
COURTS

CHAPTER 120

(S. B. No. 167. Committee on Judiciary.)

PROCEDURE IN COUNTY COURTS

An Act Providing General Rules of Procedure in County Courts Relating to Giving Notice to and Obtaining Jurisdiction of all Persons Interested in Estates of Deceased Persons or of Minors or Incompetents; and for Giving Notice to Creditors of and Presentation and Investigation and Allowance or Rejection of Claims Against, Estates of Deceased Persons; and Sales of Real Estate by Executors, Administrators and Guardians; and to Repeal Sections 8549, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8557, 8558, 8559, 8565, 8734, 8736, 8737, 8740, 8741, 8742, 8743, 8744, 8747, 8748, 8752, 8754, 8771, 8772, 8774, 8775, 8776, 8777, 8780, 8790, 8791, 8833, 8834, 8909, 8911, 8767, 8769, 8770, of the Compiled Laws of North Dakota, 1913, and All Acts and Parts of Acts in Conflict Herewith.

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

ARTICLE I. GENERAL RULES OF PROCEDURE.

§ 1. CITATION GIVES JURISDICTION. HOW ISSUED. CONTENTS AND FORM.] The process by which the Court obtains jurisdiction of the parties in each proceeding, who do not appear therein, is by citation. Before issuing a citation the Court may examine the applicant and other witnesses under oath concerning the name and post-office address of each party to be cited. If he is unable to ascertain such name, the party may be designated by his relation to the decedent as nearly as may be. Each party and each guardian, or attorney, for a party, who appears in any proceedings must be required to give his or her name and postoffice address, which shall be entered in the docket and be taken as true until the Court is notified of a change.

§ 2. CONTENTS AND FORM.] The citation shall contain a brief statement of the matter to be heard, sufficient to fairly inform those interested of the nature of the proposed proceeding and the estate involved; the residence or late residence of the owner of such estate, and the time and place at which such hearing will be held. Any number of different matters may be included in the same citation which may be substantially as follows:

STATE OF NORTH DAKOTA

County of

ss.

IN COUNTY COURT

IN THE MATTER OF THE ESTATE OF.....

Deceased.

Petitioner.

CITATION HEARING PETITION

FOR.....

vs.

THE STATE OF NORTH DAKOTA TO THE ABOVE
NAMED RESPONDENTS:

You and each of you are hereby cited and required to appear before the County Court of the County of..... in said State, at the office of the County Judge of said County, at the Court House in the city of.....in said County and State, on the.....day of.....

A. D. 19....., at the hour of.....o'clock in the..... of that day, to show cause, if any you have why (here give brief statement of the matter to be heard, residence or late residence of owner of the estate, and any other matter necessary to fairly inform the parties interested of the nature of the proceedings).

Let service be made of this citation as required by law.

Dated this.....day of.....A. D. 19.....

By the Court

SEAL OF COURT.

Judge of the County Court.

§ 3. CITATION ON PETITION, APPLICATION OR REPORT.] Upon the filing of a petition for Letters Testamentary, Letters of Administration, Letters of Administration with the Will annexed, Letters of Guardianship, petition or application for an Order or License to do or perform any act in connection with the administration and settlement of an estate or guardianship, or requiring any person to

make a report, or do or perform any act or duty to be by him or her performed; or upon the filing of any petition, application or report upon which a hearing is required by law, and not within the discretion of the Court to Order, License or Allow, the Court shall issue a citation fixing the time for hearing such petition, application or report and no other process or order fixing said hearing shall be necessary.

§ 4. SERVICE, HOW MADE.] A copy of the citation shall be served personally upon all respondents within the county, in the same manner as prescribed by the Code of Civil Procedure for the service of summons in civil actions, at least ten days before the day fixed for said hearing and be served on all respondents outside of the county including non-residents by publishing the same, once each week for two successive weeks, in some newspaper printed in the county, if there be one, and if there be none printed in the county, then in a newspaper printed in an adjoining county in the state, and service shall be deemed to be complete with the last publication, and ten days shall elapse thereafter before the day of hearing.

