
PROCEDURE

CHAPTER 187

(S. B. No. 174—Cain.)

CERTIFICATE OF FAILURE TO CONCILIATE

An Act amending and re-enacting Section 9192a5, Supplement to the Compiled Laws of 1913, relating to conciliation proceedings.

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

§ 1. AMENDMENT.] That Section 9192a5, Supplement to the Compiled Laws of 1913, be amended and re-enacted to read as follows:

§ 9192a5. The moving party may file in court a certificate of a conciliator showing that an attempt has been made to effect a settlement of the claim and that such attempt has failed; but the foregoing shall not apply to actions known as provisional or remedial remedies, actions involving title to or possession of real estate and suits involving over \$200.00.

Approved March 9, 1929.

CHAPTER 188

(S. B. No. 60—Ployhar.)

GARNISHMENT OF WAGES

An Act to amend and re-enact Section 7567 of the Supplement to the Compiled Laws of North Dakota of 1913.

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

§ 1. AMENDMENT.] That Section 7567 of the Supplement to the Compiled Laws of 1913, be and the same hereby is amended and re-enacted to read as follows:

§ 7567. CREDITORS MAY PROCEED BY GARNISHMENT OF WAGES.] Any creditor shall be entitled to proceed by garnishment in any court having jurisdiction of the subject of the action, against any person, any public corporation, the State of North Dakota, or any institution, department or agency of the State, indebted to or having any property whatever, real or personal, in his or its possession or under his or its control, belonging to such creditor's debtor, in the cases, upon the conditions and in the manner prescribed in

this chapter. The term plaintiff is used in this Chapter to embrace every judgment creditor and the term defendant a judgment debtor. Provided that the wages or salary of any person who is the head of a family and a resident of this state, to the amount of \$20.00 per week, shall be exempt from garnishment. Every employer shall pay to such person such exempt wages or salary not to exceed the sum of \$20.00 per week of each week's wages earned by him, when due, upon such wage earner making and delivering to such employer his affidavit that he is such head of a family and residing with the same in this state, notwithstanding the service of such writ, and the surplus only of such exempt salary or wages shall be held by the employer to abide the event of the garnishment suit.

At least two days prior to the issuance of any garnishment summons the creditor shall cause demand to be served upon the debtor and the employer for the excess above the amount herein exempted. Such demand with proof of service, shall be filed with the court at the time of the issuance of garnishment summons. Failure to serve or file said notice as herein provided, shall render said garnishment void. The excess of wages over and above the amount herein exempted, shall be held by the employer subject to such garnishment from the time of service of such demand and for five days thereafter.

Provided, however, that when a public corporation, the State of North Dakota, or any institution, department or agency of the state, is named as garnishee, such garnishee shall not be permitted to defend the principal action for the defendant upon the ground that the defendant is an officer, agent, or employee of such garnishee.

Service upon the State of North Dakota, or any institution, department or agency thereof, as garnishee, may be made upon the state auditor, in manner now by law provided for such service in garnishment proceedings, except that the fee to be tendered and paid the state auditor for making affidavit of disclosure and filing same, shall be three dollars.

Any and all fees so received by the state Auditor, shall constitute a "Special Garnishment Fund", from which shall be paid by him, all extra expense incurred by his office in making disclosures in the garnishment.

Provided, further, that the right to garnishee the State of North Dakota or any institution, department or agency of the state, shall not apply to any debt or obligation created or becoming due prior to the taking effect of this act.

Approved March 9, 1929.

CHAPTER 189

(H. B. No. 201—Horner.)

WITNESSES AND EVIDENCES—WHO NOT EXCLUDED. HUSBAND AND WIFE. DECEDENTS' TESTIMONY.

An Act to amend and re-enact Section 7871 of the Compiled Laws of the State of North Dakota of the year 1913 in regard to evidence as to statements and transactions with decedents, and between husband and wife.

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

§ 1. AMENDMENT.] That Section 7871 of the Compiled Laws of the State of North Dakota of the year 1913, is hereby amended and re-enacted to read as follows:

§ 7871. WHO NOT EXCLUDED. HUSBAND AND WIFE. DECEDENT'S TESTIMONY.] No person offered as a witness in any action or proceeding in any court, or before any officer or person having authority to examine witnesses or hear evidence, shall be excluded or excused by reason of such person's interest in the event of the action or proceeding; or because such person is a party thereto, or because such person is the husband or wife of a party thereto, or of any person in whose behalf such action or proceeding is commenced, prosecuted, opposed or defended, except as hereinafter provided.

1. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this subdivision does not apply to a civil action or proceeding by one against the other, nor to a civil action or proceeding where one spouse attacks the character of the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. In civil action or proceeding by or against executors, administrators heirs at law or next of kin in which judgment may be rendered or ordered entered for or against them, neither party shall be allowed to testify against the other as to any transaction whatever with or statement by the testator or intestate, unless called to testify thereto by the opposite party; and where a corporation is a party in proceedings mentioned in this section, no agent, stockholder, officer or manager of such corporation shall be permitted to testify to any transaction had with the testator or intestate. But if the testimony of a party to the action or proceeding has been taken

and he shall afterwards die and after his death the testimony so taken shall be used upon any trial or hearing in behalf of his executors, administrators, heirs at law or next of kin, then the other party shall be a competent witness as to any and all matters to which the testimony so taken relates; provided, further, that in any action or proceeding by or against any surviving husband or wife touching any business or property of either, or in which the survivor or his or her family are in any way interested, such husband or wife will be permitted, if they shall so desire, to testify under the general rules of evidence as to any or all transactions and conversations had with the deceased husband or wife during their lifetime touching such business or property.

Approved March 11, 1929.

CHAPTER 190

(H. B. No. 147—Isaak by Request.)

**DEATH CERTIFICATES JOINT TENANT PRIMA FACIE EVIDENCE
OF TERMINATION OF ESTATE HELD**

An Act providing that the execution of a specified certificate and the recording thereof, shall constitute prima facie evidence of the termination of the estate held by a deceased person, under an estate in joint tenancy; providing for the recording of such certificate .

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

§ 1. In all cases of joint tenancy in lands, and in all cases where any estate, title or interest in, or lien upon, lands, has been or may be, created, which estate, title or interest or lien was, or is, to continue only during the life of any person named or described in the instrument by which such estate, title, interest or lien was created, a copy of the record of the death of any such joint tenant, or of the person upon whose life such estate, title, interest or lien was or is limited, duly certified by any officer who is required by the laws of the state or country in which such record is made, to keep a record of the death of persons occurring within the jurisdiction of such officer, may be recorded in the office of the register of deeds of the county in which such lands are situated, and such certified copy or such record thereof in said office or a duly certified copy of such last mentioned record shall be prima facie evidence of the death of such person and the termination of such joint tenancy and of all such estate, title, interest and lien as was or is limited upon the life of such person.

§ 2. EMERGENCY.] This act is hereby declared to be an emergency measure, and shall be in full force and effect from and after the date of its passage and approval.

Approved March 8, 1929.

CHAPTER 191

(H. B. No. 142—Judiciary Committee.)

LIMITATION OF TIME FOR ACTION TO VOID FORECLOSURE

An Act limiting the time within which any action may be brought to void a foreclosure of a mortgage, or any defense interposed in any action by virtue of any defect in the form, substance or service of notice of intention to foreclose a mortgage.

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

§ 1. No action shall be commenced to set aside the foreclosure of a mortgage, and no defense shall be interposed in an action based upon the foreclosure of such mortgage by virtue of any defect in the form, substance, service or manner of service of the notice of intention to foreclose such mortgage, which mortgage has been foreclosed prior to the taking effect of this act, unless such action is commenced within four months after this act becomes effective.

Approved March 13, 1929.

CHAPTER 192

(S. B. No. 43—Whitman.)

SALE PERSONAL PROPERTY UNDER EXECUTION

An Act to amend and re-enact Section 7744 of the Supplement to the Compiled Laws of 1913 relating to the sale of personal property under execution.

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

§ 1. AMENDMENT.] That Section 7744 of the Supplement to the Compiled Laws of 1913 be amended and re-enacted to read as follows:

§ 7744. SALE OF PERSONAL PROPERTY UNDER EXECUTION.] The officer who levies upon personal property, by virtue of an execution, must, before he proceeds to sell the same, cause public notice to be given of the time and place of such sale, at least six

(6) days before the day of sale. The notice must be given by advertisement published once, at least six (6) days before the day of sale, in some newspaper printed in the county, such newspaper to be designated by the judgment creditor or his attorney, or, in case no newspaper is published therein, by posting advertisements in five (5) public places in the county. If the levy be upon crops, when harvested, such crops may, at the option of the judgment creditor, be sold in the nearest usual market therefor, at any time, after such levy, in the usual manner, at the market price thereof, in such market and without the notice hereinbefore provided; in which case, however the notice of levy shall contain a statement where and when such crops will be sold; but should the judgment debtor, his agent or attorney, at the time of making said levy, give notice to the officer making said levy that said judgment debtor intends to settle said judgment, said officer shall hold said grain six (6) days before making sale thereof. The usual and reasonable charges for such sale and the transportation of such grain to such market, shall be deemed proper expenses chargeable as costs in such proceedings, and in case notice above provided for is served on the officer, reasonable charges for storing said grain. Perishable property may be sold by order of the court or a judge thereof, prescribing such notice, time and manner of sale as may be reasonable, considering the character and condition of the property.

