

CONSTITUTION

OF THE

State of North Dakota

[Adopted Oct. 1, 1889; yeas, 27,441; nays, 8,107.]

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

The will of the People as expressed in law by the legislature, or initiated law is the supreme law of the state—and cannot be declared unconstitutional unless it contravenes the Federal or State Constitution. *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104.

ARTICLE 1.—DECLARATION OF RIGHTS.

§ 1. All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; and pursuing and obtaining safety and happiness.

Primary election law must be reasonable, uniform in operation, and must bear with substantial equality upon all parties and candidates. *State ex rel. Dorval v. Hamilton*, 20 N. D. 597, 129 N. W. 916.

A law prohibiting sale of liquor not intoxicating or otherwise harmful, valid as an exercise of the police power. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387.

Imposition of fee for those desiring to practice as licensed architects with no fee from those not holding themselves out as not unconstitutional, discrimination. *State v. Gillespie*, 39 N. D. 512, 168 N. W. 38.

The right to "bootleg" intoxicants is not an inalienable right essential to life, liberty and happiness. *State v. Ross*, 39 N. D. 630, 170 N. W. 121.

The natural right to engage in lawful business is subject to reasonable police regulations and the legislative requirement of a license in conducting a dairy business is constitutional. *Cofman v. Ousterhous*, 40 N. D. 390, 18 A.L.R. 219, 168 N. W. 826.

The free and untrammelled right to make lawful contracts is guaranteed by the Constitution and a contract between a landlord and tenant reserving title to all crops in the landlord will be upheld. *Merchants State Bank v. Sawyer Farmers Co-op. Asso.* 47 N. D. 375, 14 A.L.R. 1353, 182 N. W. 263.

The Public Utilities Act does not violate sec. 1, by appointing a commission to pass upon certain matters regarding Public Service Corporation where there is an appeal from their findings to the courts. *State v. Milhollan*, — N. D. —, 195 N. W. 292.

State bankers law does not violate § 1 by prohibiting individuals from carrying on banking business in Private Capacity. *State v. Woodmansee*, 1 N. D. 246, 11 L.R.A. 420, 46 N. W. 970.

Law requiring all carriers of live stock to transport them at a minimum speed of 20 miles per hour held unreasonable exercise of police power. *Downey v. Northern P. R. Co.* 19 N. D. 621, 26 L.R.A.(N.S.) 1017, 125 N. W. 475.

The right to take by will and to devise and bequeath are not natural and inalienable rights nor are they guaranteed by the state constitution, but are subject to taxation. *Moody v. Hayen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704.

CONSTITUTION OF NORTH DAKOTA.

See also *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104; *State v. Crawford*, 38 N. D. 385, 162 N. W. 710; *State v. Robinson*, 35 N. D. 417, 160 N. W. 514; *Strauss v. State*, 36 N. D. 594, L.R.A.1917E, 909, 162 N. W. 908; *State v. Pauley*, — N. D. —, 192 N. W. 91.

See *Constitutional Law*, 12 C. J. pp. 934-955, §§ 441-484.

Life, liberty and the pursuit of happiness. 6 R. C. L. 258, et seq. and Supps.

§ 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

Constitutions are means employed by sovereign people to limit powers of their agents. *State ex rel. Miller v. Taylor*, 22 N. D. 362, 133 N. W. 1046.

The court in construing an amendment is but the agent of the people in whom all political power is. *State v. Hall*, 44 N. D. 459, 171 N. W. 213.

Will of the people as expressed in law by the legislature or initiated law, is the supreme law of the state and can be declared invalid only when it contravenes the United States or state constitution. *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104.

The executive, legislative and judicial departments are but public servants who must exercise their powers in manner provided by constitution. *State v. Taylor*, 33 N. D. 76, L.R.A.1918B, 156, Ann. Cas. 1918A, 583, 156 N. W. 561.

Exemption of benefit provided by a fraternal beneficiary society, from attachment or garnishment, is constitutional. *Brown v. Steckler*, 40 N. D. 113, 1 A.L.R. 753, 168 N. W. 670.

See also *State v. Boucher*, 3 N. D. 389, 21 L.R.A. 539, 56 N. W. 142; *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392; *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281; *Moody v. Hagen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704; *Strauss v. State*, 36 N. D. 594, L.R.A.1917E, 909, 162 N. W. 908; *State v. Board of Canvassers*, 44 N. D. 126, 172 N. W. 80.

See *Constitutional Law*, 12 C. J. pp. 680-696, §§ 11-34.

Republican form of government. 6 R. C. L. 42, et seq.

§ 3. The state of North Dakota is an inseparable part of the American union, and the Constitution of the United States is the supreme law of the land.

See *Delaney v. State*, 42 N. D. 630, 174 N. W. 290. *State ex rel. Linde v. Taylor*, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561.

See *States*, 36 Cyc. 830-832, 834-838; *Constitutional Law*, 12 C. J. p. 743, § 158. *Supremacy of Federal Constitutions*. 6 R. C. L. 36, 37 and Supps.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Act making it unlawful to run or permit to be run theaters, etc., on Sunday, not invalid as interference with religious liberty, being valid under police power. *State ex rel. Temple v. Barnes*, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215, Ann. Cas. 1913E, 930.

See also *Bendewald v. Ley*, 39 N. D. 272, 168 N. W. 693; *State ex rel. Walker v. McLean County*, 11 N. D. 356, 92 N. W. 385.

See *Constitutional Law*, 12 C. J. pp. 941-945, §§ 450-457; *Witnesses*, 40 Cyc. 2202; *Sunday*, 37 Cyc. 541-543.

Constitutionality of statutes making witness incompetent because of religious belief, race, or previous condition. 92 Am. Dec. 473.

Distinction between fundamental rights and privileges of citizenship. 6 R. C. L. 277.

Right to religious freedom. 6 R. C. L. 251 and Supps.

§ 5. The privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion, the public safety may require.

See *Habeas Corpus*, 29 C. J. pp. 10-12, § 4, pp. 197-198, §§ 233-238; *Insurrection and Sedition*, 33 C. J. p. 158; *War*, 40 Cyc. 382-392.

Extent and effect of suspension of writ. 45 L.R.A. 834.

CONSTITUTION OF NORTH DAKOTA.

Continuance of constitutional guaranties during war or insurrection. 45 L.R.A. (N.S.) 996.

Suspension of writ. 12 R. C. L. 1182 and Supps.

§ 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

One charged with murder not entitled to bail as a strict legal right, where the proof of guilt is evident or presumption thereof great. *State v. Hartzell*, 13 N. D. 356, 100 N. W. 745.

