

§ 2439. SINKING FUND. DUTY OF COUNTY COMMISSIONERS.] Whenever there shall be accumulated in the sinking fund, or any other revenue county funds established by law, in any of the counties of this state an amount of money exceeding one thousand dollars, and for which there is no immediate use, the board of county commissioners of such county are authorized and empowered to direct a time deposit of such funds for a period of one year, as they may deem expedient, either in one or more of the county depositories as created by law, or such state or national bank as the said board of county commissioners may designate; provided, that the rate of interest offered by banks making bids for sinking funds shall not be less than two per cent nor more than five per cent per annum.

Approved February 6, 1909.

COURTS

CHAPTER 71.

[H. B. No. 190—Skulason]

CHIEF JUSTICE SUPREME COURT.

AN ACT Providing for the Office of Chief Justice of the Supreme Court, and Prescribing the Duties of the Chief Justice.

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

§ 1. JUDGE HAVING THE SHORTEST TERM SHALL BE CHIEF JUSTICE. DUTIES.] The judge of the supreme court having the shortest term to serve, not holding office by election or appointment to fill a vacancy, shall be chief justice and shall preside at all terms of the supreme court; provided, that whenever no member of said court is qualified for the office of chief justice under the above provisions, then the judges of said court shall select the chief justice. In the absence of the chief justice the judge having the next shortest term to serve, or a judge selected by the court, as the case may be, shall preside in his stead.

Approved March 16, 1909.

CHAPTER 72.

[S. B. No. 39—LaMoure]

SUPREME COURT TERMS.

AN ACT Fixing the Times and Place for Holding the General Terms of the Supreme Court and Providing for Special Terms in Certain Cases.

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

§ 1. HELD AT SEAT OF GOVERNMENT.] There shall be two general terms of the supreme court held at the seat of government each year, to be known as the April and October terms. The April term shall be held on the first Tuesday in April of each year, and the October term on the first Tuesday in October of each year; provided, that nothing herein contained shall prevent the holding of special terms at cities other than Bismarck, whenever in the opinion of the court, or a majority of the judges thereof, the public interests require a special term held elsewhere, which special term shall be held at a time and place to be determined and by giving twenty days' previous notice thereof by advertisement in a newspaper published at the seat of government.

§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act, and especially sections 440, 441 and 442 of the revised codes of 1905, are hereby repealed.

Approved February 18, 1909.

CHAPTER 73.

[S. B. No. 202—Sharpe]

SALARY CLERK SUPREME COURT.

AN ACT Fixing the Salary of the Clerk of the Supreme Court.

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

§ 1. SALARY FIXED.] Until otherwise provided by law and commencing January 1, 1909, the annual salary of the clerk of the supreme court is hereby fixed at two thousand dollars per year, which said salary shall be paid by the state auditor monthly as other state officers' salaries are paid.

Approved March 15, 1909.

CHAPTER 74.

[H. B. No. 116—Kneeland]

TERMS OF COURT IN FIFTH JUDICIAL DISTRICT.

AN ACT to Amend Section 473 of the Revised Codes of North Dakota of 1905, Relating 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.] Section 473 of the revised codes of North Dakota is hereby amended to read as follows:

§ 473. 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 second Monday in June and the second Monday in December.

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

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. EMERGENCY.] Whereas, an emergency exists in this, that the judicial business of Stutsman county requires that a term of court should be held therein prior to December, 1909, therefore this act shall take effect and be in force after its passage and approval.

Approved March 11, 1909.

CHAPTER 75.

[S. B. No. 105—McLean]

TERMS OF COURT IN SEVENTH JUDICIAL DISTRICT.

AN ACT to Amend Section 475 of the Revised Codes of 1905, Being the Section Relative to the Boundaries and Terms of Court in the Seventh Judicial District of the State of North Dakota.

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

§ 1. AMENDMENT.] Section 475 of the revised codes of 1905 for the state of North Dakota is hereby amended so as to read as follows:

§ 475. BOUNDARIES AND TERMS OF COURT.] The seventh judicial district consists of the counties of Pembina, Walsh and Cavalier and terms of court shall be held in each of said counties in each year as follows:

In the county of Pembina, at Pembina, commencing on the first Tuesday in January, the first Tuesday in June, the first Tuesday in April, and the first Tuesday in October; provided, that at the terms to be held in the months of April and October no jury shall be called unless called by the court for the trial of criminal cases.

In the county of Cavalier, at Langdon, commencing on the first Tuesday in December, the second Tuesday in June, the first Tuesday in March, and the second Tuesday in September; provided, that at the terms to be held in the months of March and September no jury shall be called unless called by the court for the trial of criminal cases.

In the county of Walsh, at Grafton, commencing on the fourth Tuesday in January, the fourth Tuesday in June, the third Tuesday in November, and the third Tuesday in March; provided, that at the terms appointed to be held in the months of March and November no jury shall be called unless called by the court for the trial of criminal cases.

Approved March 5, 1909.

CHAPTER 76.
[S. B. No. 170—Gronvold]

COURT IN NINTH JUDICIAL DISTRICT.

AN ACT to Amend Chapter 161 of the Session Laws of 1907, Relating to the Boundaries of the Second, Eighth and Ninth Judicial Districts, and Providing for Terms of Court in Said Districts.

