

ADVERSE CLAIMS.

CHAPTER 5.

[S. B. 84.]

ACTION TO DETERMINE ADVERSE CLAIMS.

AN ACT to Provide for Making Unknown Persons Parties Defendant in Certain Civil Actions and to Amend Sections 5904, 5905, 5906, 5907, 5907a, 5908, 5909, 5910, 5911, 5912, 5913, of the Revised Codes of North Dakota for 1899, Relating to the Determination of Conflicting Claims to Real Estate and Other Actions and Enacting Other Provisions Relating Thereto.

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

§ 1. AMENDMENT.] That sections 5904, 5905, 5906, 5907, 5907a, 5908, 5909, 5910, 5911, 5912 and 5913 of the Revised Codes of North Dakota of 1899, be, and the same are hereby amended to read as follows:

§ 5904. ACTION TO DETERMINE ADVERSE CLAIMS.] An action may be maintained by any persons having an estate or an interest in or lien [or] incumbrance upon real property whether in or out of possession thereof, and whether said property is vacant or unoccupied against any person claiming an estate or interest in or lien or incumbrance upon the same for the purpose of determining such adverse estate, interest, lien or incumbrance.

§ 5905. USE AND OCCUPATION. WASTE. PLEADING. POSSESSION.] A recovery may be had in the action by any party against the defendant personally served or who has appeared or against the plaintiff for the value of the use and occupation of the premises and for the value of the property wasted or removed therefrom, in the case of a vendor holding over or a trespasser as well as in case where the relation of vendor has existed. If such recovery is desired by plaintiff he shall allege the fact, stating particularly the value of the use and occupation, the value of the property wasted or removed, and the value of the real property aside from the waste or removal, and demand appropriate relief in his complaint. A recovery of possession may also be had by the plaintiff or any defendant asking for the affirmative relief.

§ 5906. JOINDER OF PLAINTIFFS.] Any two or more persons having an estate or interest in or lien or incumbrance upon real property, under a common source of title, whether holding as tenants in common, joint tenants, co-partners or in severalty, may unite in an action against any person claiming an adverse estate or interest in, or lien or incumbrance thereon, for the purpose of determining such adverse claim, or establishing such common source of title, or declaring the same to be held in trust, or of removing a cloud upon the same.

§ 5907. DESCRIPTION OF PROPERTY. COMPLAINT.] In an action for the determination of adverse claims, the property must be described in the complaint with such certainty as to enable an officer upon execution to identify it. In other respects the complaint, exclusive of the venue, title, subscription and verification, may be substantially in the following form, the blanks being properly filled. The plaintiff for cause of action shows to the court that he has an estate in, interest in, lien or incumbrance upon (as the case may be) the following described real property, situate in the above named county and state, to-wit:.....

That the defendants claimed certain estates or interests in or liens or incumbrances (as the case may be) upon the same, adverse to plaintiff. (Here allege the facts concerning use and occupation and value thereof, and any property wasted or removed and the value thereof, if pertinent.)

Wherefore, plaintiff prays. (1.) That the defendants be required to set forth all their adverse claims to the property above described, and that the validity, superiority and priority thereof be determined: (2) That the same be adjudged null and void, and that they be decreed to have no estate or interest in, or lien or incumbrance upon said property: (3) That this title be quieted as to such claim, and that defendants be forever debarred and enjoined from further asserting the same: (4) That he recover possession of the premises described, (if possession is desired:) (5) That he recover..... dollars as the value of the use and occupation and value of property wasted and removed therefrom: (6) That he have such other general relief as may be just, together with costs and disbursements.

§ 5908. JOINDER OF DEFENDANTS.] In an action to determine adverse claims all persons appearing of record to have estates or interests in, or liens or incumbrances upon the property, and all persons in possession may be joined as defendant and all others may be joined by inserting in the title of the action the following: "All other persons unknown claiming any estate or interest in, or lien or incumbrance upon the property described in the complaint, and their unknown heirs."

§ 5909. UNKNOWN PARTIES. HEIRS.] All persons having an estate or interest in, or lien or incumbrance upon the property involved in the estate, though not appearing of record to have such claim, and all heirs of any known or unknown defendants who may be deceased, may be proceeded against as persons unknown and heirs, and any order, judgment and decree shall be valid and binding on such unknown parties and heirs, whether they be of age or minors. And service of summons may be had upon all such unknown persons and heirs defendant, by publication, in the manner provided in Section 5254, Revised Codes of 1899, and sub-division 3 thereof. And the action shall proceed against such unknown person and heirs in the same manner as against the defendants who are named upon whom service is made by publication: And any such unknown person or heirs who have any estate

or interest in, or lien or incumbrance upon the property in controversy at the time of the commencement of the action, duly served as aforesaid, shall be bound and concluded by the judgment in such case, as effectually as if the action were brought against such defendants by name, and service of the summons obtained by publication.

