

amount of the expenses for general county purposes, the amount of the appropriation herein provided for may be made a part of said estimate and levy.

Approved March 2, 1905.

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## COURTS.

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### CHAPTER 81.

[S. B. No. 136—Kraabel.]

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#### APPEALS FROM JUSTICE COURTS.

AN ACT to Amend Section 6771 of the Revised Codes of This State, Relating to Appeals in Civil Actions in Justices' Courts.

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

§ I. AMENDMENT.] That section 6771 of the revised codes of the state of North Dakota be, and the same is hereby amended to read as follows:

§ 6771. APPEALS TO DISTRICT COURT.] Any party dissatisfied with a judgment rendered in a civil action in a justice's court, whether the same was rendered on default or after a trial, may appeal therefrom to the district court of the county or subdivision at any time within thirty days after the rendition of the judgment. The appeal is taken by serving the notice of appeal on the adverse party or his attorney and by filing the notice of appeal together with the undertaking required by law with the clerk of the district court of the county in which the appeal was taken; provided, however, that if at the time the service of the notice of appeal and undertaking as provided for in this chapter, the party is not within the state, or cannot conveniently be found and such fact appears by the return of the sheriff filed with the justice, and has not appeared by attorney, the service of such notice of appeal and undertaking may be made upon the justice rendering the judgment.

Approved March 2, 1905.

## CHAPTER 82.

[H. B. No. 120—Martin.]

## COURT IN BILLINGS COUNTY.

AN ACT to Fix Dates for Holding Terms of District Court in the County of Billings.

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

§ 1. WHEN HELD.] Two terms of the district court shall be held in the county of Billings at the county seat thereof, commencing on the third Tuesday in April, and the first Tuesday in October of each year.

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 All acts and parts of acts inconsistent with this act are hereby repealed.

§ 3. EMERGENCY.] An emergency exists in that there is no law fixing terms of court in Billings county; therefore this act shall be in force from and after its passage and approval.

Approved February 28, 1905.

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## CHAPTER 83.

[H. B. No. 7—Streeter.]

## COURT IN EMMONS AND McLEAN COUNTIES.

AN ACT to Fix the Dates for Holding Terms of the District Court in the Counties of Emmons and McLean.

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

§ 1. WHEN HELD IN EMMONS COUNTY.] The third subdivision of the Sixth judicial district consists of the county of Emmons, and two terms of the district court thereof shall be held at the county seat, commencing on the first Tuesday of May and the first Tuesday of October in each year.

§ 2. WHEN HELD IN McLEAN COUNTY.] The sixth subdivision of the Sixth judicial district consists of the county of McLean, and two terms of the district court thereof shall be held at the county seat commencing on the second Monday of June and the second Monday of December in each year.

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

§ 4. EMERGENCY.] Whereas, an emergency exists in that there

is but one regular term of court to be held in Emmons or McLean county, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 14, 1905.

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CHAPTER 84.

[H. B. No. 163—Meidinger.]

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COURT IN FOURTH DISTRICT.

AN ACT to Amend Chapter 63 of the Session Laws of 1903, Relating to Fixing the Time of Holding the Terms of the District Court in the Counties of the Fourth Judicial District.

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

§ 1. AMENDMENT.] That chapter 63 of the session laws of 1903 be amended to read as follows:

§ 1. WHEN HELD.] Terms of the district court in the various counties comprising the Fourth judicial district shall be held as follows:

In Richland county, commencing on the first Tuesday in June, and the first Tuesday in December.

In Ransom county, commencing on the first Tuesday in May and the second Tuesday in January.

In Sargent county, commencing on the third Tuesday in May and the third Tuesday in November.

In Dickey county, commencing on the fourth Tuesday in June, and the first Wednesday after the first Tuesday in November.

In McIntosh county, commencing on the second Tuesday in March, and the third Tuesday in October.

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

Approved March 9, 1905.

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CHAPTER 85.

[S. B. No. 18—Regan.]

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COURT IN FIFTH DISTRICT.

AN ACT to Amend Section 407 of the Revised Codes of 1899, With Reference to the Boundaries and Terms of Court in the Fifth Judicial District.

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

§ 1. AMENDMENT.] That section 407 of the revised codes of 1899 be and it is hereby amended and re-enacted so as to read as follows:

§ 407. BOUNDARIES AND TERMS OF COURT.] The fifth judicial district shall consist of the counties of Stutsman, Barnes, LaMoure, Griggs, Foster, Eddy, Wells and Logan, and two terms of the district court shall be held each year at the county seat of each of such counties as follows:

In Stutsman county, commencing on the first Monday in January and the first Monday in July.