Provided, however, that citation may be served personally upon all respondents within and without the county or on non-residents of the state in the manner above set forth and no service by publication shall, in that case, be necessary.

Provided, further, that, except a citation upon a petition for Letters of Administration, Letters Testamentary, Letters of Administration with the Will Annexed, Petition for Probate of Foreign Will, and Letters of Guardianship, which citation must be served as above set forth, service of every citation required to be made by this code may be made by mailing a copy thereof at least fifteen days before the day fixed therein for hearing, to all respondents, by registered mail; the filing of an affidavit of mailing, accompanied by the registry receipt of the United States Postoffice Department shall be conclusive proof of service upon the respondents to whom said citation was mailed and which service shall be taken in lieu of all other service of such citation.

Service with respect to manner and time of service of all papers of every kind or character and in all proceedings required by this Code shall be governed by this section.

§ 5. SERVICE UPON FOREIGN HEIRS.] The duly accredited representative in the United States of any foreign country may file in any county court in this state the name and address of a representative of such country in the United States, and in any proceeding in such Court, if it shall appear to the Judge thereof that any person interested therein has heirs, devisees or otherwise in any estate, is probab'y a citizen of such foreign country, the County Judge shall

give notice by mail to the representative so designated of the pendency of such proceeding, the name of such person, and his probable citizenship. Provided however a failure to give such notice shall not affect the validity of such proceedings.

§ 6. SERVICE UPON GUARDIAN OR ATTORNEYS.] When a person upon whom service is required is a minor or has been adjudged to be incompetent and has a special or general guardian in the case, service must be made upon the guardian and such service shall be deemed full and sufficient service upon said minor or incompetent person.

Provided, however, that citation upon petition for Letters of Administration, Letters Testamentary, Letters of Administration with the Will annexed, and Letters of Guardianship shall be served upon all persons interested over fourteen years of age;

Provided, further, that when any person upon whom service is required to be made has an attorney of record in the case, service may in all cases be made on such Attorney, and such service shall be full and sufficient service on the person represented by the attorney.

§ 7. SERVICE. HOW WAIVED.] Every party to any proceeding of any kind in the County Court, except actions or proceedings under the increased jurisdiction law in County Courts having increased jurisdiction, who is of full age and has not been declared to be incompetent, may enter his appearance in writing and therein waive service of any and all papers of every kind and character and submit to the jurisdiction of the Court; and he shall not thereafter be entitled to any further service of citation or notice in connection with such proceeding. Such waiver must be signed by the party executing the same in the presence of two witnesses who must sign the same as witnesses thereto, or he must acknowledge the execution of the same before some official qualified to take acknowledgments.

Provided, however, that a guardian, general or special, may not waive service of citation in any proceeding in which his ward is a party respondent.

ARTICLE 2. CLAIMS, PRESENTATION, PROOF AND ALLOWANCE.

§ 8. ORDER FOR NOTICE TO CREDITORS.] Upon granting Letters Testamentary or of Administration the Court shall make an order that notice to creditors be given to present their claims against the estate and fixing the time and place when and where proofs will be heard by the Court, and all such claims examined and adjusted; which time shall not be less than ten days nor more than thirty days

after the time for filing claims has expired. Such order shall designate a newspaper in the County in the state in which such notice shall be published. If there be no newspaper published in the county then the Court shall designate some other newspaper published in an adjoining county in the state to publish such notice.

§ 9. NOTICE TO CREDITORS.] Within fifteen days after making the order referred to in the preceding section, the executor or administrator must cause to be published in the newspaper designated in such order a notice to the creditors of the decedent, requiring all persons having claims against the estate to exhibit them, with the necessary vouchers, to the executor or administrator or County Judge, at a place in the county designated in the notice. Such notice shall also specify the time fixed by the Court for hearing and adjusting such claims. The time specified in the notice for filing claims shall be six months from the first publication of such notice. Such notice must be published once a week for three successive weeks. In case the executor or administrator resigns, dies or is removed before the time for filing claims has expired, claims may thereafter be presented to the County Judge without a new publication.