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

§ 1. AMENDMENT.] Section three of chapter 161 of the session laws of 1907, relating to terms of court in the second, eighth and ninth judicial districts of the state of North Dakota, is hereby amended to read as follows:

§ 3. TERMS OF COURT.] The terms of the district court for the second and eighth judicial districts shall remain as now fixed.

The terms of the district court in the ninth judicial district shall be held at the county seat of each county in said district, as follows:

In the county of Bottineau, on the second Monday in February, the fourth Monday in April, the fourth Monday in June, the third Monday in September, and the third Monday of November of each year; provided, that no jury shall be called for the terms of court beginning on the fourth Monday in April, the fourth Monday in June and the third Monday in September, except in the discretion of the district judge.

In the county of McHenry on the second Monday in March, the second Monday in May and the third Monday in July, the first Monday in October and the third Monday in December of each year; provided, that no jury shall be called for the terms of court beginning the second Monday in May, the third Monday in July, and the first Monday in October, except in the discretion of the district judge.

In the county of Pierce on the third Monday in January, the first Monday in April, the first Monday in June, the first Monday in September and the third Monday in October of each year; provided, that no jury shall be called for the terms of court beginning the first Monday in April, the first Monday in September, and the third Monday in October, except in the discretion of the district judge.

Any terms of court now called for the ninth judicial district by the presiding judges of the second and eighth judicial districts shall be duly held, unless continued by the judge of the ninth judicial district, for cause.

§ 2. EMERGENCY.] Whereas, an emergency exists in this, that it is necessary for the perfection of court work in said ninth judicial district, that this amendment take effect prior to July 1, 1909, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 17, 1909.

CHAPTER 77.

[S. B. No. 225—Simpson]

TERMS OF COURT IN TENTH DISTRICT.

AN ACT Defining the Tenth Judicial District, and Providing for Terms of Court Therein.

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

§ 1. DEFINED. TERMS OF COURT.] The tenth judicial district consists of the counties of Morton, Stark, Oliver, Mercer, Billings, Dunn, Hettinger, Bowman, Adams and McKenzie, and all that portion of the Sioux Indian reservation lying north of the seventh standard parallel in North Dakota, and is divided into judicial subdivisions as follows:

1. The first subdivision consists of the county of Morton and all that portion of the Sioux Indian reservation lying north of the seventh standard parallel, and three terms of the district court shall be held each year at Mandan, the county seat of said county, commencing on the first Tuesday in May, the first Tuesday in February and the second Tuesday in November; provided, that no jury shall be called for the February term, except upon order of the judge of the court for the trial of criminal cases.

2. The second subdivision consists of the county of Stark, and three terms of the district court shall be held therein each year at Dickinson, the county seat of said county, commencing on the third Tuesday in May, the second Tuesday in September and the first Tuesday in December; provided, that no jury shall be summoned for the September term, except upon order of the judge of said court for the trial of criminal cases.

3. The third subdivision consists of the county of Oliver, and two terms of the district court shall be held therein each year at the county seat of said county at such times as the judge of said court shall direct.

4. The fourth subdivision consists of the county of Mercer, and two terms of the district court shall be held each year at the county seat of said county, commencing on the third Tuesday in June and the fourth Tuesday in October.

5. The fifth subdivision consists of the county of Billings, and two terms of the district court shall be held therein each year at Medora, the county seat of said county, commencing on the second Tuesday in January and the first Tuesday in June.

6. The sixth subdivision consists of the county of Dunn, and two terms of the district court shall be held therein each year at the county seat of said county at such times as the judge of said court shall direct.

7. The seventh subdivision consists of the county of Hettinger, and two terms of the district court shall be held each year at Mott, the county seat of said county, at such times as the judge of said court may direct.

8. The eighth subdivision consists of the county of Bowman and two terms of the district court shall be held therein each year at Bowman, the county seat of said county, at such times as the judge of said court shall direct.

9. The ninth subdivision consists of the county of Adams, and two terms of the district court shall be held therein each year at Hettinger, the county seat of said county, commencing on the first Tuesday in April and the second Tuesday in October.

10. The tenth subdivision consists of the county of McKenzie, and two terms of the district court shall be held therein each year at the county seat of said county at such times as the judge of said court may direct.

§ 2. CHAMBERS OF JUDGE.] The court of the tenth judicial district shall, excepting such times as the court is actually engaged in the holding of a term of court in any of the counties of said district, have its chambers for the purpose of holding and transacting such business as may come before it in the counties of Morton and Stark, respectively, at the county seats of said counties as follows:

(a) In the county of Morton on the first Monday in the months of January, March, May, July, September and November.

(b) In the county of Stark on the first Monday in the months of February, April, June, August, October and December.

§ 3. EMERGENCY.] An emergency exists in this, that within the tenth judicial district new counties have recently become organized, and there is no law fixing times of holding court therein, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 15, 1909.

CHAPTER 78.

[S. B. No. 205—McArthur]

COUNTY COURT.

AN ACT to Amend Section 8288 of the Revised Codes of 1905, of the State of North Dakota, Relating to the Increased Jurisdiction of the County Courts, and Providing for Abolishing the Same.