A defendant has right to bail in a capital case, unless the proof of the commission of the offense, or the presumption thereof, is great. *State ex rel. West v. Collins*, 10 N. D. 464, 88 N. W. 88, 12 Am. Crim. Rep. 41.

Constitutionality of law imposing liability on sheriff for failure to make return of execution within time required by law, upheld. *Lee v. Dolan*, 34 N. D. 449, 158 N. W. 1007.

See also *State v. Gottlieb*, 21 N. D. 179, 129 N. W. 460.

See Constitutional Law, 12 C. J. p. 941, § 449; Bail, 6 C. J. pp. 953-954, § 168, p. 989, § 222; Criminal Law, 16 C. J. pp. 1353-1359, §§ 3191-3202; Witnesses, 40 Cyc. 2175-2176.

Admission to bail after indictment for murder. 81 Am. Dec. 87.

Bail in capital case as a matter of right. 39 L.R.A.(N.S.) 752.

Deposit of cash in lieu of bail. 44 L.R.A.(N.S.) 1150.

Validity of statutes and ordinances enhancing penalty when crime committed by habitual criminals or prior offenders. 34 L.R.A. 398; 24 L.R.A.(N.S.) 432; 48 L.R.A.(N.S.) 204.

Constitutional and statutory provisions as to cruel and unusual punishment. 35 L.R.A. 561.

Detention of one as witness as false imprisonment. 39 L.R.A.(N.S.) 503.

Constitutional right to bail pending appeal from conviction. 19 A.L.R. 807.

Abolition of death penalty as affecting right to bail of one charged with murder in first degree. 8 A.L.R. 1352.

Right to give bail in civil action or proceeding. 15 A.L.R. 1079.

Bail: imposition of life sentence as affecting capital character of offense. 3 A.L.R. 970.

Power to admit to bail in deportation case. 36 A.L.R. 887.

Right to bail pending attempt to avoid body execution. L.R.A.1915E, 340.

Right to release pending appeal from conviction upon taking pauper's oath. L.R.A.1916F, 106.

Legislative control of extent of punishment. L.R.A.1915C, 559.

Cruel and unusual punishment. L.R.A.1915C, 558.

Asexualization or sterilization of criminals. L.R.A.1918D, 236.

Manner of inflicting death sentence as cruel or unusual punishment. 30 A.L.R. 1452.

Right to bail. 3 R. C. L. 5, et seq. and Supps.

Amount of bail. 3 R. C. L. 28 and Supps.

Statutes providing for increase of punishment after conviction for second or subsequent offense as violation of constitutional guaranty against cruel and unusual punishment. 8 R. C. L. 273 and Supps.

Right to bail in Chinese deportation proceedings. 1 R. C. L. 845.

Cruel and unusual punishment. 8 R. C. L. 262 et seq. and Supps.

Excessive fines. 8 R. C. L. 270 and Supps.

§ 7. The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record, may consist of less than twelve men, as may be prescribed by law.

Preserves right of trial by jury as it existed prior to the adoption of the constitution, and allows a reference where long account is involved. *Smith v. Kunert*, 17 N. D. 120, 115 N. W. 76.

Issues of fact in an equitable action to foreclose a mortgage are not triable before a jury as a matter of right. *Avery Mfg. Co. v. Crumb*, 14 N. D. 57, 103 N. W. 410.

CONSTITUTION OF NORTH DAKOTA.

Gives prosecution right to change the place of trial when necessary to secure a fair and impartial trial. *Barry v. Traux*, 13 N. D. 131, 65 L.R.A. 762, 112 Am. St. Rep. 662, 99 N. W. 769, 3 Ann. Cas. 191.

See also *Froelich v. Northern P. R. Co.* 39 N. D. 307, 167 N. W. 366; *Goss v. Lindberg*, 41 N. D. 99, 169 N. W. 585; *State v. Finlayson*, 41 N. D. 494, 170 N. W. 910; *Youmans v. Hanna*, 43 N. D. 536, 171 N. W. 835; *Klein v. Hutton*, — N. D. —, 191 N. W. 485; *State v. Markuson*, 5 N. D. 147, 64 N. W. 934; *Draveskracht v. First State Bank of Balfour*, 16 N. D. 555, 113 N. W. 1032; *State v. Gottlieb*, 21 N. D. 179, 129 N. W. 460; *Erickson v. Wiper*, 33 N. D. 193, 157 N. W. 592; *Thompson v. Scott*, 34 N. D. 503, 159 N. W. 21; *Power v. Williams*, — N. D. —, 205 N. W. 9.

See *Juries*, 35 C. J. pp. 148-150, §§ 13-15, pp. 232-235, §§ 159-162.

Power of legislature to regulate or dispense with trial by jury. 48 Am. Dec. 185; 58 Am. Dec. 791.

Conditions and restrictions which may be imposed upon trial by jury by the legislature. 98 Am. St. Rep. 538.

Question whether suit for statutory penalty is a civil or criminal prosecution as affecting right to jury. 27 L.R.A.(N.S.) 745.

Right upon plea of guilty to sentence accused without intervention of jury. 35 L.R.A.(N.S.) 1146.

Effect of statutory declaration that murder committed by certain means, or while engaged in commission of felony, shall be murder in the first degree, upon right of jury to pass upon degree. 12 L.R.A.(N.S.) 935.

Restraint on freedom of child as deprivation of right to jury trial. 18 L.R.A.(N.S.) 890.

Validity of waiver of jury trial in criminal action. 11 L.R.A.(N.S.) 1136.

Right to trial by jury in equitable cases on account of demand for damages. 15 L.R.A. 287.

Right to jury for assessment of damages on default. 15 L.R.A. 614; 20 L.R.A.(N.S.) 1.

Denial of jury trial simply because matters in issue are complicated. 39 L.R.A.(N.S.) 45.

Compulsory reference as affected by constitutional right to jury. 25 L.R.A. 67; 13 L.R.A.(N.S.) 146.

Civil service laws as violating constitutional right of trial by jury. 34 L.R.A.(N.S.) 482.

Constitutionality of provision for separate trial of different issues in same case. 40 L.R.A.(N.S.) 138.

Right to jury in quo warranto proceedings. 24 L.R.A. 806; 24 L.R.A.(N.S.) 639.

Right to jury as affected by compulsory evidence against one's self. 29 L.R.A. 819.

Right of property owner to have amount of assessment for public improvement fixed by jury. 60 L.R.A. 236.

Right to jury in proceedings for registration of land titles. 41 L.R.A.(N.S.) 1044.

Effect of provision that jury shall determine the law and the facts in libel cases. 33 L.R.A.(N.S.) 207.

Jury trial on appeal as satisfying the constitutional right to trial by jury. 15 L.R.A. 441.

Number and agreement of jurors necessary to verdict. 24 L.R.A. 272; 43 L.R.A. 34.