§ 10. PRESENTATION OF CLAIMS, BARRED.] All claims arising upon contract, whether the same be due, not due, or contingent, must be presented within the time limited in the notice and any claim not so presented is barred forever, provided, however, that nothing in this article contained shall be construed to affect the right or limit the time of foreclosure of mortgages or other liens, except that no balance of the debts secured by such mortgage or other lien and remaining unpaid after the foreclosure shall be a claim against the estate, unless such debts were presented as required by this code.

§ 11. PROOF OF CLAIM. HOW MADE.] Every claim which is due when presented to the executor or administrator must be supported by the affidavit of the claimant or some one in his behalf, that the amount is justly due, that no payments have been made which are not credited, and that there are no offsets to the same, to the knowledge of the claimant or affiant. If the claim be not due when presented or be contingent the particulars of such claims must be stated. When the affidavit is made by a person other than the claimant he must set forth in the affidavit the reason why it is not made by the claimant. The executor or administrator may also require satisfactory vouchers or proof to be produced in support of the claim. If the claim is founded on a bond, bill, note or other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his

claim with his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim, or any part thereof, is secured by mortgage or other lien which has been recorded or filed according to law in the office of the register of deeds of the county in which the land or property affected by it is situated, it is sufficient to describe the mortgage or lien, and refer to the date of its filing and volume and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator or suffered the same to be filed in the court, he may withdraw the same when a copy thereof has been, or is then, attached to his claim.

§ 12. INVESTIGATION OF CLAIM, HEARING AND ALLOWANCE.] When a claim, accompanied by the affidavit required in this article is presented to the executor or administrator, he must carefully and faithfully investigate the merits of such claim and endorse thereon his approval, or rejection, in whole or in part, and file the same with the County Court before the day set for adjusting claims and the Court may, in its discretion, allow the executor or administrator additional time for further proof, and continue the hearing to a future day. If another day is set for hearing claims, the court must cause ten days notice thereof to be given the claimant, by mail. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time though acted upon by the executor or administrator and by the judge, after the expiration of such time. On the day set for adjusting claims, the executor or administrator shall exhibit the claims of the deceased, if any, in offset to the claims of the creditors, and the court shall ascertain and allow the balance if any against the estate; but no claim barred by the statutes of limitations at the time of death of the decedent shall be allowed by the Court either in favor or against the estate, as a setoff or otherwise.

§ 13. CLAIMS ALLOWED ENTERED IN REGISTER.] Upon the day set for hearing such claims, the court must pass upon and adjudicate the same. All claims adjudicated by the court, whether disputed or not, shall have endorsed thereon by the court the amount allowed, the class to which it belongs, and the date of adjudication, and such claims shall be ranked among the acknowledged debts of the estate to be paid in due course of administration, and shall bear interest at the legal rate. If any claim is rejected in whole or in part, the judge shall forthwith cause notice to be given the claimant, his attorney or agent, by registered mail, of such rejection. A brief description of every claim filed must be entered by the Judge in a register for the purpose, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance.

§ 14. CLAIMS REJECTED, SUITS INSTITUTED. HOW.] When a claim is disallowed by the County Court, the holder must bring suit in the proper court against the executor or administrator within ninety days after the date of the notice by the County Judge of its disallowance, if it be then due, otherwise the claim is barred forever. If the creditor refuses to accept the amount allowed in satisfaction of his claim, he shall recover no costs in an action therefor, brought against the executor or administrator, unless he recover a greater amount than that allowed. No claim against any estate which has been presented is affected by the statute of limitations, pending the proceedings for the settlement of the estate.

§ 15. PENDING ACTIONS PROSECUTED. JUDGMENT. HOW PAID.] All actions which may be pending against a deceased person at the time of his death, may, if the cause of action survive, be prosecuted to final judgment, and the executor or administrator may defend the same. If any judgment shall be rendered against the executor or administrator the court rendering it shall certify the same to the county court, and the amount thereof shall be paid in the same manner as other claims allowed against the estate.