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

§ 1. AMENDMENT.] Section 8288 of the revised codes of 1905, of the state of North Dakota, be and the same is hereby amended and re-enacted to read as follows:

§ 8288. MAY HAVE INCREASED JURISDICTION, HOW.] Whenever the board of county commissioners of any county shall be presented with a petition signed by at least twenty per cent of the qualified voters and tax payers of said county, praying for the submission to the voters of the county of the question whether the county court of said county shall have increased jurisdiction, and in counties having such increased jurisdiction whether the same shall be abolished, it shall be the duty of said board to cause the same to be submitted to the voters of the county at the next general election; provided, that said board may in its discretion call a special election to determine said question. Notice of said special election shall be given by publishing a notice of the same, stating the object of said election, in three newspapers in the county once each week, for three successive weeks; provided, that the last publication shall be at least ten days, and not more than fifteen days, immediately preceding said election. In case there are not three newspapers published in the county, then said notice shall be published in such newspapers as are situated in said county and in not more than the three nearest newspapers published in adjoining counties. The petition presented to the board of county commissioners, as provided in this chapter, must show the population of said county to be at least two thousand, that the petitioners are qualified voters and taxpayers of said county and must be verified by at least three of the petitioners showing these facts; provided, further, that a majority of the highest number of votes cast at such election on any proposition whatever, shall be necessary to carry such question of increased jurisdiction or abolishing same; and provided, further, that an election for the purpose of abolishing such increased jurisdiction of the county court shall not be held oftener than once in six years.

§ 2. WHEN DECREASED JURISDICTION BECOMES OPERATIVE.] Whenever an election shall have been held under section one of this act, and the result thereof shall be, that said county courts of increased jurisdiction shall be reduced to that of courts of probate procedure as specified in section 7889, of the probate code of 1905, then said reduction shall take place at the expiration of the term for which the then presiding judge is elected.

§ 3. DUTY OF DISTRICT COURT.] Whenever there shall have been a reduction in the powers of the county court of increased jurisdiction any cases left untried, or any unfinished business upon the calendar of the court, and not properly triable in the probate court, shall be continued over and placed upon the calendar of the district court of the judicial district in which said county is situated, without prejudice thereto, and such transfer shall in all things operate the same as if said causes had been originally filed in said district court, and the court on its own motion shall direct and authorize said actions to be entitled in the district court.

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

Approved March 15, 1909.

CHAPTER 79.

[H. B. No. 66—White]

BONDS IN COUNTY COURT.

AN ACT to Amend Section 8049 of the Revised Codes of North Dakota of 1905, Relating to the Bonds of Executors, Administrators and Guardians.

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

§ 1. AMENDMENT.] Section 8049 of the revised codes of 1905, relating to the bonds of executors, administrators, and guardians, is amended to read as follows:

§ 8049. BOND. JUSTIFICATION.] Every executor, administrator or guardian must give bond to the state of North Dakota for the benefit of all persons interested in the estate in such sum as the court prescribes, with sufficient sureties to be approved by the judge; and conditioned for the faithful discharge of all the duties of the trust imposed on him by law or by order of the court according to law. Except as otherwise specially prescribed by law the required sum must not be less than twice the aggregate value, as ascertained by the court, of the personal property and the rents, profits and income for one year of the real property, belonging to the estate. Every bond must be held to be the joint and several contract of the principal and sureties executing the same, notwithstanding any express provisions therein to the contrary; provided, however, that whenever, by partial distribution or otherwise, the assets in the hands of any executor, administrator or guardian are reduced, and it is necessary to continue the trust for a period longer than one year from the time of the appointment of such executor, administrator or guardian, the county court, in its discretion, may accept from executor, administrator or guardian, a bond for a reduced amount, in twice the aggregate value as ascertained by the court of the personal property and the rents, profits and income for one year of the real property then in the hands of such executor, administrator or guardian, and upon full accounting by such executor, administrator or guardian the bond first given may be released as to future liability, and the bond in the reduced amount so taken, shall stand as the bond of such person; provided, however, that the release of such prior bond, shall in no way discharge the obligors therein from liability by reason of any default occurring prior to such discharge.

Approved March 16, 1909.

CHAPTER 80.

[H. B. No. 284—Kneeland]

PRACTICE IN COUNTY COURT.

AN ACT Regulating the Practice in County Courts Having Increased Jurisdiction and All Matters Relating Thereto; Fixing the Terms of Court, Compensation of Judges and Clerks, and Other Officers of Said Courts and Their Duties, and Repealing Sections 8289 to 8319, Inclusive, of the Revised Codes of 1905 of the State of North Dakota, and Chapter 68, Laws of 1907.

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

§ 1. JURISDICTION.] The county court shall have concurrent jurisdiction with the district court in all civil actions where the amount in controversy does not exceed one thousand dollars and in all criminal actions below the grade of felony.

§ 2. GENERAL PROVISIONS TO APPLY.] The general provisions of law which may at any time be in force relating to the district courts and to civil and criminal proceedings therein shall also relate to the county courts having increased jurisdiction, and the rules of practice of district courts shall be in force in said county courts, unless inapplicable and except as herein otherwise provided.