In Barnes county, commencing on the second Monday in June and the second Monday in December.

In LaMoure county, commencing on the first Monday in February and the fourth Monday in September.

In Griggs county, commencing on the second Monday in May and the second Monday in November.

In Foster County, commencing on the first Monday in May and the second Monday in October.

In Eddy county, commencing on the fourth Monday in May and the fourth Monday in November.

In Wells county, commencing on the third Monday in January and the third Monday in July.

In Logan county, commencing on the fourth Monday in April and the fourth Monday in October.

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

Approved March 6, 1905.

## CHAPTER 86.

[H. B. No. 30—Stevens of Burleigh.]

### EXEMPTIONS FROM JURY DUTY.

AN ACT to Amend Section 441 of the Revised Codes of North Dakota, Relating to Jurors.

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

§ 1. AMENDMENT.] That section 441 of the revised codes of the state of North Dakota, be amended to read as follows:

§ 441. QUALIFICATIONS OF JURORS.] All male citizens residing in any of the counties of this state having the qualification of electors, and of sound mind and discretion, and not judges of the supreme, district or county court, sheriff, coroner, jailer, attorney at law engaged in practice, and who are not subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and not subject to disability on account of the commission of any offense which by special provision of law disqualifies him, are competent to serve on all grand and petit juries within their respective counties or

judicial subdivisions; provided that persons over sixty years of age, ministers of the gospel, county commissioners, registers of deeds, county auditors, county treasurers, county superintendents of schools, clerk of the supreme court, clerks of the district court, clerks of the county court, county judges, practicing physicians, practicing dentists, registered pharmacists, postmasters, carriers of United States mail, and members in good standing of any regularly organized fire company, shall not be compelled to serve as jurors in any of the courts of this state.

Approved February 15, 1905.

## CHAPTER 87.

[S. B. No. 19—Regan.]

### FEEES IN COUNTY COURTS.

AN ACT to Amend Section 2071 of the Revised Codes of 1899, Relating to Reimbursing Counties for Salaries Paid to Judges of County Courts.

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

§ I. AMENDMENT.] Section 2071 of the revised codes of 1899, relating to reimbursing counties for salaries paid judges of county courts, is hereby amended so as to read as follows:

§ 2071. COUNTY TO BE REIMBURSED, HOW.] For the purpose of reimbursing the county for the salaries provided in the foregoing sections to be paid the judges of the county courts, each petitioner for letters testamentary, of administration or guardianship, before filing the same in the county court, shall pay or cause to be paid into the county treasury, for the use and benefit of the county in whose county court proceedings are to be instituted to settle the estate of a deceased person, or for the appointment of a guardian, the sum of five dollars, and when the value of said estate has been ascertained by the court, through the inventory and appraisement or upon hearing of same, as legally required, within thirty days after the issuance of letters testamentary, of administration or guardianship, the judge of said court shall require an additional fee to be paid from said estate into said county treasury, of five dollars for each and every one thousand dollars or fraction thereof of value therein found, as shown by said inventory and appraisement; and in all cases in addition thereto, all sums necessarily expended in publishing or serving notices required by law. In all civil and criminal actions the same fees and costs shall be paid as in like actions in the district court, the same to be paid to the clerk of the county court, a record to be kept thereof and the same turned over by him to the county treasurer.

Approved February 27, 1905.

## CHAPTER 88.

[H. B. No. 61—Streeter.]

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## FEES OF WITNESSES.

AN ACT Amending Section 2097 of the Political Code, Relating to the Fees of Witnesses.

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

§ 1. AMENDMENT.] That section 2097 of the political code, relating to the fees of witnesses, be amended so as to read as follows:

§ 2097. PER DIEM AND MILEAGE.] Witnesses are entitled to receive for each day's attendance before the district court, or before any other court, board, or tribunal, in all civil and criminal cases, the sum of two dollars, and for each mile actually traveled, one way, ten cents; provided, that in all criminal cases witnesses fees on the part of the state shall be paid out of the county treasury of the proper county.

§ 2. EMERGENCY.] Whereas, the present compensation of witnesses in the various courts of the state is inadequate, an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 23, 1905.

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## CHAPTER 89.

[H. B. No. 133—Rose.]

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## MUNICIPAL COURTS ABOLISHED.

AN ACT to Repeal Sections 2209 to 2247, Both Inclusive, of the Revised Codes of 1899, Relating to Municipal Courts.