§ 16. EXECUTOR MAY PROSECUTE. SETOFF. JUDGMENT. HOW PAID.] Nothing in this chapter shall be construed to prevent an executor or administrator from commencing and prosecuting any action against any other person or from prosecuting any action commenced by the deceased in his lifetime for the recovery of any debt or claim to final judgment, or from having execution on any judgment. In such case the defendant may set off any claim he may have against the deceased, instead of presenting it to the court, and all mutual claims may be set off in such action. If judgment shall be rendered in favor of the defendant, the same shall be certified by the court rendering it to the county court and be considered the true balance, and paid as other claims allowed against the estate.

§ 17. ESTATE OF JOINT DEBTOR LIABLE FOR WHOLE.] When two or more persons shall be indebted on any joint contract or upon a judgment founded on a joint contract and either of them shall die, his estate shall be liable therefor, and the claim may be allowed by the court as if the contract had been joint and several or as if the judgment had been against him alone, and the other parties to such joint contract may be compelled to contribute or to pay the same if they would have been liable to do so upon payment thereof by the deceased.

§ 18. WHEN EXECUTOR OR ADMINISTRATOR TO ACCOUNT AND PAY DEBTS.] Not less than thirty days after the entry of allowance or disallowance of claims as hereinbefore set forth and within sixty days thereafter every executor or administrator shall proceed to the payment of the debts so allowed and shall thereupon make his final

report and account of his administration of the estate in the manner prescribed by law, unless it shall satisfactorily appear to the court: (1) That the personal assets in the hands of the executor or administrator are insufficient to pay the debts of the deceased and that there is real estate that can be mortgaged leased or sold to pay such debts; (2) That an appeal has been taken from some action of the county court or suit has been instituted against the executor or administrator which is still pending and necessarily delays the settlement of the estate; (3) That collectable debts due the estate have not been collected; (4) That a contingent claim has been allowed against the estate of the deceased, and that the final settlement of the estate is necessarily delayed thereby; (5) That the best interests of the estate will be served by continuing the business of the decedent. In such event the executor or administrator shall be allowed in addition to his fees reasonable compensation for managing the business, or (6) That some other good and sufficient cause for delay exists.

§ 19. TIME TO PAY DEBTS FIXED. EXTENSION OF.] Whenever it shall satisfactorily appear to the county court that any one or more of the causes for delay mentioned in the preceding section exists, such court shall, by order, without notice, fix a time within which the executor or administrator shall pay the debts and legacies and make a final settlement of his account as executor or administrator. But such time shall not exceed twelve months, except when granted upon the petition of the executor or administrator, under oath, setting forth the assets remaining in his possession belonging to the estate of the deceased, the debts and legacies that remain unpaid, the reasons why the delay in the settlement of the estate prayed for is necessary and that an additional time is deemed requisite for a full settlement of such estate, and upon notice to all parties interested of the time and place of hearing such petition by citation in the manner required by law. On such hearing the court may, in its discretion, grant such further time for the payment of the debts and legacies and the settlement of the estate, as the nature of the case may require, and may again extend the time upon like petition and notice, no single extension shall be for a period of more than two years but in no case shall the time be extended beyond six years from the time of granting letters testamentary or of administration.

ARTICLE 3. SALES OF REAL ESTATE

§ 20. EXECUTOR OR ADMINISTRATOR MAY SELL PROPERTY.] When a sale of property of the state is necessary to pay the allowance to the family, or the debts outstanding against the decedent or the debts, expenses or charges of administration, or legacies; or when it appears to the satisfaction of the court that it is for the advantage, benefit and best interest of the estate, and those interested

therein, that the real estate, or some part thereof, be sold, the executor or administrator may sell any real as well as personal property of the estate, upon the order of the court; and an application for the sale of real property, may also embrace the sale of personal property.