Granting new trial because of excessive verdict as interference with constitutional right to jury trial. 51 L.R.A.(N.S.) 860.

Workmen's compensation act as infringing right to trial by jury. L.R.A.1916A, 426; L.R.A.1917D, 56.

Statute making prima facie rule of evidence for criminal cases as denial of right to jury trial. L.R.A.1915C, 724.

The Torrens Law as infringing right to trial by jury. L.R.A.1916D, 22.

Denial or infringement of right to jury trial by statute entitling women to serve as jurors. L.R.A.1918E, 773.

Effect of statutory declaration that murder committed by certain means or while engaged in commission of felony shall be murder in first degree, upon right of jury to pass upon degree. L.R.A.1916D, 610.

CONSTITUTION OF NORTH DAKOTA.

Right of accused to full panel from which to select jury. L.R.A.1916A, 814.

Right to jury before revocation of conditional pardon or parole for condition broken. L.R.A.1915F, 541.

Right to trial by jury in inquisition of insanity. L.R.A.1918A, 348.

Right to jury to determine disputed questions in summary proceedings to compel attorney to surrender money or property. L.R.A.1918D, 831.

Is issue upon grounds of attachment for court or jury. L.R.A.1918B, 344.

Infringement of right to jury trial in case of seizure of property alleged to be illegally used, when appeal preserves the right to jury trial. 17 A.L.R. 571.

Statute conferring on chancery courts power to abate public nuisances as invasion of constitutional guaranty of jury trial. 5 A.L.R. 1489; 22 A.L.R. 544.

Statute providing for revocation of license of physician, surgeon, or dentist, as denial of right to jury trial. 5 A.L.R. 94.

Statute requiring claims for refund of overcharges by carriers to be submitted to public service commission as infringement of right to jury trial. 3 A.L.R. 203.

Constitutionality of statute requiring party demanding jury to pay fees or charges incidental to summoning or impaneling of jurors. 32 A.L.R. 865.

Statute requiring appellate review of evidence as denial of right to jury trial. 19 A.L.R. 744; 24 A.L.R. 1267; 33 A.L.R. 10.

Jury trial in case of seizure of property in house of ill fame. 17 A.L.R. 573.

Statute creating municipal liability for mob or riot as violating right to trial by jury. 13 A.L.R. 758.

Right to jury in case of seizure of property alleged to be illegally used. 17 A.L.R. 568.

Constitutionality of statute permitting separation of jury in criminal cases as infringement of right to jury trial. 34 A.L.R. 1128.

Right to jury trial in proceeding for removal of public officer. 3 A.L.R. 232; 8 A.L.R. 1476.

Statutes giving right to jury trial in contempt proceedings for violating injunction in industrial dispute. 27 A.L.R. 423; 35 A.L.R. 461.

Attorney's right to jury trial where he is charged with failure to turn over money or property to client. 22 A.L.R. 1501.

Right to trial by jury as privilege of immunity of citizenship. 6 R. C. L. 287 and Supps.

Jury trials as related to due process. 6 R. C. L. 458 and Supps.

Trials in criminal cases. 6 R. C. L. 467 and Supps.

Number of jurors. 16 R. C. L. 221 et seq. and Supps.

§ 8. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

Prosecution may amend information in county to which trial removed by leave of court, where no new offense charged. *State v. Woods*, 24 N. D. 156, 139 N. W. 321.

Forbids prosecutions of militiamen for felonies by court-martial except when in actual service in time of war or public danger, until provided by statute. *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

See also *State v. Finlayson*, 41 N. D. 494, 170 N. W. 910; *State v. Northern P. R. Co.* 43 N. D. 556, 172 N. W. 324; *State v. Rozum*, 8 N. D. 548, 80 N. W. 477; *Wylde v. Patterson*, 31 N. D. 282, 153 N. W. 630.

See *Constitutional Law*, 12 C. J. p. 1205, § 997; *Criminal Law*, 16 C. J. p. 176. § 230; *Indictments and Informations*, 31 C. J. pp. 559-573, §§ 1-22; *Army and Navy*, 5 C. J. p. 344, § 139; *Militia*, 27 Cyc. 497-500; *Grand Juries*, 28 C. J. p. 760.

Necessity of indictment for prosecution under Volstead Act. 10 A.L.R. 1556.

What is an infamous crime within constitutional provisions requiring presentment by a grand jury. 17 L.R.A. 764; 24 A.L.R. 1002.

Constitutional or statutory provisions for prosecution of felony upon information without indictment as an ex post facto law. 38 L.R.A.(N.S.) 600.

CONSTITUTION OF NORTH DAKOTA.

Power of legislature to change number of grand jurors required at common law. 27 L.R.A. 846.

Requiring employer to furnish discharged employee with statement of cause of his discharge as violation of freedom of speech. L.R.A.1917B, 1115.

Effect of provision that jury shall determine the law and the facts in libel cases. 51 L.R.A.(N.S.) 369.

Necessity of indictment by grand jury. 6 R. C. L. 467 and Supps.

Necessity for formal accusation. 14 R. C. L. 152 and Supps.

§ 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

Merely vests in jury right to render general verdict in libel cases, and to determine law as in cases where general verdict is returned. *State v. Tolley*, 23 N. D. 284, 136 N. W. 784.

Every man has right to freely write, speak and publish his opinion on all subjects, but is responsible for abuse of the right. *Englund v. Townley*, 43 N. D. 118, 174 N. W. 755.

See also *McCue v. Equity Co-op. Pub. Co. of Fargo*, 39 N. D. 190, 167 N. W. 225; *Meyerle v. Pioneer Pub. Co.* 45 N. D. 568, 178 N. W. 792; *Martinson v. Freeberg*, 47 N. D. 389, 182 N. W. 461.

See *Constitutional Law*, 12 C. J. pp. 952-954, §§ 467-481; *Insurrection and Sedition*, 33 C. J. pp. 162-164, §§ 17-24; *Libel and Slander*, 36 C. J. pp. 1231-1232, § 193, 37 C. J. p. 104, § 548, p. 142, § 346, p. 156, § 704.

Truth as a defense in criminal prosecution for libel. 21 L.R.A. 509; 31 L.R.A. (N.S.) 132.

Instigation of criminal libel as defense to prosecution. 30 L.R.A.(N.S.) 953.

Province of judge and jury in prosecutions for libel. 13 Am. St. Rep. 625.

Constitutional freedom of speech and of the press. 32 L.R.A. 829.

Constitutional guaranty of freedom of speech or press as affecting civil service laws. 34 L.R.A.(N.S.) 482.

Prohibition against mailing of obscene and indecent publications. 24 L.R.A. 112.