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

§ 1. REPEAL.] That sections 2209 to 2247 of the revised codes of 1899, both inclusive, relating to municipal courts, be, and the same are hereby repealed.

§ 2. EMERGENCY.] Whereas, an emergency exists in this that said sections are unconstitutional, and have been so declared by the supreme court of this state, and therefor should be no part of the statutes of this state, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1905.

## CHAPTER 90.

[H. B. No. 4—Casey.]

## PROCEEDINGS IN COUNTY COURT, WHEN JUDGE DISQUALIFIED.

AN ACT to Amend Sections 6188, 6189, 6190 and 6191 of the Revised Codes of North Dakota, Being Article 3 of Chapter 1, of the Probate Code, Relating to the Disqualification of County Judges and Transfers of the Administration of Estates From One County to Some Other, or the Calling in of the County Judge of an Adjoining County to Hear the Same, by the Judge Disqualified.

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

§ 1. AMENDMENT.] That sections 6188, 6189, 6190, and 6191, of the revised codes of 1899, be amended to read as follows:

§ 6188. WHEN COUNTY JUDGE NOT TO ACT.] No will shall be admitted to probate, or letters testamentary or of administration granted, before any county judge who is interested, is next of kin to the decedent or is a legatee or devisee under the will, or when he is named as executor or trustee in the will, or is a witness thereto, or in any other manner interested or disqualified from acting.

§ 6189. COUNTY JUDGE BEING DISQUALIFIED PROCEEDINGS TO BE TRANSFERRED, AND WHERE.] When a petition is filed in the county court, praying for admission to probate of a will, or for granting of letters testamentary or of administration, or when proceedings are pending in the county court for the settlement of an estate, and the county judge is disqualified to act, an order must be made transferring the proceedings to the county court of an adjoining county; and the county judge ordering the transfer must transmit to the county court to which the proceedings are ordered to be transferred a certified copy of the order and all papers on file in his office in the proceedings; and thereafter the county court to which the proceedings are transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof as if it had original jurisdiction of the estate; provided, there shall not be any necessity for transferring such proceedings, or any of them when a county judge of some other county qualified to act attends at the request of the county judge of the county where such proceedings are pending, to hold court, and conduct and try such proceedings; and such county judge, when so called upon to preside, shall exercise the same jurisdiction over any proceedings in the estate as is exercised in other cases under like circumstances.

§ 6190. TRANSFER NOT TO CHANGE RIGHT TO ADMINISTER—RETRANSFER.] The transfer of a proceeding from one county court to another, as provided for in the preceding section, does not affect the

right of any person for letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration of the estate, in the order hereinbefore provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed, and qualified as judge of the county court wherein such proceeding was originally commenced, who is not disqualified to act in the settlement of the estate, and the cause for which the proceeding was transferred no longer exists, any person interested in the estate may have the proceeding returned to the county court from which it was originally transferred, by filing a petition setting forth these facts, and moving the court therefor.

§ 6191. WHEN PROCEEDING TO BE RETURNED TO ORIGINAL COURT.] On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of the parties interested would be promoted by such change, the county judge must make an order transferring the proceeding back to the court where it was originally commenced; and the county judge of the court ordering the transfer must transmit to the county court in which the proceeding was originally commenced a certified copy of the order, and all original papers on file in his office in the proceeding; and the county court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is no law for the calling in of an adjoining county judge to hear a case in which the presiding judge is disqualified, this act shall take effect and be in force from and after its passage and approval.

Approved February 23, 1905.

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## CHAPTER 91.

[S. B. No. 7—Kraabel.]

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### PROCEDURE IN JUSTICE COURT.

AN ACT to Amend Chapter 4 of the Laws of 1903, Relating to Procedure in Civil Actions in Justice Court.

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

§ 1. AMENDMENT.] That chapter 4 of the session laws of 1903, being section 6633 of the revised codes of North Dakota, 1899, be amended and re-enacted to read as follows:

§ 6633. COUNTY IN WHICH ACTION MUST BE COMMENCED.] The county in which a civil action in justice's court must be commenced and tried is as follows:

1. An action of forcible detainer or for trespass or any other injury to real property, or an action to recover specific personal property, or to foreclose or enforce a lien upon chattels or trespassing animals, must be brought in the county in which the subject of the action or property upon which the lien was claimed is situated.

2. An action to recover a penalty or forfeiture prescribed by statute, or to recover of a public officer, or his deputy, agent or surety for a violation of official duty, or any act done by color of his office, must be brought in the county in which the cause of action arose.