§ 21. VERIFIED PETITION FOR SALE. WHAT TO CONTAIN.] To obtain such order for sale of real property, he must present a verified petition to the court, setting forth (1) the amount of the personal estate that has come to his hands, and (2) how much thereof, if any, remains undisposed of; (3) the debts outstanding against the decedent, as far as can be ascertained or estimated; (4) the amount due on the family allowance, or (5) that will be due after the same has been in force for one year; (6) the debts, expenses and charges of administration already accrued; and (7) an estimate of what will or may accrue during the administration; (8) a general description of all the real property of which the decedent died seized, or in which he had any interest or in which the estate has acquired any interest, and (9) the condition and value thereof, and (10) the names of the legatees and devisees, if known to the petitioners; and if such order for sale of real estate is petitioned for on the ground that it is for the advantage, benefit, and best interests of the estate, and those interested therein that a sale be made, the petition, in addition to the foregoing facts, must set forth in what way an advantage or benefit would accrue to the estate, and those interested therein by such a sale. If any of the matters herein enumerated cannot be ascertained it must be so stated in the petition; but a failure to set forth facts hereinbefore enumerated will not invalidate the subsequent proceedings, if the defects be supplied by the proofs at the hearing, or the general facts showing that such sale is necessary or that such sale is for the advantage, benefit and best interests of the estate, and those interested therein, be stated in the decree.

§ 22. NOTICE TO PERSONS INTERESTED.] If it appears to the court, from such petition, that it is necessary or that it would be for the advantage, benefit or best interests of the estate, and those interested therein, to sell the whole or some portion of the real estate, for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed and a citation thereupon issued and served as provided in Section 4, hereof.

§ 23. ASSENT GIVEN NO NOTICE NECESSARY.] If all persons interested in the estate including guardians, either general or special, if any, join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with and the hearing may be had at any time.

§ 24. GUARDIAN. NOTICE TO.] If it shall appear to the County Court by the petition or other competent evidence that any

person interested in such estate is a minor or incompetent person and has no general or special guardian residing in the county, the court shall, at or before the time for issuing the citation for hearing the petition, appoint some disinterested freeholder of the county, guardian of such minor or incompetent person or ward for the sole purpose of appearing for him and taking care of his interests in the proceedings, and the service of all citations shall be made on such special guardian.

§ 25. HEARING AFTER PROOF OF SERVICE.] The Court at the time and place appointed in such citation or at such other time to which the hearing may be postponed, upon satisfactory proof of service of a citation as provided in this code, (if the consent in writing to such sale of all the parties interested is not filed) must proceed to hear the petition and hear and examine the allegations and proofs of the petitioner and of all persons interested in the estate who may oppose the application.

§ 26. EXECUTOR, ADMINISTRATOR AND WITNESSES MAY BE EXAMINED.] The executor, administrator and witnesses may be examined on oath by either party, and the process to compel them to attend and testify may be issued by the court or judge, in the same manner and with like effect as in other cases.

§ 27. TO SELL REAL ESTATE OR ANY PART, WHEN.] If it appears to the satisfaction of the Court, that it is necessary or that it is for the advantage, benefit, and best interests of the estate and those interested therein, to sell a part of the real estate and that by sale thereof, the residue of the estate, real and personal, or some specific part thereof, would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate, or any part thereof, as in the judgment of the court is necessary, or for the advantage, benefit, and best interests of the estate, and those interested therein.

§ 28. ORDER OF SALE. WHEN TO BE MADE.] If it appears to the satisfaction of the court, after a full hearing upon the petition and examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this article, or that a sale of the whole or some portion of the real estate is for the advantage, benefit, and best interests of the estate and those interested therein, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts

of the real estate described in the petition as the court shall judge necessary, or for the advantage, benefit and best interests of the estate and those interested therein.

§ 29. WHAT THE ORDER OF SALE MUST CONTAIN.] The order of sale must describe the lands to be sold, and the terms of sale, which may be cash, or may be one-third cash and the balance on a credit not exceeding five years, payable in gross or installments with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised.

