

Laws of North Dakota for the year 1913 is hereby amended and re-enacted so as to read as follows:

Sec. 147. STATE TREASURER'S: REPORT.) It shall be the duty of the State Treasurer on or before the tenth day of January, April, July and October of each year to make a report in writing, under oath to the Governor, showing the total amount of all moneys in his hands or under his control, and showing the balance in all funds on the last day of the preceding month, showing separately the amount of the average daily balance in each of the state depositories and the amount on time deposits therein, together with the rate of interest paid on each class of deposits and the amount of the bond furnished by each depository; also the amount on hand in the vaults of the State Treasurer. Under the latter head, he must specify the amount on hand in cash, and separately the amount held as cash items. Such report must be verified by the State Auditor and the State Treasurer shall, before the fifteenth day of each of said months, cause to have printed said report in pamphlet form and must forthwith mail a copy thereof to each depository, one to each County Auditor in the state and one to each official county paper in the state. Proof of the mailing of such report must be made by affidavit of some person having a personal knowledge thereof and such report, with such other proof, then filed in the office of the Governor.

Sec. 2. REPEAL.) That Section 147a of the Compiled Laws of North Dakota for the year 1913 is hereby repealed.

Approved February 19th, 1923.

TRIAL

CHAPTER 330.

(H. B. No. 38—Twichell.)

CONVERSION OF GRAIN OF PUBLIC WAREHOUSE.

An Act Regulating Procedure and Prescribing Rules of Evidence in Actions Brought by Holders of Grain Storage Tickets, for the Recovery of the Possession or Value of Grain stored in Public Warehouses, which Grain has been Converted or Improperly Detained from the Owner.

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

Sec. 1. WHO MAY BRING ACTION AND EFFECT THEREOF.)
In any case where the grain of different owners has been stored

in warehouses or elevators and has become mingled in a common mass, and any part thereof has been converted or is wrongfully detained by any person, the owner of any part of such common mass may maintain an action against the wrongdoer for the recovery of the possession or the value, as the case may be, of the quantity of such person's contribution to such common mass, and it shall not be necessary to join as a party any other person who may likewise have contributed, or be alleged to have contributed to such common mass, but the commencement of such action shall be deemed to be a selection or segregation of such person's interest, in all things the same as though upon a demand made therefor, such grain or the value thereof had been set aside and delivered to such party.

Provided, however: In case two or more persons shall have brought separate actions against the same defendant to recover the value or possession of different amounts of such common mass, the court in which such actions are pending may in its discretion consolidate such actions, and dispose of them as justice and equity shall require.

Sec. 2. STORAGE TICKETS PRIMA FACIE EVIDENCE.) In any action involving the ownership or right of possession of stored grain, the storage tickets or warehouse receipts issued by any public warehouseman or grain dealer who commonly receives such grain for storage, in substantially the form prescribed by statute, shall be received in evidence, and shall be prima facie evidence that grain of the kind and quantity recited therein was received by such warehouseman at about the date of such ticket, and that the same was the property of the person named in said receipt as having deposited the same.

Sec. 3. VALUE OF GRAIN MAY BE PROVED, HOW.) In any such action it shall be permissible to prove the value of the grain in question by any of the following classes of evidence:

(a) By market reports published in any newspaper or trade journal which commonly publishes such reports, purporting to give market values or selling prices of such grain at the market in question. No further foundation for the introduction of such reports in evidence shall be necessary than the showing that such newspaper or journal is in circulation as such or is commonly sold at public news stands and the court may take judicial notice of the character and circulation of such newspaper or journal without proof.

(b) The buying and selling price of similar grain may be shown by the records of any chamber of commerce, board of trade or similar organization which is shown to keep a record of permanent character of the prices at which such, or similar grain sold in the market at which such organization is situated.

(c) Witnesses engaged in the business of buying or selling grain may likewise testify to the value of grain at any given market at any given time, upon showing their knowledge thereof, and for the purpose of refreshing his recollection such witness may examine and consider the permanent records of sales or purchases made in the regular course of business of such witness or the firm or concern with which he is or was connected.

Sec. 4. METHOD OF PROOF NOT EXCLUSIVE.) The methods of proof herein provided for shall not be exclusive but cumulative, and shall be taken and received together with any other competent evidence tending to establish the value in question.

Sec. 5. APPLICABLE IN WHAT CASES.) The provisions of this act shall be applicable to all actions hereafter tried, without regard to when the same were commenced.