3. Every other action must be tried in the county in which the original defendant, or one of the several defendants, resides, or is served with summons, in a county contiguous to that of his residence, or in which a warrant of attachment is levied on property of the defendant.

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

## CHAPTER 92.

[S. B. No. 80—Stade.]

### SERVICE OF PAPERS IN COUNTY COURT.

AN ACT to Amend Sections 6207, 6208 and 6210 of the Revised Codes, Relating to the Service of Citations and Other Papers in the County Court.

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

§ 1. AMENDMENT.] That section 6207 of the revised codes be amended so as to read as follows:

§ 6207. SERVICE BY PUBLICATION, WHEN.] Service by publication may be substituted for personal service by a direction of the court authorizing such service, in either of the following cases:

1. When the party who is required to make or procure service or his attorney files an affidavit stating that he cannot obtain personal service on a person to be served, because he is unable to ascertain where such person may be found, he having no known place of residence within the state, if the court is further satisfied upon an examination as prescribed in section 6195 that the statements of the affidavit are true.

2. When it is established in like manner or appears upon the records in the case, that the person to be served is a nonresident of this state.

§ 2. That section 6208 of the revised codes be amended so as to read as follows:

§ 6208. MODE OF SERVICE INDORSED ON CITATION OR NOTICE.] Every direction for service by publication or other direction given by

the court respecting the mode of service must be indorsed on the citation or notice.

§ 3. That section 6210 of the revised codes be amended so as to read as follows:

§ 6210. SERVICE BY PUBLICATION. HOW MADE AND PROVED.] Service by publication is effected by printing and publishing the citation or notice to be served three times, once each week for three successive weeks in a newspaper, published in the county to be selected by the petitioner or his attorney, and is deemed complete on the day of the last publication and may be proved by affidavit as provided by section 5693 of the code of civil procedure.

Approved February 24, 1905.

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## CHAPTER 93.

[S. B. No. 216—Simpson.]

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### SERVICE OF PROCESS ON SHERIFF.

AN ACT Providing for the Service of Process Upon the Sheriff When Such Officer is a Party to Any Action or Proceeding by Virtue of His Office.

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

§ 1. CORONER OR CONSTABLE EMPOWERED TO SERVE.] In all actions or proceedings where the sheriff of any county in this state is, or hereafter may be, a party to any action or proceeding by virtue of his office, it shall be lawful for the coroner or any constable of the county of which such sheriff is an officer to serve all necessary process on such sheriff, and then make return thereon.

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

Approved March 9, 1905.

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## CHAPTER 94.

[S. B. No. 39—Sharpe.]

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### SUMMONS IN COUNTY COURT.

AN ACT to Amend Section 6608 of the Revised Codes, Relating to the Issue of Summons in County Courts With Increased Jurisdiction.

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

§ 1. AMENDMENT.] That section 6608 of the revised codes be amended so as to read as follows:

§ 6608. SUMMONS.] The summons may be issued by the judge or clerk of the county court or by the plaintiff or his attorney. If the summons is not issued by the judge or clerk of the county court it must contain the title of the action, specifying the court in which the action is brought, the names of the parties to the action and the name of the county, and shall be subscribed by the plaintiff or his attorney, who must add to his signature his post office address. The summons, if not issued by the judge or clerk of the county court, exclusive of the title of the action and the subscription, must be substantially in the following form, the blanks being properly filled :

“The state of North Dakota to the above named defendant :

“You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer upon the subscriber within ten days after the service of this summons upon you, exclusive of the day of service ; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

“Dated .....

In all cases where the summons is not issued by the judge or clerk of the county court, the complaint must be served at the same time as the summons.

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

Approved February 24, 1905.

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## DAIRY COMMISSIONER.

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### CHAPTER 95.

[H. B. No. 158—Weigel.]

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#### DAIRY COMMISSIONER.

**AN ACT to Regulate the Manufacture and Sale of Dairy Products and Imitations and Substitutes Therefor, Prescribing Penalties for Violations, to Create the Office of Assistant Dairy Commissioner, Prescribing His Duties and Fixing His Salary.**

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

§ I. OFFICE OF ASSISTANT DAIRY COMMISSIONER CREATED. DUTIES. SALARY.] In order to secure the better enforcement of the provisions of this act, and to promote the improvement of the products of the dairy, the commissioner of agriculture, by and with the advice and consent of the governor, shall appoint one deputy in his department to be known officially as assistant dairy commissioner, who shall