§ 30. MAY BE SOLD AT PUBLIC OR PRIVATE SALE. ORDER COMPELLING SALE.] Every such sale must be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in the petition, order or direct such real estate or any part thereof to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate. If the executor or administrator neglects or refuses to make a sale under the order, and as directed therein, he may be compelled to sell by order of the court, made on motion, after due notice, by any party interested.

§ 31. NOTICE OF SALE.] When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be published in a newspaper, if there be one printed in the same county, but if none, then in a paper in an adjoining county in the state as the court may direct, once each week for two successive weeks next before the sale. The lands and tenements to be sold must be described with common certainty in the notice.

§ 32. TIME AND PLACE.] Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and six o'clock in the afternoon of the same day, and must be made at the time named in the notice of sale, unless same is postponed. If at the time appointed for the sale, the executor or administrator deems it for the best interests of the estate that the sale be postponed, he may postpone it from time to time not exceeding in all three months. In case of postponement, notice thereof must be given by a public declaration at the time and place first appointed for the sale, and if the postponement is for more than ten days, further notice must be given by publishing the same once each week for two successive weeks next before the sale.

§ 33. PRIVATE SALE OF REAL ESTATE. HOW MADE. AND NOTICE.] When a sale of real estate is ordered to be made at private sale, notice of the same must be published in a newspaper if there be one printed, in the same county, if none, then in a paper in an adjoining county in the state as the court may direct, once each week for two successive weeks before the day on or after which the sale is to be made in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The last day referred to must be at least ten days from the last publication of notice; and the sale must not be made before that day, but must be made within six months thereafter.

§ 34. BIDS, WHEN AND HOW RECEIVED.] The bids or offers must be in writing and may be left at the place designated in the notice, or delivered to the executor or administrator personally or may be filed in the office of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale.

§ 35. NINETY PER CENT OF THE APPRAISED VALUE MUST BE OFFERED.] No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisal is too high or too low, appraisers must be appointed, and they must make an appraisal thereof in the same manner as in case of the original appraisal of an estate. This may be done at any time before the sale or the confirmation thereof.

§ 36. PURCHASE MONEY ON SALE ON CREDIT. HOW SECURED.] The executor or administrator must, when a sale is made upon a credit, take the notes of the purchaser for the balance of the purchase money with a mortgage on the property to secure their payment.

§ 37. REPORT. CONFIRMATION OR VACATION OF SALE.] The executor or administrator making such sale shall immediately thereafter make a return of his doings upon the order of sale, in pursuance of which it is made, to the county court granting the order. Said court shall thereupon examine the proceedings and may also examine the executor, administrator and any other persons on oath touching the same. If such court shall be of the opinion that the proceedings were unfair or that the sum bid is disproportionate to the value of the land sold and that a sum exceeding such bid, exclusive of the expense of a new sale, may be obtained, said court

may vacate such sale and direct another to be had, of which notice shall be given and the sale shall in all respects be conducted as if no previous sale had taken place. If it shall appear to the county court that the sale was legally made and fairly conducted and that the sum bid thereon was not disproportionate to the value of the property sold, or if disproportionate that a greater sum as above specified cannot be obtained, said court shall make an order forthwith confirming such sale and directing conveyance to be executed.

§ 38. PROCEEDS OF SALE.. USE OF AND LIABILITY FOR.] The proceeds arising from mortgage, lease or sale of real estate or from the sale of the interest of any deceased persons in real estate, held under contract, as provided in this chapter, shall be deemed assets in the hands of the executor or administrator in like manner as if the same had been originally part of the goods and chattels of the deceased; and the executor or administrator and sureties on his administration bond shall be accountable and liable therefor unless otherwise provided by law.

§ 39. SALE TO PAY LEGACY.] When a testator shall have given any legacy by a will that is effectual to pass or charge real estate and his goods, chattels, rights and credits, shall be insufficient to pay such legacy; together with the debts and charges of administration, the executor or administrator with the will annexed may be licensed to sell, mortgage or lease the real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a sale, mortgage or lease for the payment of debts.