Truth as defense to libel. 50 L.R.A.(N.S.) 1040.

Questions for court or jury in action for defamation based on statements made in character of a witness. 4 B. R. C. 972.

Questions for jury as to amount of damages for libel or slander reflecting on integrity or responsibility of merchant. 44 L.R.A.(N.S.) 355.

Relative provinces of court and jury as to privileged occasion and privileged communication in law of libel and slander. 26 A.L.R. 830.

Malice in making privileged communication as question for jury. 26 A.L.R. 856.

Publication of truth as defense to criminal prosecution for libel. 19 A.L.R. 1477.

Statute regulating newspapers or magazines as invasion of right of free speech. 35 A.L.R. 12.

Statute or ordinance forbidding picketing as invasion of right of free speech. 35 A.L.R. 1200.

Constitutionality of service letter acts. 27 A.L.R. 39.

Injunction against boycott in industrial dispute as invasion of right of free speech. 6 A.L.R. 971; 16 A.L.R. 240; 27 A.L.R. 658.

Constitutionality of Espionage Act. 20 A.L.R. 1526.

Legislation directed against social or industrial propaganda deemed to be of a dangerous tending as invasion of freedom of speech. 1 A.L.R. 336; 20 A.L.R. 1535.

Constitutionality of statute prohibiting and penalizing blasphemy. 14 A.L.R. 883.

Freedom of speech and of the press. 6 R. C. L. 253 et seq. and Supps.

CONSTITUTION OF NORTH DAKOTA.

Distinction between fundamental rights and privileges of citizenship. 6 R. C. L. 277.

Censorship of motion pictures. 26 R. C. L. 702.

Liability for publications. 20 R. C. L. 212.

Truth and belief in truth as a defense. 17 R. C. L. 325, 466 and Supps.

§ 10. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

Legislature has power to require nomination to be made at primary elections by use of ballot, and may provide that such elections shall be conducted within organized political parties. State ex rel. Miller v. Flaherty, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

Authority of legislature to pass general law giving owner of farm land right to petition city council, to disconnect it from city. Enderson v. Hildenbrand, 204 N. W. 356, — N. D. —.

See also State v. Rooney, 12 N. D. 144, 95 N. W. 513.

See Constitutional Law, 12 C. J. p. 955, §§ 482-484.

Civil liability of persons who join in petition addressed to public authorities. L.R.A.1916D, 394.

Power of municipality to prevent gathering or assembling of persons on street or sidewalk. 52 L.R.A.(N.S.) 999.

Validity of statute or ordinance forbidding picketing. L.R.A.1918C, 282; 35 A.L.R. 1200.

Constitutionality of statute or ordinance prohibiting or regulating street meetings. 10 A.L.R. 1483; 25 A.L.R. 114.

Right to assemble and to petition government. 6 R. C. L. 250 and Supps.

Privileges of citizenship. 6 R. C. L. 282.

§ 11. All laws of a general nature shall have a uniform operation.

Chapter 285 of Laws of 1911, relating to Sunday theaters, is not special legislation. State ex rel. Temple v. Barnes, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215, Ann. Cas. 1913E, 930.

Act requiring county treasurer to transfer to city treasurer bridge funds collected from city property where bridge constructed in city, valid. State ex rel. Hagen v. Anderson, 22 N. D. 65, 132 N. W. 433.

Act conferring upon boards of county commissioners of every county authority to enforce payment of taxes on unredeemed tax sale property, valid. Pictop v. Cass County, 13 N. D. 242, 100 N. W. 711, 3 Ann. Cas. 345.

Act requiring registration and publication of internal revenue tax receipts, and applying to all paying tax and having receipts, valid. State ex rel. Flaherty v. Hanson, 16 N. D. 347, 113 N. W. 371.

A general law assessing and taxing grain in elevators to the possessor, and providing for a lien as security for reimbursement, if not the owner, is valid. Minneapolis & N. Elevator Co. v. Traill County, 9 N. D. 213, 50 L.R.A. 266, 82 N. W. 727.

A law regulating relocation of county seats must not arbitrarily classify counties. Edmonds v. Herbrandson, 2 N. D. 270, 14 L.R.A. 725, 50 N. W. 790.

Law allowing unorganized school township containing a city of 800 inhabitants or more to organize distinct school township, void. Plummer v. Borsheim, 8 N. D. 565, 80 N. W. 690.

Provision in primary law that no nomination is made unless vote cast is at least 30 per cent of total number cast for candidate for secretary of state at last general election, invalid. State ex rel. Dowal v. Hamilton, 20 N. D. 592, 129 N. W. 916.

Act giving to materialmen and laborers a lien upon buildings erected upon government lands held under the laws of United States valid. Powers Elevator Co. v. Pottner, 16 N. D. 359, 113 N. W. 703.

Laws of 1907, chap. 203, purporting to make every common carrier liable to any of its employees, valid. Majavis v. Great Northern R. Co. 121 Minn. 431, 141 N. W. 806.

Exemption of money or other benefit, provided or rendered by any fraternal

CONSTITUTION OF NORTH DAKOTA.

beneficiary society, from attachment or garnishment, valid. *Brown v. Steckler*, 40 N. D. 113, 1 A.L.R. 753, 168 N. W. 670.

Act authorizing any city to annex certain adjacent territory by resolution of the city council, not subject to constitutional objection that it is not uniform in operation. *Waslien v. Hillsboro*, 48 N. D. 1113, 188 N. W. 738.

Statute applying only to school townships of 800 inhabitants or more, contravenes requirement that all general laws have uniform operation. *A. L. Plummer v. Borsheim*, 8 N. D. 565, 80 N. W. 690.

Law requiring registration and publication of internal tax receipts, not vulnerable to requirement that all general laws have uniform operation. *State ex rel. Flaherty v. Hanson*, 16 N. D. 347, 113 N. W. 371.

Act amending statute relating to fees of county court, invalid. *Malin v. La-moure Co.* 27 N. D. 140, 50 L.R.A.(N.S.) 997, 145 N. W. 582.

Act establishing state bonding fund for purpose of bonding county, city, village, school district, and township officers, required to be bonded, not repugnant to requirement that all general laws have uniform operation. *State ex rel. Linde v. Taylor*, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561.

Law imposing liability on a sheriff for failing to make return on execution, does not contravene requirement that all general laws have uniform operation. *Lee v. Dolan*, 34 N. D. 449, 158 N. W. 1007.

Statute imposing tax of 25% on inheritance of nonresident aliens as opposed to a tax of 1½% on inheritances of citizens and resident aliens, not in violation of requirement that all general laws have uniform operation. *Moody v. Hagen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704.

Law providing methods of organizing new common school districts, valid. *McDonald v. Hanson*, 37 N. D. 324, 164 N. W. 8.