EMERGENCY.) Whereas it is a matter of common knowledge that during the past year large amounts of grain belonging to farmers and represented by storage tickets have been appropriated by buyers of grain and commission men at terminal markets, and the same is being held against the claims of the owners thereof, and a large amount of litigation is pending in the courts of the state, and being contemplated, and there is great uncertainty as to the admissibility of ordinary and convenient evidence to prove the value thereof, and large expense is being cast upon the citizens of the state, an emergency exists and this act shall take effect immediately upon its passage and approval.

Approved January 26th, 1923.

CHAPTER 331.

(S. B. No. 205—Kaldor.)

CHANGE OF JUDGES.

An Act to Amend and Re-enact Section 7644 of the Compiled Laws of North Dakota for the Year 1913, as Amended by Chapter 1 of the Session Laws for the Year 1919, (Regular Session) and Chapter 129 of the Session Laws for the Year 1921, Relating to Change of Judges in Civil and Criminal Actions in the District Court, for Prejudice or Bias of Judge thereof; Providing for the Calling in of Another Judge of Another Judicial District, and the Payment of His Expenses, and the Discharge of Jurors Therein, and Repealing all Acts or Parts of Acts in Conflict Herewith.

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

Sec. 1. AMENDMENT.) That Section 7644 of the Compiled Laws of North Dakota for the Year 1913, as amended by Chap-

ter 1 of the Session Laws for the year 1919, (Regular session), as amended by Chapter 129 of the Session Laws for the year 1921, is hereby amended and re-enacted to read as follows:

Sec. 1. FOR PREJUDICE OR BIAS.) When either party to a criminal or civil action pending in any of the District Courts of the state, shall after issue joined and before the opening of any regular, special or adjourned term at which the cause is to be tried file an affidavit stating that he has reason to believe and does believe that he cannot have a fair and impartial trial or hearing before the Judge of the District Court by reason of the bias and prejudice of such judge, the court shall proceed no further in the action and shall thereupon be disqualified to do any further act in said cause; provided that where the information in a criminal action is filed in term time such affidavit may be filed at any time before trial.

Sec. 2. AFFIDAVIT OF PREJUDICE. BY WHOM MADE.) Such affidavit shall be made by the defendant or his attorney or the attorney for the state in a criminal action and in civil actions by the party to the action desiring such change of Trial Judge or by his attorney.

Sec. 3. AFFIDAVIT TO BE FILED.) Such affidavit with two copies thereof shall be filed with the Clerk of the Court in which the action is pending. Upon the filing of such affidavit the Clerk shall immediately give notice to the Judge so disqualified by delivering to him a copy of such affidavit. Said Clerk shall promptly forward to the Clerk of the State Supreme Court a copy of such affidavit.

Sec. 4. THE SUPREME COURT TO DESIGNATE TRIAL JUDGE.) The Supreme Court shall upon receipt of such affidavit of prejudice from the Clerk of the District Court designate a District Judge to act in the place and stead of the Judge disqualified.

Sec. 5. EXPENSES OF JUDGE.) Any Judge of the District Court designated by the Supreme Court to act in said cause shall as soon as possible after receiving such notice from the Supreme Court and during said term, unless otherwise agreed by the parties to said action, proceed with the trial of said cause, first giving reasonable notice of the date of trial to the parties to said action, or their attorneys, and the actual expenses of such incoming Judge shall upon the furnishing of a voucher therefor by said Judge to the State Auditor be approved for payment and paid to the State Treasurer out of the General Fund.

Sec. 6. JURORS NOT TO BE EXCUSED BY DISQUALIFIED JUDGE.) After the filing of such affidavit of prejudice with the

Clerk of the District Court no juror shall be excused except for good cause shown to the incoming judge and by such incoming judge.

Sec. 7. NUMBER OF CHANGES ALLOWED.) No more than one change shall be granted on the application of either party in any action.

Sec. 8. All acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 1st, 1923.

CHAPTER 332.

(S. B. No. 316—Baird.)

TRIAL JURY.

An Act To Amend and Re-enact Section 7625 of the Compiled Laws of North Dakota for 1913, Relating to a Trial Jury in Civil Cases.

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

Sec. 1. AMENDMENT.) Section 7625 of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

Sec. 7625.) When the case is finally submitted to the jury they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place under charge of an officer, until they agree upon a verdict or are discharged by the court. Unless, by order of the court, the officer having them under his charge must not suffer any communication to be made to them, or to make any himself except to ask them if they have agreed upon a verdict; and he must not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon. Provided, however, that where a trial jury contains both men and women members, the trial judge in his discretion, if he deems it proper to so do, direct that the women members of the jury be placed in charge of a woman bailiff and permitted to retire to a suitable place for rest; and the men members of the jury placed in charge of a man bailiff for a similar purpose. In all cases where the jury is permitted to be separated, as above stated, the trial judge shall admonish the jury that they must not in any manner discuss the case among themselves, or permit anyone to discuss it with them, while they are so separated; and that they must discuss and consider the case only in the jury room when all members of the jury are present.