§ 40. MORTGAGING PROPERTY, WHEN.] The County Court may make an order directing an executor or administrator to mortgage any property of a decedent for either of the following purposes: (1) the payment of an existing lien or mortgage; (2) for any other purposes for which a sale may be ordered; (3) to authorize a renewal or extension of an existing mortgage; (4) to mortgage the homestead when the person entitled thereto and the guardian of minors consents, but if the minor is under fourteen years of age then the guardian's consent only shall be sufficient; (5) whenever upon application to sell the court finds it would be for the best interests of the estate to mortgage instead.

§ 41. ORDER FOR MORTGAGE.] Such order must be based upon a verified petition setting forth at least one of the reasons set forth in the foregoing section and further showing the amount of money necessary to be raised, together with such further particulars as are required in a petition for the sale of real property. Upon filing such petition the citation must be issued and served on all persons interested in the estate as required in Section 4 of this act.

§ 42. ORDER FOR MORTGAGING.] The order must fix the amount for which the mortgage may be given, the rate of interest that may be paid thereon, the number of years which the mortgage is to run, and may direct that the whole or any part of the money so secured, be paid from time to time out of the income of the mortgaged property.

§ 43. DUTIES OF AN EXECUTOR. ADMINISTRATOR AND GUARDIAN.] After the making of the order to mortgage the executor, administrator or guardian of a minor or of an incompetent person shall execute and deliver a promissory note or notes for the amount and period specified in the order, and shall execute, acknowledge, and deliver a mortgage of the premises, setting forth in the mortgage that it was made by authority of the court's order, and giving the date of such order. The note or notes and mortgage shall be signed by the executor, administrator, or guardian as such, and shall create no personal liability against the person so signing.

§ 44. EFFECT OF SAID NOTES AND MORTGAGES.] Every note or notes and mortgages so made shall be effectual to mortgage and hypothecate all the right, title, interest and estate which the decedent, minor, or incompetent person had in the premises described therein at the time of the death of such decedent, or at the time of the appointment of the guardian of such minor or of such incompetent person, or prior thereto, and any right, title or interest in said premises acquired by the estate of such deceased, minor or incompetent person, by operation of law or otherwise, since the time of the death of such decedent, or the appointment of such minor or incompetent person, subject however to any unpaid mortgage, previously authorized by the court.

§ 45. REPORT. CONFIRMATION.] The executor, administrator or guardian making such mortgage shall immediately thereafter make a report of his doings upon the order to mortgage in pursuance of which it was made, to the county court. Said court shall thereupon examine the proceedings and if the same are in accordance with the order of license to mortgage, said court shall make an order forthwith confirming such mortgage.

§ 46. SALE OF PERSONAL PROPERTY. HOW MADE.] All personal property of any estate may be sold by the representative without notice and without securing an order of the court, provided, however, that such representative shall not sell any personal property at private sale for less than ninety per cent of its appraised value, except that any personal property having a market value may be sold in any usual market therefor, at any time, in the usual manner and at the market price thereof. A complete and detailed account of all sales of personal property shall be made by the representative in his first report to the Court after such sale or sales,

such report to set forth a description of the property sold, the name and address of the purchaser and the price received.

§ 47. NOTICE OF FINAL SETTLEMENT. HOW SERVED.] Whenever a final report and account and petition for distribution of the estate to the parties entitled thereto are presented by any executor or administrator and the estate be ready for distribution, a citation must be issued thereon directing all persons interested in the estate to appear and show cause, if any there be, why such final report and account should not be allowed and distribution made. Such citation must be served as required in Section 4 of this act and on the confirmation of the final account a final decree of distribution shall be entered immediately and without further notice of the proceedings.

ARTICLE 4. GUARDIAN AND WARD. SALES OF PROPERTY.

§ 48. LAW OF ESTATES GOVERNS GUARDIANS UNLESS OTHERWISE DECLARED.] All the proceedings under petition of guardians for sale or mortgaging of property of their wards, giving notice, and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, re-selling the same property, return of sale, confirmation thereof, orders rejecting or confirming such sale, and reports of sale, ordering and making conveyances of property sold, accounting and settlement of accounts must be had and made the same as required by the administrator of an estate unless otherwise herein specially provided.