§ 3. PROVISIONAL REMEDIES TO BE GRANTED.] In all actions in county courts having increased jurisdiction in this state the proper parties shall be entitled to the benefit of the provisional remedies of arrest and bail, claim and delivery of personal property, attachment, garnishment and deposit, and, except as otherwise provided in this act, the procedure in such remedies shall be the same as provided for in chapter nine of the code of civil procedure of the revised codes of 1905, the powers therein given and duties imposed on sheriffs being hereby extended to constables, and the powers hereby given and the duties imposed on clerks of the district court are hereby extended to clerks of the county court, and the powers therein given and the duties imposed on a judge of the district court are hereby extended to a judge of a county court having increased jurisdiction.

§ 4. CONCURRENT JURISDICTION ON APPEAL.] Such county courts shall have concurrent jurisdiction with the district courts in appeals from all final judgments of justices of the peace, police, city or township justices, and the proceedings on such appeals shall be the same as now or may hereafter be provided for appeals from judgments of justices of the peace to district courts.

§ 5. POWER OF COUNTY JUDGE.] The county judge also possesses the same power and authority in any action or proceeding, which can be lawfully instituted before him, out of court, which a

judge of the district court possesses in a like action or proceeding, instituted before him in like manner. In all civil actions tried to the court without a jury or wherein a trial by jury is waived, the judge of such county court, upon consent of all parties to the action, may hear testimony and take evidence in any part of his county.

§ 6. CALENDAR.] The county judge shall, on the first day of each term, or as soon thereafter as may be, prepare a calendar of the causes standing for trial at such term, placing the causes upon such calendar in the order in which the same are numbered on the docket and setting the causes for trial upon convenient days during such term; provided, that no cause shall be set for trial upon the first day of said term without the consent of all parties thereto.

§ 7. CONTINUED CASES.] When for any cause the county judge fails to attend at the commencement of any regular term or at the time to which any cause is assigned for trial or at the time to which any cause may be continued, the parties shall not be obliged to wait more than one hour, and if he does not attend within the hour and no other disposition of the case is made by the judge, the parties in attendance shall be required to attend at nine o'clock a. m. of the following day, and if such judge shall not attend at that time, the cause shall stand continued until the first day of the next regular term.

§ 8. ADJOURNMENT.] The time for which any civil action may be adjourned shall be regulated by the county judge in the exercise of a reasonable discretion; provided, that such action cannot be adjourned over more than three regular terms of such court upon the application of either party without the consent of the other. In criminal actions, if the defendant has been committed to jail, he must be tried at the first jury term of such court held after such commitment. If the defendant, in a criminal action has given bail for his appearance, his trial must not be postponed longer than until the third term after such bail is given.

§ 9. TERMS OF COURT.] The regular terms of the county court shall be held at the county seat, commencing on the first Tuesday of each calendar month, for the trial of such civil and criminal cases as may be brought before such court; and a jury may be called at any regular term when, in the opinion of the county judge, there is a sufficient number of jury cases for trial to warrant the calling of such jury; provided, that no jury shall be called for any term at which there is not one or more criminal cases, or five or more civil jury cases for trial.

§ 10. MANNER OF SELECTING JURY.] Jurors in the county court having increased jurisdiction shall be selected in the same manner and by the same officers and from the same jury list as if the jurors were to be selected for the district court, and all of the laws relating to the selection of jurors in the district court are hereby made applicable to the selection of jurors in the county court, and each

party shall be entitled to the same number of challenges as are now or may hereafter be allowed in the district court in like actions.

§ 11. JURY MAY BE REQUIRED TO ATTEND SUBSEQUENT TERMS.] Any jury so summoned may at the discretion of the judge of such county court be required to attend at any subsequent adjourned or regular term of such court not exceeding in all one calendar year. Jurors shall attend without service of venire or summons upon receipt of a notice from the clerk of such court stating the date on which his appearance is required, which notice may be served by registered mail.

§ 12. BAILIFF.] The judge of the county court may appoint one or more competent persons as bailiffs of the court, who shall hold such office at the pleasure of the judge. Such bailiff shall have the same powers as a constable, and shall receive for his services the same fees as are prescribed for constables.

§ 13. PROCESS, BY WHOM SERVED AND COMPENSATION.] All writs and processes in county courts may be served by a constable as well as a sheriff, and when served by a constable, he shall be entitled to the same fees as the sheriff receives for like service.

§ 14. JUDGMENT LIEN. ABSTRACT.] The clerk of the county court, on the demand of a party in whose favor a judgment shall have been rendered in that court, must give a certified abstract thereof, in substantially the form prescribed by section 8446 of the justice's code, which abstract may be filed in the office of the clerk of the district court of the county or sub-division in which the judgment was rendered, and the clerk of such district court must thereupon enter such judgment in the judgment book, and upon the judgment docket; and from the time of the docketing thereof, it becomes a judgment of such district court for the purposes of execution and a lien upon real property owned by the debtor; and a certified transcript of the docket of such judgment may be filed and the judgment docketed accordingly in any other county or sub-division with the same effect in every respect as if the judgment had been rendered in the district court where such judgment is filed. No execution shall issue out of the county court upon any judgment upon which an abstract has been issued and filed in the district court of that county.