See also *State v. Gillespie*, 39 N. D. 512, 168 N. W. 38; *State ex rel. Amerland v. Hagan*, 44 N. D. 306, 175 N. W. 372; *Vermont Loan & T. Co. v. Whithed*, 2 N. D. 82, 49 N. W. 318; *Morton v. Holes*, 17 N. D. 154, 115 N. W. 256; *State ex rel. Hagan v. Anderson*, 22 N. D. 65, 132 N. W. 433; *Peterson v. Fargo-Moorehead Street R. Co.* 37 N. D. 440, 164 N. W. 42; *Lee v. Crawford*, 10 N. D. 482, 88 N. W. 97; *Jennie B. Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72; *Beleal v. Northern P. R. Co.* 15 N. D. 318, 108 N. W. 33; *State ex rel. Mitchell v. Mayo*, 15 N. D. 327, 108 N. W. 36; *Powers Elevator Co. v. Pottner*, 16 N. D. 359, 113 N. W. 703; *Ex parte Corliss*, 16 N. D. 470, 114 N. W. 962.

See *Constitutional Law*, 12 C. J. pp. 1108-1140, §§ 824-873; *Statutes*, 36 Cyc. 989-1015.

Test as to character of law. 25 R. C. L. 815 and Supps.

§ 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this state in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

See *Army and Navy*, 5 C. J. p. 297, §§ 8-9.

Power of governor, in exercise of power to suppress insurrection, to authorize arrest and detention of persons without turning them over to the civil authorities. 12 L.R.A.(N.S.) 979.

Right to convict for offense against both military and civil authorities. 31 L.R.A.(N.S.) 710.

Civil and criminal responsibility of militiamen. L.R.A.1915A, 1141.

States in rebellion and under martial law. 6 R. C. L. 41 and Supps.

§ 13. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Unconditional immunity from prosecution so as to compel witness to testify, not granted by act providing that testimony shall not be used against him. *Re Beer*, 17 N. D. 184, 115 N. W. 672, 17 Ann. Cas. 126.

Admission in evidence over objection, of public record of sales of liquor of a

CONSTITUTION OF NORTH DAKOTA.

druggist, not erroneous as compelling him to be a witness against himself. *State ex rel. McClory v. Donovan*, 10 N. D. 203, 86 N. W. 709.

Act making posted internal revenue tax receipts *prima facie* evidence of violation of liquor law valid. *State ex rel. Flaherty v. Hanson*, 16 N. D. 347, 113 N. W. 371.

A law prohibiting sale of liquor not intoxicating or otherwise harmful is valid as an exercise of the police power. *State v. Fargo Bottling Works Co.* 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387.

Legislature may invest drainage boards with judicial powers to determine benefits after due notice and hearing. *Soliah v. Cormack*, 17 N. D. 393, 117 N. W. 125.

Rate fixed by railroad commission on coal not invalid because if applied to all freight road would be operated at a loss, test-earning of fair profit on all interstate business. *State ex rel. McCue v. Northern P. R. Co.* 19 N. D. 45, 25 L.R.A.(N.S.) 1001, 120 N. W. 869.

Violation of the rights of accused for the court to instruct the jury to "pay no attention to any remarks or statements made by counsel." *State v. Gutterman*, 20 N. D. 432, 128 N. W. 307, Ann. Cas. 1912C, 816.

Failure to call jury for two succeeding terms after information, not violative of right to speedy trial. *State v. Dinger*, — N. D. —, 199 N. W. 196.

Former jeopardy not a bar, unless claimed by plea, and before verdict. *State v. Barnes*, 29 N. D. 164, 150 N. W. 557.

Law imposing liability on sheriff for failure to make return of execution, not deprivation of life, liberty or property without due process of law. *Lee v. Dolan*, 34 N. D. 449, 158 N. W. 1007.

See also *State ex rel. Stoesser v. Brass*, 2 N. D. 482, 52 N. W. 408; *State v. Kent*, 5 N. D. 516, 35 L.R.A. 518, 67 N. W. 1052; *State v. Markuson*, 7 N. D. 155, 73 N. W. 82; *State v. McKnight*, 7 N. D. 444, 75 N. W. 790; *State ex rel. Adams v. Larson*, 12 N. D. 474, 97 N. W. 537; *State v. Barry*, 14 N. D. 316, 103 N. W. 637; *Murphy v. District Court*, 14 N. D. 542, 105 N. W. 728; *Fenton v. Minnesota Title Ins. & T. Co.* 15 N. D. 365, 109 N. W. 363; *Nind v. Myers & Beck*, 15 N. D. 400, 109 N. W. 335; *Harris v. Rolette County*, 16 N. D. 204, 112 N. W. 971; *Neer v. State Live Stock Sanitary Bd.* 40 N. D. 340, 168 N. W. 601; *Cofman v. Ousterhous*, 40 N. D. 390, 18 A.L.R. 219, 168 N. W. 826; *Grand Forks County v. Cream of Wheat Co.* 41 N. D. 330, 170 N. W. 863; *State v. Finlayson*, 41 N. D. 494, 170 N. W. 910; *Wanberg v. National Union F. Ins. Co.* 46 N. D. 369, 179 N. W. 666; *Merchants State Bank v. Sawyer Farmers Co-op. Asso.* 47 N. D. 375, 14 A.L.R. 1353, 182 N. W. 263; *State v. Kelsey*, — N. D. —, 190 N. W. 817; *Klein v. Hutton*, — N. D. —, 191 N. W. 485; *State v. Pauley*, — N. D. —, 192 N. W. 91; *State v. Kilmer*, 31 N. D. 442, 153 N. W. 1089; *State v. Uhler*, 32 N. D. 483, 156 N. W. 220; *State ex rel. Miller v. Leech*, 33 N. D. 513, 157 N. W. 492; *State v. Sogge*, 36 N. D. 262, 161 N. W. 1022; *State v. First State Bank*, — N. D. —, 202 N. W. 391.

See *Constitutional Law*, 12 C. J. pp. 1188-1285, §§ 956-1099; *Criminal Law*, 16 C. J. p. 807, § 2052, pp. 813-823; §§ 2066-2082, p. 848, § 2140; *Witnesses*, 40 Cyc. pp. 2156-2158.

Right of defendant to public trial. 14 L.R.A. 809; 28 Am. St. Rep. 308.

Right of court to exclude public from court room during criminal trial. 9 L.R.A.(N.S.) 277; 27 L.R.A.(N.S.) 487; 44 L.R.A.(N.S.) 583.

Right to speedy trial. 41 Am. Dec. 604; 85 Am. St. Rep. 187.

Delay of prosecution as ground of discharge. 56 L.R.A. 513.

