern;
5. That evidence willfully suppressed would be adverse if produced;
6. That higher evidence would be adverse from inferior, being produced;
7. That money paid by one to another was due the latter;
8. That a thing delivered by one to another was due the latter;
9. That an obligation delivered up to the debtor has been paid;
10. That former rents or installments have been paid when a receipt for the latter is produced;
11. That things which a person possesses are owned by him;
12. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership;
13. That a person in possession of an order on himself for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly;
14. That a person acting in a public office was regularly appointed to it;
15. That official duty has been regularly performed;

16. That a court or judge, acting as such, whether in this state or any other state or county, was acting in the lawful exercise of his lawful jurisdiction;
17. That a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties;
18. That all matters within an issue were laid before the jury and passed upon by them; and, in like manner, that all matters within a submission to arbitration were laid before the arbitrator and passed upon by him;
19. That private transactions have been fair and regular;
20. That the ordinary course of business has been followed;
21. That a promissory note or bill of exchange was given or indorsed for a sufficient consideration;
22. That an indorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill;
23. That a writing is truly dated;
24. That a letter duly directed and mailed was received in the regular course of the mail;
25. Identity of person from identity of name;
26. That a person not heard from in seven years is dead;
27. That acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact;
28. That things have happened according to the ordinary course of nature and the ordinary habits of life;
29. That persons acting as copartners have entered into a contract of copartnership.
30. That a man and woman deporting themselves as husband and wife, have entered into a lawful contract of marriage;
31. That a child born in lawful wedlock, there being no divorce from bed and board, is legitimate.
32. That a thing once found to exist continues as long as is usual with things of that nature;
33. That the law has been obeyed;
34. That a document or writing more than thirty years old is genuine when the same has been since generally acted upon as genuine by persons having an interest in the question, and its custody has been satisfactorily explained;
35. That a printed and published book and statutes purporting to be printed or published by public authority, was so printed or published;
36. That a printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published, contains correct reports of such cases;
37. That a trustee or other person whose duty it was to convey real property to a particular person, has actually conveyed to heirs, when such presumption is necessary to perfect the title of such person or his successor in interest;
38. The uninterrupted use by the public of land for a burial

ground for five years, with the consent of the owner, and without a reservation of his right, is presumptive evidence of his intention to dedicate it to the public for that purpose;

39. That there was a good and sufficient consideration for a written contract;

40. When two persons perish in the same calamity, such as a wreck, battle or conflagration, and it is not shown who died first, and there is no particular circumstance from which it can be inferred, survivorship is presumed from the probabilities resulting from the strength, age, sex, according to the following rules;

41. If both of those who have perished were under the age of fifteen years, the older is presumed to have survived;

42. If both were above the age of sixty, the younger is presumed to have survived;

43. If one be under fifteen and the other above sixty, the former is presumed to have survived;

44. If both be over fifteen and under sixty, and sexes be different, the male is presumed to have survived; if the sexes be the same then the older;

45. If one be under fifteen or over sixty, and the other between those ages, the latter is presumed to have survived;

46. That the foreign law will be presumed to be the common law in the absence of rebutting evidence;

47. A domicile once acquired is presumed to continue until it is shown to have been changed.

Approved March 3rd, 1897.

PROBATE CODE.

CHAPTER 111.

[S. B. 150.]

AMENDING THE PROBATE CODE.

AN ACT to Amend the Probate Code of the State of North Dakota.

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

§ 1. AMENDMENT.] That an act passed by the fourth legislative assembly of the State of North Dakota and approved March 1, 1895, entitled, "An act to establish a probate code for the State of North Dakota," and comprising section 6160 and following sections up to and including section 6587 of the Revised Codes of said state be and the same is hereby amended as hereinafter prescribed.

§ 2. That section 6168 of the Revised Codes of said state,