§ 15. REQUISITES OF SUMMONS.] The summons must contain the title of the action, specifying the court in which the action is brought, the name of the parties to the action, and shall be subscribed by the plaintiff or his attorney, who must add to his signature his address, specifying a place within the state where there is a post office. The summons shall be substantially in the following form, the blanks being properly filled:

the affidavit for publication, and a copy of the summons and complaint must, within ten 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. Such copy of summons and complaint may be mailed by registered letter, in which case the return of registry receipt of the post office department, shall be prima facie proof of its mailing and its receipt by the defendant to whom it is mailed.

§ 19. SERVICE OUTSIDE OF THE STATE.] After the filing of the affidavit for publication, and the complaint in any civil action personal service of the summons and complaint upon the defendant outside of the state, if made within twenty days after the filing of such affidavit, shall be equivalent to and have the same force and effect as the publication and mailing thereof hereinbefore provided for.

§ 20. WHEN SERVICE COMPLETE.] Service by publication is complete upon the expiration of twenty-one days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defendant outside of the state, upon the expiration of ten days after the date of such service.

§ 21. PROCESS MAY BE SERVED IN ANY COUNTY.] A county court having increased jurisdiction has power in any civil action within its jurisdiction, to send its process into any county of the state for service or execution, and to enforce obedience thereto with like power and authority as the district court; and all writs, summons and other process may be executed and served in any county of this state, except that no execution upon any judgment in a civil action shall issue out of any county court after an abstract of such judgment has been filed in the district court of the county where the judgment was rendered.

§ 22. TIME OF TRIAL. NOTICE.] It shall not be necessary to serve a notice of trial or file a note of issue in any civil action in a county court having increased jurisdiction, and in all cases where the answer to the complaint in such action has been filed at least ten days before the time of commencement of any regular term of such court, such action shall be placed upon the calendar and stand for trial at that time. When the time to answer does not expire at least ten days before the first day of the next regular term of such court, the cause shall stand for trial at the next succeeding term thereof.

§ 23. GARNISHMENT SUMMONS.] In all garnishment proceedings the plaintiff shall attach to his affidavit for garnishment a garnishment summons, which shall be substantially in the following form:

determined in said district court as if the same had originally been commenced in such district court, but costs shall be taxed and allowed as in a county court having increased jurisdiction.

§ 26. PREJUDICE OF JUDGE. AFFIDAVIT. PROCEDURE.] Whenever the defendant, in a criminal action shall, before the opening of any term in which the case appears on the calendar for trial, file his affidavit stating that he has good reason to believe and does believe that he cannot have a fair and impartial trial of such action on account of the bias or prejudice of the judge of the county court in which said action is pending, the court shall thereafter proceed in said action, as follows:

1. The court may request, arrange and procure the judge of another county having a county court with increased jurisdiction, to preside at said trial in the county in which the action is pending. A change upon the ground in this section provided for must be asked at the time hereinafter provided and not more than one change can be granted therefor; but if a trial has been had without a verdict, a change for the cause provided for in this section may be had if asked for at the term at which said trial was had and before another trial of the action is begun; provided, that the county judge before whom said affidavit is filed may in his discretion in lieu thereof certify all proceedings to the district court.

2. The actual expenses of a county judge, procured under the provisions of this section, while traveling to and from the county to which he has been called and during the trial of the cause, shall be paid by the county in which the action was pending.

3. When either party to a civil action pending in any of the county courts having increased jurisdiction, in this state, shall, after issue is joined and before the opening of any term at which the cause is to be tried, file an affidavit, corroborated by the affidavit of his attorney in such cause and that of at least one reputable person, stating that there is good reason to believe that such party cannot have a fair and impartial trial of said action by reason of the prejudice, bias or interest of the judge of the county [court] in which the action is pending, the court shall proceed no further in the action, but shall forthwith request, arrange for and procure the county judge of some other county of the state having a county court of increased jurisdiction to preside at such trial in the county in which the action is pending. The actual expenses of such judge while in attendance upon the trial of the cause for which the change was had and the extra expense of the court and jury, incurred by reason of said change, shall be paid by the person asking for the change, in advance, or a bond, to be approved by the clerk of the county court, given therefor, the amount of said bond being fixed by the presiding judge; provided, that not more than one such change shall be granted on the application of either party; and provided, that the county judge before whom said affidavit is filed may

in his discretion in lieu thereof certify all proceedings to the district court. A failure to file the affidavit of prejudice hereinbefore mentioned within the time before specified in any criminal or civil action shall constitute a waiver of all objections to the trial of such action by the presiding judge of such county court.

§ 27. JURY TRIAL TO BE DEMANDED.] In all civil actions wherein there are issues of fact triable to a jury, either party may demand a jury trial, but such demand must be made in writing and filed in the office of the clerk of the county court, on or before the first day of the term at which said cause may be tried. A failure to file such demand shall be deemed an express waiver of the right to a jury trial in such action.

§ 28. COSTS.] When the prevailing party in a civil action has appeared therein by an attorney duly authorized to practice in the courts of this state, there shall be allowed for his reimbursement and taxed as a part of the costs, the same sums as provided by section 8445 of the revised codes of 1905 in like cases; and in all cases there shall be allowed such other costs as are provided in the code of civil procedure.