Failure to demand trial as waiver of right to speedy trial. 44 L.R.A.(N.S.) 871.

Necessity for presence of accused at trial. 28 Am. Dec. 629; 68 Am. Dec. 219.

Presence of accused at view by jury. 42 L.R.A. 378.

— at time of making of dying declaration. 56 L.R.A. 453.

Waiver of presence of one charged with misdemeanor at time of receiving verdict. 21 L.R.A.(N.S.) 56.

Right of accused to waive his presence at time of receiving verdict upon trial for felony. 14 L.R.A.(N.S.) 603; 32 L.R.A.(N.S.) 306.

Power to regulate or restrict right of defendant in criminal cases to compulsory process to procure attendance of witnesses in his behalf. 8 L.R.A.(N.S.) 509.

Constitutional right of an accused to be confronted by the witnesses, and what is an invasion of that right. 129 Am. St. Rep. 23.

CONSTITUTION OF NORTH DAKOTA.

Admissibility of testimony given on preliminary examination as affected by right of accused to be confronted with witnesses against him. 25 L.R.A.(N.S.) 868.

Former acquittal or conviction as a defense. 11 Am. St. Rep. 228.

Waiver and estoppel of defendant to plead former jeopardy. 135 Am. St. Rep. 70.

Former jeopardy in retrial for substantive offense after setting aside verdict for attempt. 44 L.R.A.(N.S.) 1047.

Question whether suit for statutory penalty is a civil or criminal prosecution as affecting former jeopardy. 27 L.R.A.(N.S.) 752.

Trial under erroneous theory as to crime charged as former jeopardy. 24 L.R.A.(N.S.) 481.

Acquittal of crime as a bar to a subsequent prosecution of defendant for perjury committed on the former trial. 39 L.R.A.(N.S.) 385.

Conviction under municipal ordinance as bar to prosecution under state statutes, and vice versa. 17 L.R.A.(N.S.) 69.

Conviction or acquittal of marital offense as bar to a subsequent prosecution. 40 L.R.A.(N.S.) 615.

Does impaneling jury and proceeding with the trial, without arraigning defendant, place him in jeopardy? 27 L.R.A.(N.S.) 137.

Does jeopardy attach where trial is begun with unsworn jury? 40 L.R.A.(N.S.) 1213.

Trial of insane person as former jeopardy. 35 L.R.A.(N.S.) 470.

Right to have claim of former jeopardy determined in habeas corpus proceeding. 15 L.R.A.(N.S.) 227.

Identity of offenses in plea of former jeopardy. 92 Am. St. Rep. 89.

Conviction or acquittal of offenses as a bar to prosecution for homicide in commission of the offense. 63 L.R.A. 405.

Conviction on charge of assault as bar to subsequent prosecution for homicide following death of victim. 14 L.R.A.(N.S.) 209.

Acquittal of larceny as bar to prosecution for forgery in same transaction. 4 L.R.A.(N.S.) 402.

Conviction or acquittal of sale of liquor as bar to prosecution for sales made prior to first indictment. 45 L.R.A.(N.S.) 977.

Former jeopardy when trial is stopped for purpose of prosecution of higher or different offense. 44 L.R.A.(N.S.) 617.

Former jeopardy in retrial on higher charge after setting aside verdict for lower charge. 5 L.R.A.(N.S.) 571; 22 L.R.A.(N.S.) 959; 4 Am. St. Rep. 117.

Effect of conviction of lower degree in prosecution for homicide as acquittal of higher degree. 21 L.R.A.(N.S.) 20.

Former jeopardy by reason of the discharge of the jury in the prisoner's absence. 44 L.R.A. 694.

Effect of discharge of jury upon the discovery of prejudice, disqualification, or misconduct of one or more of their number, to sustain a plea of former jeopardy. 14 L.R.A.(N.S.) 548.

Effect of second indictment or information for same offense after accused is entitled to discharge for want of prosecution under first. 11 L.R.A.(N.S.) 257.

Whether appeal by state after acquittal may be authorized without violating the prohibitions against placing the accused twice in jeopardy. 28 Am. St. Rep. 213.

Constitutional guaranty against self-incrimination; equivalent exemption to witness. 1 L.R.A.(N.S.) 167.

Self-incrimination by experiment in presence of jury. 15 L.R.A. 223.

Merely demanding that accused produce incriminating document as violation of his privilege. 35 L.R.A.(N.S.) 1171.

Incriminating evidence furnished by defendant acting under compulsion. 32 L.R.A.(N.S.) 772.

Admissibility of schedules filed in Federal bankruptcy proceedings, in prosecution of bankrupt for concealment of property. 18 L.R.A.(N.S.) 1194.

Use in criminal proceeding of books which one has been required to produce in another proceeding. 47 L.R.A.(N.S.) 263.

May records of sales of liquor which a druggist is required by law to keep be used as evidence against him in a criminal prosecution? 25 L.R.A.(N.S.) 818.

Conclusiveness of witness's statement that the answer to questions against which he pleads his privilege would tend to criminate him. 24 L.R.A.(N.S.) 165.

CONSTITUTION OF NORTH DAKOTA.

Necessity of claiming constitutional protection against being compelled to give incriminating evidence. 4 L.R.A.(N.S.) 1144.

Admissibility against accused of documents or things taken from him. 59 L.R.A. 465; 8 L.R.A.(N.S.) 762; 34 L.R.A.(N.S.) 58.

Right to compel accused to exhibit himself for identification. 28 L.R.A. 699.

Power to require one who has caused injury to identify himself. 40 L.R.A.(N.S.) 622.

Compelling an accused to perform acts or submit his person to inspection. 94 Am. St. Rep. 336.

Compelling accused to submit to physical examination. 68 Am. St. Rep. 251.

Due process of law, what is. 24 Am. Dec. 538; 20 Am. St. Rep. 554.

Argument of counsel, limitations upon the right of. 46 Am. St. Rep. 23; 25 L.R.A.(N.S.) 1027; 42 L.R.A.(N.S.) 209.

Validity of sentences differing from those allowed by law. 55 Am. St. Rep. 264.

Due process in arrest and imprisonment of Mexican citizen suspected of organizing in United States military expedition against Mexico. L.R.A.1917A, 281.

Former jeopardy, discharge of jury because of matter affecting witness. L.R.A. 1917D, 1148.

Effect of discharge of jury for disqualification or misconduct, to sustain plea of former jeopardy. L.R.A.1916E, 1273.

Acquittal or conviction of burglary of goods of one person as bar to prosecution based upon same entry of burglary of property of another person. L.R.A.1915C, 627.

Conviction or acquittal of one of the substantive offenses embraced in a conspiracy as bar to prosecution of another. L.R.A.1918A, 588.