§ 5910. ANSWER. COUNTERCLAIM.] In an action to determine adverse claims a defendant in his answer may deny that the plaintiff has the estate, interests, lien or incumbrance alleged in the complaint coupled with allegations setting forth fully and particularly the origin, nature and extent of his own claim to the property, and if such defendant claim a lien the original amount secured thereby and the date of the same, and the sum remaining due thereon, also whether the same has been secured in any other way or not, and if so secured, the nature and extent of such security; or he may likewise set forth his rights in the property as a counterclaim and demand affirmative relief against the plaintiff and any co-defendant; and in such case he may also set forth a counterclaim and recovery from plaintiff or a co-defendant for permanent improvements made by him or those under whom he claims, holding under color of title in good faith adversely to the plaintiff or co-defendant against whom he seeks a recovery; such counterclaim is set forth among other things the value of the land aside from the improvements thereon, and as accurately and practicable the improvements upon the land and the value thereof; and in such case he may also set forth as a counterclaim his demand for recovery of the value of the use and occupation of the premises and value of property wasted or removed therefrom, in the same manner as provided by Section 5905. The answer shall be deemed served on co-defendants by filing the same in the office of the clerk of court of the county where the action is pending at any time within thirty days after the service of summons on such defendant is complete. Where affirmative relief is demanded against co-defendants the allegations constituting counterclaims shall be deemed controverted by all the parties, as upon a direct denial or avoidance, as the case may require, without further pleading.

§ 5911. REPLY. BETTERMENTS BY PLAINTIFF.] No reply shall be required on the part of plaintiff except that when he has made permanent improvements on the property in good faith while in possession under color of title, he may recover a reasonable value thereof as against the defendant recovering the property, provided a reply alleging the facts and stating particularly the value of such improvements, the value of the property, and demanding appropriate relief, be served on such defendant and filed with the clerk within twenty days after the service of his answer.

§ 5912. TRIAL. FINDINGS. POSSESSION. COSTS.] The plaintiff or any defendant who has answered may bring the case on for trial by serving all other parties who have appeared with notice of trial. A defendant interposing a counterclaim, shall for purposes of trial, be deemed plaintiff, and the plaintiff and co-defendants against whom

relief is sought, shall be deemed defendants as to him. The court in its decision shall find the nature and extent of the claim asserted by the various parties, and determine the validity, superiority and priority of the same, any defendant in default for want of an answer, or not appearing at the trial, or a plaintiff not appearing at the trial, shall be adjudged to have no estate or interest in, or lien or incumbrance upon the property; and he shall also be adjudged to pay the amount demanded against him in any counterclaim or reply for the use and occupation of the premises, property removed therefrom, and waste committed, except in the case of a defendant served by publication and not appearing. If any counterclaim for improvements has been urged against one recovering property the value of such improvements thereof and the value of the land aside from the improvements, shall be specifically found. There shall be, likewise, findings on all other counterclaims urged at the trial. If possession of the premises is demanded by the plaintiff or by any defendant asking for affirmative relief, such possession shall be awarded to the party asking for possession who has the paramount claim to the property, and he may thereupon have a writ for possession as against all other parties to the action. Costs shall be awarded to the prevailing parties against each adversary in the action by the court, except that no costs shall be allowed against the defendant not appearing.

§ 5912a. JUDGMENT. WHEN RIGHT FAILS AFTER ACTION BROUGHT.] In an action for the recovery of real property, when a party shows a right to recover at the time when the action was commenced, but it appears that his right has terminated during the pendency of the action, the finding and judgment must be according to the fact, and he may recover whatever he may show himself entitled to up to the time that his right terminated.

§ 5912b. ADJUSTMENT OF CROSS JUDGMENTS.] If the decision of the court is in favor of one party for the recovery of the real property, and in favor of another for improvements, the former shall have the option for sixty days after receiving notice that the findings are filed, obtain the value of such improvements less such sums as may be found due for use and occupation and waste; or of taking judgment against him for the value of the land aside from the improvements, as determined by the findings, and such sums as may be found due for use and occupation and waste. If said option is not exercised in writing by said party or his attorney for him, and filed with the clerk within sixty days, the other party may thereupon exercise the option for him in like manner. If the party entitled to the possession of the property received in lieu thereof a money judgment, the other party may be subrogated to all the former's rights therein, including all the relief he would otherwise be entitled to under the findings; and judgment shall thereupon be entered accordingly. But until payment is made by the party recovering the land or tender and deposit in the office of the clerk of the court in which the action is pending, no writ for the possession of the property shall be issued.

§ 5913. WHEN DEFENDANT PERMITTED TO DEFEND.] • A defendant in an action to determine adverse claim, proceed against by name or as an unknown party or heir, or his representative on application and sufficient cause shown at any time before trial, must be allowed to defend on such terms as may be just; and any such defendants or his representatives upon good cause shown, and on such terms as may be just, may be allowed to defend after trial and within one year after the rendition of judgment therein, but not otherwise.

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

§ 3. EMERGENCY.] Whereas, an emergency exists in that there is no adequate law on the subject matter of this action, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1901.

APPROPRIATIONS.

CHAPTER 6.

[H. B. 74.]

TO MEET DEFICIENCY IN SALARY.

AN ACT to Appropriate Money to Meet a Deficiency in the Salary and Expenses of the Office of Assistant Dairy and Food Commissioner.

DAIRY AND FOOD COMMISSIONER. SALARY INCREASED.] Whereas, it was construed that section 1687, Revised Codes of North Dakota, 1899, appropriated the sum of two thousand dollars for the expenses of the office of the assistant dairy and food commissioner and holding farmers' institutes, in addition to twelve hundred dollars for salary, and

Whereas, the said assistant dairy and food commissioner has conducted the office and scheduled a certain number of farmers' institutes with that understanding, and

Whereas, it is now held that such appropriation is only two thousand dollars in its entirety, therefore,

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

§ 1. APPROPRIATION.] That the sum of twelve hundred dollars is hereby appropriated to pay the salary and expenses of the office of the assistant dairy and food commissioner, and the holding of farmers' institutes until June 30, 1901.

§ 2. EMERGENCY.] Whereas, an emergency exists as above stated,