§ 2. All acts or parts of acts inconsistent herewith are hereby repealed.

Approved February 16, 1929.

CHAPTER 193

(S. B. No. 26—Forbes.)

ACTIONS BY AND AGAINST PARTNERSHIPS AND ASSOCIATIONS

An Act to amend and re-enact Section 1 of Chapter 213 of the Laws of 1927, relating to actions by and against partnerships and associations.

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

That Section 1 of Chapter 213 of the Laws of North Dakota, for the year 1927 be, and the same is, hereby amended and re-enacted to read as follows:

§ 1. AMENDMENT.] When two or more persons have heretofore done or transacted, or are doing or transacting or shall hereafter do or transact business as partners or associates under a common name, whether such name comprises the name of such persons

or not, they may sue, and be sued by such common name, and in case such partners or associates are defendants; provided, that if the business of such partners or associates is in charge of a manager or agent, the summons must be served, on such manager or agent, but in case the sheriff shall make return that no such member, manager, or agent can be found then such service may be made by leaving a copy of the summons in any office of such partners or associates in said state with the person in charge of such office. The summons may be served on one or more of them. The judgment in any such action shall bind the joint property of all the members or associates of such firm or association, the same as though all of them had been named as defendants.

Approved March 11, 1929.

CHAPTER 194

(S. B. No. 25—Forbes.)

PEREMPTORY CHALLENGES JURORS CRIMINAL CASES

An Act prescribing and limiting the number of peremptory challenges to jurors in criminal actions, authorizing district judges to excuse and discharge jurors, and repealing laws in conflict with this act.

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

§ 1. In all criminal actions, the state and the defendant are, each, entitled to exercise the following number of peremptory challenges:

When the offense charged is murder in the first degree, fifteen; in prosecutions for felonies other than murder in the first degree, ten; in other prosecutions, six.

§ 2. When it shall appear to any judge of the district court, engaged in holding a term of such court, that a greater number of jurors than is necessary has been summoned, or is in attendance, at such term, it shall be the duty of such judge to forthwith, at any time during such term, excuse and discharge all jurors in excess of the necessary number. The jurors to be so excused and discharged shall be determined by placing the ballots containing the names of all the jurors in attendance at said term of court (except such jurors as are then impaneled and sworn as jurors in an action then on trial) in the trial jury box, folded as nearly alike as possible and so that the names cannot be seen, and then the clerk of such court shall, by direction of said judge, in open court, without looking at or viewing the contents of said box, thoroughly stir or mix

such ballots and draw from such box as many ballots as shall be specified by said judge, and, thereupon, all jurors whose names are contained on such ballots, so drawn, shall be excused and discharged from further service or attendance at said term of court, and none of their names shall be again placed in said trial jury box during said term of court.

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

Approved March 4, 1929.

PUBLIC BUILDINGS

CHAPTER 195

(S. B. No. 185—Atkins.)

CONSTRUCTION PUBLIC BUILDINGS

An Act relating to the construction of public buildings and repairs thereof and the erection of improvements connected therewith or pertaining thereto; prescribing the duties of the board of administration, of county commissioners, city commissions, city councils, board of park commissioners, school district officials, and other public officers in the matter of securing plans and specifications, advertising for bids, letting of contracts, allowance and payment of estimates, providing for contractor's bond and payment of premiums thereon, and the filing of claims thereunder, the insurance on unfinished buildings and material on ground, and preferring architects, contractors and manufacturers, resident within the State of North Dakota, and repealing all acts and parts of acts in conflict herewith.

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

§ 1. BUILDING AND REPAIR BY CONTRACT.] In altering, repairing or constructing buildings belonging or appertaining to any of the public institutions of the state, or to any county, city, park district, village, school district or other political subdivisions of the state, or in any improvements connected therewith or pertaining thereto, or in doing any work thereon amounting to more than the sum of \$3,000.00, the board of administration, city council, city commission, board of park commissioners, county commissioners, school district officials, or village trustees, as the case may be, shall procure such plans, drawings and specifications thereof, upon competitive bids or otherwise as such board may deem necessary; and in all cases where expedient, such plans, drawings and specifications