Judgment in voluntary or collusive appearance as bar to subsequent prosecution. L.R.A.1918A, 1181.

Former jeopardy in case of sexual offenses. L.R.A.1915A, 256.

Conviction or acquittal of sexual offense as bar to prosecution for similar offense with or against same person at different time. L.R.A.1917D, 731.

Defective or void sentence or judgment as basis of plea of former jeopardy. L.R.A.1915A, 526.

Acquittal of crime as bar to subsequent prosecution of defendant for perjury committed on former trial. L.R.A.1917B, 743.

Manner and time of raising defense of former jeopardy. L.R.A.1917A, 1233.

Admissibility against accused of documents or things taken from him. L.R.A. 1915B, 834; L.R.A.1916E, 716.

Applicability of rule against self-elimination to proceeding to punish criminal contempt. L.R.A.1917B, 118.

Incriminating evidence furnished by defendant acting under compulsion. L.R.A. 1918B, 849.

Who is within protection of provision of bankruptcy act as to use in criminal proceedings of testimony given by bankrupt. L.R.A.1917B, 614.

Applicability in proceeding to punish criminal contempt of rule as to right of accused to be confronted with witnesses. L.R.A.1917B, 119.

Statute establishing prima facie rule of evidence as denial of right to be confronted with witnesses. L.R.A.1915C, 725.

Waiver of presence of accused at time of receiving verdict upon trial for felony. L.R.A.1915D, 817.

Necessity of presence of accused at rendition of verdict for misdemeanor. L.R.A. 1917B, 346.

Right to speedy trial of one under confinement for another offense. L.R.A.1915E, 363.

Right of court to exclude public from courtroom during criminal trial. L.R.A. 1918C, 1168.

Right to take or retain in rogues' gallery picture of one accused of crime. L.R.A. 1916A, 743.

Conviction or acquittal under Federal statute as bar to prosecution under state or territorial statute, or vice versa. 16 A.L.R. 1238; 22 A.L.R. 1551.

Conviction or acquittal in one district as bar to prosecution in another, based on continuous transportation of intoxicating liquor. 24 A.L.R. 1125.

Pendency in one county of charge of larceny as bar to subsequent charge in an-

CONSTITUTION OF NORTH DAKOTA.

other county of offense which involves both felonious breaking and felonious taking of same property. 19 A.L.R. 636.

Conviction or acquittal of larceny as bar to prosecution for burglary. 19 A.L.R. 626.

Conviction or acquittal upon charge of murder of or assault upon one person as bar to prosecution of like offense against another person at same time. 20 A.L.R. 341.

Acquittal or conviction of offense during commission of which homicide is committed as bar to prosecution for homicide. 4 A.L.R. 702.

Each bet or play at gaming on a single occasion as constituting a distinct offense. 35 A.L.R. 89.

Acquittal as bar to prosecution of accused for perjury committed at trial. 37 A.L.R. 1290.

Forgery of names of several individuals to same instrument as more than one offense. 33 A.L.R. 562.

Substitution of juror after completion of panel as sustaining plea of double jeopardy. 28 A.L.R. 849; 33 A.L.R. 142.

Right to cross-examine codefendant who takes stand in his own behalf as included in defendant's right to meet witnesses. 33 A.L.R. 826.

Presence of accused during view by jury. 30 A.L.R. 1357.

Acquittal on charge as to one as bar to charge as other, where one person is killed or assaulted by acts directed at another. 2 A.L.R. 606.

Occurrences during view as warranting jury's discharge without letting in plea of former jeopardy upon subsequent trial. 4 A.L.R. 1266.

Plea of former jeopardy where jury was not sworn. 12 A.L.R. 1006.

Effect of passing indictment to files. 18 A.L.R. 1153.

Former jeopardy of member of association. 1 A.L.R. 431.

Discharge of accused under a limitation statute as bar to a subsequent prosecution for same offense. 3 A.L.R. 519.

Effect of and remedy for infringement of right of accused to communicate with his attorney. 23 A.L.R. 1382.

Right of defendant as to conducting defense in person. 17 A.L.R. 266.

Admissibility of evidence of refusal of accused to comply with order or request to do an act which might aid in establishing his guilt. 35 A.L.R. 1236.

Privilege of witness against being compelled to testify as to violation of Blue Sky Laws. 30 A.L.R. 1344.

Use of finger prints as evidence as violation of constitutional provision against self-incrimination. 16 A.L.R. 371.

Contractual stipulation to submit to examination as affected by constitutional immunity against self-incrimination. 18 A.L.R. 749.

Privilege of corporation of officer thereof in refusing to produce books and records before grand jury. 27 A.L.R. 145.

Privilege against self-incrimination as to production by dairymen of sample of milk for analysis. 18 A.L.R. 248.

Privilege against self-incrimination before grand jury. 27 A.L.R. 139.

Compulsory examination for venereal disease. 2 A.L.R. 1332.

Applicability to disbarment proceeding of constitutional provision against self-incrimination. 24 A.L.R. 863.

Validity of statute making owner liable for injury by automobile being used by another. L.R.A.1918A, 918.

Constitutionality of acts regulating speed of automobiles. L.R.A.1918D, 132.

Constitutionality of statutes giving lien by automobile or injuries done by it. L.R.A.1917E, 928.

Constitutionality of statute authorizing officer to take charge of assets of bank upon suspicion of insolvency. L.R.A.1915E, 675.

Constitutionality of statutes establishing fund for bonding of public officials. L.R.A.1918B, 179.

Constitutionality of Blue Sky Laws. L.R.A.1917F, 524.

Constitutionality of bulk sale legislation. L.R.A.1915E, 917.

Constitutionality of statutes fixing minimum rate of speed at which carrier may transport special kinds of freight. L.R.A.1917C, 142.

Constitutionality of statute imposing penalty or added liability for failure of carrier to pay claims. L.R.A.1917B, 926.

CONSTITUTION OF NORTH DAKOTA.