§ 29. FEES OF CLERKS.] Clerks of county courts having increased jurisdiction shall collect for their services in all civil and criminal proceedings the same fees as provided for in the fee bill for the clerk of the district court, except as follows: Clerks of county courts shall collect for all default judgments in civil actions, including all fees prior to execution, the sum of one dollar and fifty cents and no more, and for a certified abstract or transcript of any judgment in any civil action, the sum of fifty cents and no more. The clerk of the county court shall require a deposit of three dollars at the time of the filing in this court of any civil action and may thereafter require from time to time additional deposits to cover his fees as they may accumulate, and upon the entry of judgment in any such action, the clerk of said court shall refund to the proper party, the amount of all such deposits in excess of his legal fees accrued in said action.

§ 30. NEW TRIALS.] The county court shall have authority to grant new trials, judgments notwithstanding the verdict, to vacate and set aside verdicts, affirm, modify or set aside judgments in actions tried in such court in the same manner and pursuant to the same statutes, rules and regulations now prescribed by law for the district courts, and a statement of the case may be prepared and settled in the manner prescribed in the code of civil procedure.

§ 31. APPEALS FROM COUNTY COURT.] In all actions brought under the provisions of this chapter an appeal may be taken to the supreme court of the state in the same manner and pursuant to the same rules as appeals from the district court.

§ 32. DEFENDANT BOUND OVER TO.] In any criminal action or proceeding for any criminal offense of which the county court has

jurisdiction, any justice of the peace or other examining magistrate having jurisdiction must admit to bail, bind over or commit for trial the accused to the county court of such county and the information shall be filed in such county court. If any person accused of a criminal offense is so bailed, bound over or committed for trial to the county court for a crime of which such court has not jurisdiction, such proceedings shall not abate and such county court shall not lose jurisdiction of such person and proceedings, but shall certify the same to the district court of such county and such proceedings shall thereupon be tried in the district court with the same force and effect as if such action or proceeding had been originally commenced therein. If any examining magistrate shall at any time bind over a defendant to the district court for an offense of which the county court has jurisdiction or if it shall appear by evidence or otherwise at any time to the judge of the district court that the offense with which the defendant is or should be charged is triable in the county court, the judge of the district court may certify such cause and all proceedings relative to any person accused of such offense to the county court of such county for trial, determination and adjudication, and thereupon the same and all the papers and files therein shall be transferred by the clerk of the district court to the county court without any further order or certificate and such shall thereupon be tried in the county court with the same force and effect as if said cause had originally been commenced therein.

§ 33. WARRANT OF ARREST.] The county court in term time or the judge in vacation may issue warrants of arrest for persons against whom an information has been filed, shall fix the amount of bail to be required of the accused and the clerk shall indorse the same upon the warrant except when the warrant is issued in term time, when the same may be returnable forthwith and it shall not then be necessary to fix the amount of bail until the accused is brought into court.

§ 34. RECEIVE PLEA AND PASS JUDGMENT.] The court may receive the plea of guilty and pass judgment in term time or vacation. If the accused waives a jury he may be tried by the court without a jury in term time upon notice being given first to the state's attorney.

§ 35. PRELIMINARY EXAMINATION.] No preliminary examination shall be necessary before trial in criminal actions in the county court. The judge of a county court having increased jurisdiction may act as a committing magistrate, and hold preliminary examinations in any part of his county.

§ 36. ASSIGNMENT OF COUNSEL.] In all criminal cases triable in the county court when it is satisfactorily shown to the court that the defendant has no means and is unable to employ counsel, the court shall in such cases assign counsel for the defense and al-

low and direct to be paid by the county in which said court is held, a reasonable and just compensation to the attorney or attorneys assigned for such services as they may render; provided, however, that such compensation shall not exceed twenty-five dollars in any one case.

§ 37. JURY TRIAL.] In all criminal actions the defendant shall be entitled to a trial by jury, and when the defendant is arraigned he shall be informed by the court of his right to trial by jury and if he waives his right to a jury trial an entry to that effect shall be made on the court minutes and the defendant shall be tried to the court.

§ 38. JURY IN CRIMINAL ACTION, HOW COMPOSED.] The jury in all criminal cases shall be composed of twelve residents of the county having the qualifications of jurors, and the jurors above mentioned shall be selected, summoned and empaneled as hereinabove specified; provided, that each party shall be entitled to the same number of challenges as is now or may hereafter be allowed in the district court in like actions.

§ 39. NEW TRIALS IN CRIMINAL ACTIONS.] In all criminal actions or proceedings brought in a county court having increased jurisdiction, the county court shall have authority to grant new trials, vacate and set aside verdicts and entertain motions in arrests of judgments in the same manner and pursuant to the same statutes, rules and regulations now prescribed by law for the district courts, and a statement of the case may be prepared and settled in the same manner prescribed in the code of criminal procedure.

§ 40. APPEALS FROM COUNTY COURT IN CRIMINAL ACTIONS.] In all criminal actions brought in a county court having increased jurisdiction, an appeal may be taken to the supreme court in the same manner and pursuant to the same rules as appeals from the district court to the supreme court.