Sec. 2. EMERGENCY.) This act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved March 6th, 1923.

CHAPTER 333.

(S. B. No. 206—Fleckten.)

VERDICT BY FIVE-SIXTHS OF JURY.

An Act Providing for a verdict in civil cases by five-sixths of the jury after twelve hours deliberation.

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

Sec. 1. In all civil actions or proceedings in any court of record in this state after twelve hours deliberation the agreement of five-sixths of any jury therein shall be a sufficient and valid verdict; the deliberation of the jury shall be deemed to have commenced when the officer taking charge of the jury has been sworn, and the clerk shall enter such time in his records.

Sec. 2. Where the verdict is agreed to by the full membership of the jury, the foreman shall sign the verdict; when less than the full membership agree on the verdict, the same shall be signed by all the jurors who agree therein and the clerk of said court shall enter on his minutes the number of said jurors agreeing in said verdict.

Sec. 3. All acts in conflict herewith are hereby repealed.

Approved March 1st, 1923.

CHAPTER 334.

(S. B. No. 268—Tofsrud.)

CAUSES FOR NEW TRIAL.

An Act to Amend and Re-enact Chapter 7660, of the Compiled Laws of the State of North Dakota, for the year 1913, as Amended by Chapter 131, of the Session Laws of 1921, Relating to Causes for a New Trial in Civil Actions.

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

Sec. 1. AMENDMENT.) Section 7660 of the Compiled Laws of the State of North Dakota for the year 1913, as amended by Chapter 131 of the Session Laws of 1921, is hereby amended and re-enacted to read as follows:

Sec. 7660. CAUSES FOR NEW TRIAL.) The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the Court, Jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial.

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

3. Accident, or surprise, which ordinary prudence could not have guarded against.

4. Newly discovered evidence material to the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

5. Excessive damages appearing to have been given under the influence of passion or prejudice. Where a new trial is asked for on this ground, and it appears that the passion and prejudice affected only the amount of damages allowed, and did not influence the findings of the jury on other issues in the case, the trial court on hearing the motion, and the supreme court on appeal, shall have power to order a reduction of the verdict in lieu of a new trial; or to order that a new trial be had unless the party in whose favor the verdict was given remit the excess of damages.

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

7. Error in law occurring at the trial and excepted to by the party making the application.

8. Loss or destruction, without fault on the part of the party aggrieved, of the official shorthand minutes, taken at the trial containing the testimony offered and the instructions of the court when given orally to the jury, or either, before a transcript thereof has been made.

Approved March 6th, 1923.

CHAPTER 335.

(S. B. No. 280—Lynch.)

DIRECTED VERDICTS.

An Act to Amend and Re-enact Section 7643 of the Compiled Laws of the State of North Dakota for the Year 1913, as Amended by Chapter 133, of the Session Laws of 1921, Relating to Directed Verdicts.

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

Sec. 1. That Section 7643 of the Compiled Laws of the State of North Dakota for the year 1913 as Amended by Chapter 133 of the Session Laws of 1921 be, and the same hereby is, amended and re-enacted to read as follows:

Sec. 7643. JUDGMENT NOTWITHSTANDING VERDICT.) When at the close of the testimony any party to the action moves the court to direct a verdict in his favor, and the adverse party objects thereto, such motion shall be denied and the court shall submit to the jury such issue or issues, within the pleadings on which any evidence has been taken, as either or any party to the action shall request, but upon a subsequent motion, by such moving party after verdict rendered in such action, that judgment be entered notwithstanding the verdict, or if the jury have failed to agree upon a verdict, for a directed verdict, the court shall grant the same if, upon the evidence as it stood at the time such motion to direct a verdict was made, the moving party was entitled to such directed verdict. An order for judgment notwithstanding the verdict may also be made on a motion in the alternative form asking therefor, or if the same be denied, for a new trial. The ruling on the motion for a directed verdict may be reviewed by the Supreme Court without a motion for judgment notwithstanding the verdict or a motion in the alternative for such judgment or for a new trial having been first made in the trial court. If the motion for judgment notwithstanding the verdict be denied, the supreme court, on appeal from the judgment, may order judgment to be entered, when it appears from the testimony that a verdict should have been so directed; and it may also so order on appeal from the whole order denying such motion when made in the alternative form whether a new trial was granted or denied by such order.

Approved March 1st, 1923.