

EMINENT DOMAIN.

CHAPTER 74.

[S. B. 205.]

ASSESSMENT OF DAMAGES UNDER THE LAW OF EMINENT DOMAIN.

AN ACT to Amend Section 5961 of the Code of Civil Procedure, and to Facilitate the Assessment of Damages Under the Law of Eminent Domain, and to Regulate Procedure in Actions Brought Thereunder.

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

§ 1. AMENDMENT.] That section 5961 of the Revised Codes of the state of North Dakota, edition of 1899, be and the same is hereby amended so as to read as follows:

§ 5961. PROCEEDINGS BY CIVIL ACTIONS.] All proceedings under this chapter must be prosecuted by civil action brought in the district court of the county in which the property or some part thereof is situated.

1. FORM OF SUMMONS. WHEN SERVED.] The summons shall be in the form prescribed by section 5248 of the Revised Codes, except that the defendant shall be required to serve his answer to the complaint within fifteen days after service of summons upon him. In all cases in which personal service is made upon the defendant, a copy of the complaint shall be attached to and served with the summons.

2. SERVICE BY PUBLICATION.] Service of the summons by publication may be made by publishing the same two times, once in each week for two successive weeks in a newspaper published in the county in which the action is pending, if a newspaper is published in said county, and if no newspaper is published in such county, then in a newspaper published at the seat of government of this state.

3. COPY OF SUMMONS SERVED THROUGH MAILS.] A copy of the summons and complaint must within two days after the first publication of the summons be deposited in some post office in this state, postage prepaid, and directed to the defendant, to be served at his place of residence, unless the affidavit for publication states that the residence of the defendant is unknown.

4. SERVICE COMPLETE IN 14 DAYS.] Service by publication is complete upon the expiration of fourteen days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, upon the expiration of ten days after the date of such service.

5. FILED WITH CLERK 4 DAYS PREVIOUS.] Note of issue herein

shall be filed with the clerk four days before the date fixed for the trial of the action.

6. **MAY DEMAND A JURY.]** Whenever in an action brought under the provisions of chapter 35 of the Code of Civil Procedure, an issue for the jury is formed whereby it appears that the attendance of a jury will be necessary to assess the damages in such action as provided by law, the plaintiff therein may apply to the judge of the district court where the same is pending for an order requiring a jury to be summoned to assess the damages in such action, as provided by law. Thereupon the judge shall forthwith issue an order to the clerk of said court requiring a jury to be summoned, and in such order shall specify the number of jurors to be drawn, the place where they are to appear, and the time when they shall come, which shall be not less than eight days nor more than thirty days from the date thereof. Thereupon the clerk shall proceed to draw the number of jurors required by such order, in accordance with the Revised Codes, relating to the drawing of petit jurors. After the names have been so drawn, the sheriff of said county shall forthwith certify to the clerk his legal fees for the service of the venire upon the jurymen who have been drawn, which fees shall be those provided by law to be paid to him for the summoning of a jury under a special venire; whereupon the clerk shall forthwith notify the plaintiff of the amount of said fees, and upon the payment thereof to the clerk, to be paid by him to the sheriff, said clerk shall issue the venire forthwith, and the same shall forthwith be served by the sheriff; the plaintiff shall give sufficient surety to be approved by the clerk of said court for the payment of all jury fees and mileage; provided, however, such payment shall not be required to be made if the plaintiff be either the state of North Dakota, or any city, municipality, town, village, school district or other political subdivision, in all of which cases the sheriff's fees for summoning the jury shall be paid by the county as provided by law.

7. **SERVE NOTICE 1 DAY AFTER SUMMONING JURY.]** Within one day after entry of the order for summoning the jury, the plaintiff shall serve notice of trial upon the opposite party, or parties, to such issue, specifying as the date of trial of said cause, the time fixed by such order for the meeting of such jury.

8. **COURT SIT AT. A SPECIAL TERM.]** The court shall sit at a special term to hear the case according to the law and practice of the court, and shall have the same power to complete the jury as is now provided by the Revised Codes of North Dakota, and the pay of such jurymen and the penalty for failure or refusal to appear shall be the same as now provided by sections 2096 and 459 of the Revised Codes.

9. **CAN TRY AT AN ADJOURNED TERM.]** Nothing in this act contained shall prevent the trial of such case at any general, or special, or adjourned term of district court, held, or called in the county in which such action is, or may be pending, and such action may be tried at any such term; provided, further, if issue be not joined prior to the commencement of said regular, special or adjourned term, the plaintiff may

nevertheless require said cause to be tried on such day thereof as the court may order; but plaintiff shall serve upon the opposite party, or parties, a seven days' notice of trial, specifying the date of trial, as fixed by order of the court.

§ 2. DOES NOT CHANGE METHOD OF PROCEDURE.] This act shall not be held or construed to alter or change the method of procedure in any action, or actions, save those brought under chapter 35 of the Code of Civil Procedure of North Dakota.

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

Approved March 13, 1901.

CHAPTER 75.

[H. B. 71.]

PRIVILEGES IN RIGHT OF EMINENT DOMAIN.

AN ACT to Amend Section 5958 of the Revised Codes, Enumerating What Property May be Taken in the Exercises of the Right of Eminent Domain.

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

§ 1. AMENDMENT.] Section 5958 of the Revised Codes is hereby amended so as to read as follows:

[WHAT PROPERTY MAY BE TAKEN. THE PRIVATE PROPERTY WHICH MAY BE TAKEN UNDER THIS CHAPTER INCLUDES:]

1. All real property belonging to any person.
2. Lands belonging to this state; or to any county, incorporated city, village or town not appropriated to some public use.
3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated; and whenever a right of way shall have been taken and the person, firm or corporation taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm or corporation to appropriate such right of way shall be considered a more necessary public use.
4. Franchises for toll roads, toll bridges, ferries and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.
5. All rights of way for any and all the purposes mentioned in section 5956 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by any other right of way or structure thereon. They shall also be subject to a limited use in

common with the owner thereof when necessary; but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

Approved March 6, 1901.

EXEMPTIONS.

CHAPTER 76.

[H. B. 24.]

RELATING TO EXEMPTIONS.

AN ACT Entitled an Act to Amend Sections 324, 328 and 333 of the Code of Civil Procedure of the State of North Dakota, Being Sections 5518, 5522 and 5528 of the Revised Codes of 1895 of the State of North Dakota, Relating to Exemptions.

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

§ 1. AMENDMENT.] That sections 324, 328 and 333 of the code of civil procedure of the state of North Dakota, being sections 5518, 5522 and 5528 of the Revised Codes of 1895 of the state of North Dakota, are hereby amended to read as follows:

§ 5518. ADDITIONAL EXEMPTIONS.] In addition to the property mentioned in the preceding section, the head of the family may, by himself or his agent, select from all other of his personal property, not absolutely exempt, goods, chattels, merchandise, money or other personal property, not to exceed in the aggregate one thousand dollars in value, which is also exempt and must be chosen and appraised as hereinafter provided.

§ 5522. OATH AND DUTIES OF APPRAISERS.] The three appraisers so selected must take and subscribe an oath before the sheriff or other officer, to be attached to the inventory of appraisement, that they will truly, honestly and impartially appraise the property of the debtor. The property must be appraised at the actual value of the several articles at the place where they are situated as near as can be determined, and must be set down in an inventory by articles or by lots, when definitely descriptive, with the value opposite. From the appraisement so made, if over the amount of one thousand dollars, the debtor, his agent or attorney, may select the amount in value of one thousand dollars, or the alternative in order of each class, leaving the remainder, if any, subject to legal process.