§ 41. CLERK OF DISTRICT COURT EX-OFFICIO CLERK OF COUNTY COURT.] In all counties having county courts with increased jurisdiction the clerk of the district court shall be the clerk of the county court in the same county. Such clerks of the district court and their deputies shall perform all the duties of clerks of such courts, in all actions and proceedings commenced in the county court by virtue of its increased jurisdiction, in the same manner as they are required to perform the duties of clerks of the district court, so far as the provisions of the law relating to that subject are applicable, and may demand, receive and retain the fees provided for clerks of district courts, except as herein otherwise provided, and the fees so paid shall be retained by the clerk of the district court as and for compensation for the services rendered by him as the clerk of such county court; provided, however, that they shall be entitled to receive no per diem for attendance on court, nor salary from the county on account of services performed in

said court. The judge of a county court having increased jurisdiction in counties having a population of not less than fifteen thousand, shall have power to appoint a clerk of such court, whose duties and powers shall be as nearly as may be the same as those of the clerks of the district courts. Such clerk shall hold his office during the pleasure of the judge appointing him; and in counties having a population of less than eighteen thousand, the salary of such clerk shall be twelve hundred dollars per year, and in counties having a population of more than eighteen thousand such clerk shall receive a salary of fifteen hundred dollars per year, such salary to be paid by the county monthly in the same manner as the salaries of other county officers are paid. He shall charge and receive for acts performed by him the same fees and commissions as are now allowed by law to clerks of district courts, except as modified by the provisions of this act. He shall keep a true account of all commissions and fees received by him in a book of record, to be kept for that purpose, and on the first day of each calendar month, shall pay all such fees and commissions to the treasurer of the county.

§ 42. CUSTODY OF RECORDS.] The judge of the county court shall have the care and custody of all records of the court which relate to actions or proceedings within its civil and criminal jurisdiction, and shall be responsible for all acts of any clerk of such court who may be appointed by such judge, and for all fees collected by such appointee; and the judge of such court may require such clerk to give to him a bond conditioned for the faithful performance of all his duties as such clerk, and for the accounting for and payment to the county treasurer of all fees and other moneys collected by him by virtue of his office.

§ 43. POPULATION, HOW DETERMINED.] For the purposes of ascertaining the amount of compensation to be paid to the judges and clerks of the county courts, the county auditor shall determine the population of his county from the latest census of such population taken either by state or federal authority.

§ 44. SALARY OF JUDGE.] As compensation for their services under this chapter, there shall be allowed and paid to the judges of county courts having civil and criminal jurisdiction in addition to the salary provided for such judges of county courts, in counties not having increased jurisdiction, the sum of one hundred dollars for each one thousand inhabitants or fraction thereof; provided, that in no case shall the compensation for all services of the county judge exceed the sum of two thousand five hundred dollars, and said sum shall cover all services under the prohibition law.

§ 45. JUDGE SHALL NOT ACT AS ATTORNEY.] It shall be unlawful for any judge of a county court in counties in which said courts have been or shall or may be given increased jurisdiction, to act as attorney or counselor at law during the period of his in-

cumbency in his office. Any such judge who shall willfully violate the provisions of this section shall be subject to removal from office.

§ 46. COURT STENOGRAPHER.] The judge of any county court having civil or criminal jurisdiction is authorized in his discretion to appoint a court stenographer of such court. Such stenographer shall qualify in the same manner and his duties and compensation shall be the same as the court stenographer of a district court. Such compensation shall be paid in the same manner as that of the court stenographer of the district court; provided, that such court stenographer shall not be appointed in any county having less than eight thousand inhabitants, unless the board of county commissioners shall first authorize such appointment.

§ 47. REPEAL.] Sections 8289, 8290, 8291, 8292, 8293, 8294, 8295, 8296, 8297, 8298, 8299, 8300, 8301, 8302, 8303, 8304, 8305, 8306, 8307, 8308, 8309, 8310, 8311, 8312, 8313, 8314, 8315, 8316, 8317, 8318, and 8319 of the probate code of the revised codes of 1905, of the state of North Dakota, and chapter 68 of the laws of the tenth legislative assembly of said state, are hereby expressly repealed.

Approved March 12, 1909.

CHAPTER 81.

[S. B. No. 156—Overson]

JUSTICE OF THE PEACE.

AN ACT Providing for the Election of Justices of the Peace and Constables in Election Precincts, Comprising One or More Unorganized Townships, on Petition of Ten or More Qualified Electors of Such Precinct.

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

§ 1. ADDITIONAL JUSTICES, WHEN. PETITION FOR.] Whenever ten or more qualified electors of any election precinct in this state, comprising one or more unorganized townships, shall file a petition with the county auditor of the county in which they reside, setting forth that there are not enough justices of the peace or constables in such precinct for the proper administration of justice, there shall thereafter be elected at the general election in each even numbered year two justices of the peace and two constables, whose jurisdiction shall be the same as county justices and constables. On the filing of said petition such offices shall be deemed vacant and shall be filled by appointment of the board of county commissioners at their next regular meeting or at a special meeting called for that pur-

pose. The officers so appointed shall hold office until their successors are elected and qualified, or until the township or townships comprising said election precinct shall become organized.

§ 2. EMERGENCY.] Whereas, an emergency exists, there being many counties in the state in which there are not enough justices of the peace and constables for the proper administration of justice, this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1909.

CHAPTER 82.

[H. B. No. 370—Dovle, of Foster]

NON-PARTISAN JUDICIARY.