§ 49. TERMS OF SALE. SECURITY.] All sales of real estate of wards must be for cash, or for part cash and part deferred payments, the credit in no case to exceed five years from date of sale, as in the discretion of the court is most beneficial to the ward. Guardians making sale must demand, and receive, from the purchaser, in case of deferred payments, notes and a mortgage on the real estate sold, with such additional security as the court deems necessary and sufficient to secure the prompt payment of the amounts so deferred with interest thereon.

§ 50. REPEAL.] That Sections 8549, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8557, 8558, 8559, 8565, 8734, 8736, 8737, 8740, 8741, 8742, 8743, 8744, 8747, 8748, 8752, 8754, 8771, 8772, 8774, 8775, 8776, 8777, 8780, 8790, 8791, 8833, 8834, 8909, 8911, 8767, 8769 and 8770 of the Compiled Laws of North Dakota for 1913, and all acts and parts of acts in conflict herewith be and the same are hereby repealed.

Approved March 10, 1925.

CHAPTER 121

(H. B. No. 111—Carr.)

PRELIMINARY EXAMINATION, CHANGE OF VENUE—COUNTY COURTS

An Act To Amend and Re-enact Section 8964 of the Compiled Laws of North Dakota for 1913, Providing for Preliminary Examination by Judge of the County Court having Increased Jurisdiction, Preliminary Examinations and Change of Venue.

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

§ 1. AMENDMENT.] Section 8964 of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 8964. 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. Whenever a person accused of a public offense is brought before a Judge of a County Court having increased jurisdiction for preliminary examination, and at any time before such examination is commenced, files with said Judge of the County Court his affidavit stating that by reason of the bias or prejudice of said Judge of the County Court he believes he cannot have a fair and impartial examination before him, such Judge of the County Court, acting as such committing magistrate, must transfer such action and all the papers therein, including a certified copy of his docket entries, to a Justice of the Peace of the same County; provided, that unless the parties agree upon the Justice to whom said action shall be transferred, the same shall be sent for preliminary examination to the nearest Justice of the County. The State's Attorney, or his Assistant, may, in the same manner and for the same reasons as the defendant, obtain a transfer of said action from the Judge of the County Court having increased jurisdiction, and before whom the preliminary hearing was commenced, or from the Justice to whom it has been transferred on application of the defendant. When the preliminary hearing has been once transferred by one party, it shall, on motion of the party as herein provided, be transferred to the nearest qualified Justice of the same County unless the parties agree upon a Justice to whom said action shall be transferred. The place of examination can be changed only once by each party under this section.

§ 2. EMERGENCY.] By reason of the fact that it is now declared to be necessary to call in a County Judge having increased jurisdiction of another County, in case an affidavit for change of

venue is filed, 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 3, 1925.

CHAPTER 122

(H. B. No. 156—Palms.)

TERMS OF COURT

An Act To Amend and Re-enact Section 2 of Chapter 167, Session Laws of 1919, to Provide for Terms of Court in the State of North Dakota.

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

§ 1. AMENDMENT.] Section 2 of Chapter 167, Session Laws of 1919, is hereby amended and re-enacted to read as follows:

§ 2. TERMS THEREOF. CHAMBERS.] The terms of court to be held in each county in the several judicial districts and the location of the judges' chambers shall be fixed by order of the Supreme Court in such manner that the judges in each judicial district may have a circuit within their district and so that no judge shall hold two consecutive jury terms of court in any county in his district, except in the counties of Cass and Burleigh; and in said county of Cass the terms of court thereof shall be held as follows, until otherwise provided by law, to-wit: terms of the district court shall be held therein at the county seat on the first Tuesday of each month in the year except July and August, but a jury shall only be called for the January, February, March, November and December terms unless, in the opinion of the judge, there is sufficient business to demand a jury for any other term or terms; provided, however, that the court may, if deemed advisable, continue the jury called at the January term as the jury for the February or February and March terms, and the jury called at the November term as the jury for the December term.

Approved March 10, 1925.