AN ACT to Provide for the Nomination and Election of Judges of the Supreme and District Courts.

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

§ 1. NO PARTY BALLOT.] In all petitions and affidavits to be filed by or in behalf of candidates for nomination at the primary election to the office of judge of the supreme or district court, no reference shall be made to a party ballot or to the party affiliation of such candidate.

§ 2. SEPARATE BALLOT FOR JUDICIAL NOMINATIONS.] All primary elections at which candidates for judge of the supreme or district court are to be nominated, there shall be separate ballots, upon which shall be placed the names of the candidate for such offices, which ballot shall be entitled the "judiciary ballot," and the names of such candidates shall be placed thereon without party designation, and there shall be designated thereon the number of judges each elector is entitled to vote for. This ballot shall be delivered to each elector by the proper election officer, and the candidate on such "judiciary ballot" receiving the highest number of votes to the extent of double the number of those to be elected, provided there are that many or more candidates running for such office or offices, shall be duly nominated.

§ 3. BALLOT AT GENERAL ELECTIONS.] At the general election there shall be a separate ballot, upon which shall be placed the names of the candidates for judge of the supreme court and judge of the district court, who have been nominated as herein provided, which ballot shall be entitled the "judiciary ballot," and the names of all candidates shall be placed thereon without party designation, and there shall be designated thereon the number of judges each elector is entitled to vote for. This ballot shall be delivered to each elector,

number of votes to the number of those to be elected, shall be duly elected.

and the candidates on such "judiciary ballot" receiving the highest

§ 4. REPEAL.] All acts and parts of acts in so far as they conflict herewith are hereby repealed.

Approved March 6, 1909.

CHAPTER 83.

[S. B. No. 296—Bessesen]

REPORTS OF SUPREME COURT.

AN ACT to Amend Section 460 of the Revised Codes of North Dakota for 1905, Relating to the Supreme Court Reports, How Printed, and Number.

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

§ 1. AMENDMENT.] Section 460 of the revised codes of North Dakota for the year 1905 is hereby amended to read as follows:

§ 460. REPORTS, HOW PRINTED. NUMBER.] After sufficient opinions are announced and recorded to make a volume, the reporter shall forthwith deliver to the person, persons or corporation having the contract with the state for publishing the same, copies of such opinions, and with each opinion a syllabus, and a brief statement of the facts involved, together with other matters as contemplated in section 457. Within twenty days after the proofsheets for a volume have been furnished to him by the publishers at his office, he shall furnish to such publishers an index and table of cases to such volume. The publishers shall furnish to the reporter without delay, as soon as they shall be issued seven copies of the revised proofsheets of the opinions, head notes, index and table of cases of each volume, for correction and approval by the reporter and judges of the supreme court, and shall cause such corrections to be made therein as shall be indicated by the reporter or said judges. Each of said volumes shall contain not less than six hundred and fifty pages, exclusive of the table of cases and index, and the workmanship and quality of material shall be approved and accepted by a majority of the judges of the supreme court. The secretary of state shall, in the first week in April and every eight years thereafter, advertise weekly, in six different newspapers in different localities in this state, for the term of six weeks, that sealed proposals will be received at the office of the secretary of state, for printing, publishing and selling the said reports for the term of eight years next after the first day of June of said year, at a certain rate per volume, to be stated in said proposal, not exceeding

two dollars and twenty-five cents per volume. Each bidder shall deposit with the state treasurer the sum of one thousand dollars either in cash or by certified check, before making his proposal, to be forfeited to the state in case he shall not make a contract according to his proposal, if accepted, and according to the requirements of this chapter, and shall take a receipt from said treasurer and deposit the same with his proposal, and, upon entering into the contract herein provided, or upon the proposal being rejected, the said sum shall be returned. The successful bidder shall enter into a contract that he will publish the supreme court reports of the state, of the quality, style and character in all respects as required in this chapter.

First: Each volume shall contain at least six hundred and fifty pages of four and one-half inches in width and equal in style and quality to the best of those heretofore published.

Second: Three hundred and twenty-five copies shall be published and delivered to the secretary of state within sixty days after the complete manuscript thereof shall be delivered by the reporter of said court to said contracting party; provided, however, that such time that said reporter shall retain the proof of any one volume after the same shall have been submitted to him for revision shall not be computed as a part of said sixty days.

Third: That at the time said party to whom said contract shall be awarded shall deliver said copies of said report to said secretary of state, said party shall deliver to said secretary of state, free of charge, a true and correct paper matrix of said report, to be preserved by said secretary of state as part of the records of his office.

Fourth: That the party to whom said contract shall be awarded shall agree to publish and sell the same to the citizens of North Dakota, and at all times keep the same on sale at the price agreed upon in said contract, and shall agree to stereotype the same and at all times keep the same on sale at the contract price, and furnish the state any number of additional copies that may be thereafter required at said contract price, the copyright of all reports published under said contract vesting in the secretary of state for the benefit of the people of this state; provided, however, that nothing herein contained shall be so construed as to prevent the contractors by whom any such volume is published, their representatives or assigns, from continuing the publication and sale of such volumes, so long as they shall comply in all respects with the requirements of this act in respect to the character, sale and price of such volume.

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

Approved March 15, 1909.