- Constitutionality of statute to prevent waste of subterranean waters, natural gas, or oil. L.R.A.1918B, 134.
- Regulations concerning cremation of human bodies. 52 L.R.A.(N.S.) 408.
- Constitutionality of preferential system of voting. L.R.A.1916B, 939.
- Constitutionality of statute requiring voter to vote for all officers. L.R.A.1915B, 402.
- Constitutionality of provision limiting names of candidates on official ballot. L.R.A.1915A, 1190.
- Constitutionality of primary election laws. L.R.A.1917A, 259.
- Constitutionality of statute imposing fee for filing nominations. L.R.A.1915B, 197.
- Privilege of using streets for electric light poles and wires, etc., as a contract. L.R.A.1918E, 907.
- Prohibiting or restricting employment of aliens. L.R.A.1916D, 569.
- Constitutionality of workmen's compensation and industrial insurance statutes. L.R.A.1916A, 409; L.R.A.1917D, 51.
- Statute requiring mine owners or operators to furnish wash rooms or similar conveniences for employees. L.R.A.1915B, 420.
- Constitutionality of statute restricting remedy by injunction in labor disputes. L.R.A.1916F, 836; 35 A.L.R. 460.
- Constitutionality of statutes restricting right of employer to discharge employee. L.R.A.1917B, 1122.
- Constitutionality of statutes requiring employer to furnish discharged employee with statement of cause of discharge. L.R.A.1917B, 1115.
- Constitutionality of statutes forbidding employer to exact agreement from employee not to join labor union. L.R.A.1915C, 960.
- Right of municipality or other public body to discriminate in favor of organized labor. 52 L.R.A.(N.S.) 728.
- Exempting wage earners from anti-trust laws. 52 L.R.A.(N.S.) 525.
- Validity of statute or ordinance against picketing. L.R.A.1918C, 282; 35 A.L.R. 1200.
- Police power to license employment agencies. L.R.A.1916E, 1150.
- Constitutionality of statute forbidding taking of fee for securing employment for another. L.R.A.1917B, 1280.
- Prohibition or regulation of fishing over private land. L.R.A.1916E, 523.
- Constitutionality of game laws as affected by the fact that game protected is destructive of private property. L.R.A.1918C, 404.
- Constitutionality of statutes in relation to vinegar. 49 L.R.A.(N.S.) 1206.
- Regulations affecting ice cream. L.R.A.1917B, 207.
- Power to prescribe manner or method of determining quantity or amount of commodity. L.R.A.1916E, 379.
- Validity of regulations as to milk. L.R.A.1917C, 243.
- Prohibition or regulation of the manufacture, sale or importation of tobacco. L.R.A.1918B, 988.
- Compelling occupant or owner of property boarding on public street to remove snow and ice from sidewalks. L.R.A.1918D, 1019.
- Power to require railroad to construct sidewalk across its tracks or right of way. L.R.A.1918D, 1157.
- Constitutionality of regulation of jitney busses. L.R.A.1915F, 842; L.R.A.1918D, 912; L.R.A.1918F, 475.
- Constitutionality of moving picture censorship acts. L.R.A.1916C, 228.
- Constitutionality of commission form of government for municipality. 51 L.R.A.(N.S.) 632; L.R.A.1917A, 1260.
- Constitutionality of recall of officers. 50 L.R.A.(N.S.) 227; L.R.A.1916D, 1103.
- Exaction of penalty for acts done under supposed sanction of law as violation of due process of law. L.R.A.1916A, 1211.
- Validity of segregation statute or ordinance prohibiting persons of different race or color from living in same locality. L.R.A.1918C, 220.
- Constitutionality of statute imposing penalty or added liability for failure of railroad to pay claim. L.R.A.1917B, 929.
- State regulation of rates of irrigation company. L.R.A.1915D, 1205.
- Constitutionality of Torrens Law. L.R.A.1916D, 15.
- Constitutionality of mortgage registration law. L.R.A.1916A, 865.

CONSTITUTION OF NORTH DAKOTA.

- Constitutionality of statute providing for transportation of pupils at public expense. 50 L.R.A.(N.S.) 428.
- Constitutionality of Teachers' Pension Laws. L.R.A.1918A, 526.
- Constitutionality of succession taxes. 50 L.R.A.(N.S.) 991.
- Constitutionality of income tax. L.R.A.1915B, 569.
- Power to prohibit or restrict use of tobacco. 51 L.R.A.(N.S.) 562.
- Forbidding or regulating use of trading stamps. L.R.A.1917A, 433; L.R.A.1918B, 383.
- Validity of statute or ordinance for the settlement of weights as between buyer and seller by public weigher. 51 L.R.A.(N.S.) 731.
- Abrogation of defenses and rights of action by Workmen's Compensation scheme. L.R.A.1917D, 57.
- Constitutionality of statute requiring payment of court fees. L.R.A.1918B, 150.
- Power of legislature to enact prima facie rules of evidence for criminal cases. L.R.A.1915C, 717.
- Constitutionality of statute which makes shipper's statement as to weight conclusive. L.R.A.1917E, 1022.
- Making weight as found by public weigher conclusive as between buyer and seller. 51 L.R.A.(N.S.) 731.
- Establishment of presumptions by Workmen's Compensation Act. L.R.A.1917D, 60.
- Statute or ordinance making it an offense to associate with disreputable persons. L.R.A.1917F, 904.
- Revocation for condition broken of conditional pardon or parole without notice or hearing. L.R.A.1915F, 541.
- Constitutionality of restrictions upon governor's pardoning power. L.R.A.1915F, 519.
- Validity of statutory provisions for attorneys' fees. L.R.A.1915E, 943; 11 A.L.R. 884.
- Constitutionality of statute or ordinance providing for destruction of animals. 8 A.L.R. 67.
- Fencing and stock laws. 6 A.L.R. 212; 18 A.L.R. 67.
- Constitutionality of statute for prevention of larceny of live stock. 3 A.L.R. 81.
- Constitutionality of requirement as to bonds from operators of jitney busses. 22 A.L.R. 232.
- Constitutionality of statutes for protection of vegetation against disease or infection. 12 A.L.R. 1136.
- State income tax on nonresident. 15 A.L.R. 1329.
- Constitutionality of statute relating to disposition of old bank deposits. 1 A.L.R. 1054; 31 A.L.R. 398.
- Constitutionality of statute or ordinance requiring commodities to be sold in a specified quantity or weight. 6 A.L.R. 436.
- Constitutionality of Child Labor Laws. 12 A.L.R. 1216; 21 A.L.R. 1437.
- Constitutionality of statute in relation to hotel rates or charges. 19 A.L.R. 641.
- Constitutionality of anti-cigarette legislation. 20 A.L.R. 926.
- Validity of statutes making owner responsible for injury inflicted by another operating automobile. 4 A.L.R. 361.
- Statute making possession of automobile from which identifying marks had been removed a crime. 4 A.L.R. 1538.
- Statute as to use or teaching of foreign language in schools as violating constitutional guaranty of liberty. 29 A.L.R. 1452.
- Validity of statute restricting right of mining so as not to interfere with surface. 28 A.L.R. 1330.
- Constitutionality of statute imposing tax upon insurance contracts made and to be performed out of state, upon property or life within state. 32 A.L.R. 636.
- Statute providing for disbarment of attorney convicted of crime as violation of due process. 32 A.L.R. 1068.
- Constitutionality of statute relating to preferences in assets of insolvent bank. 31 A.L.R. 790.
- Constitutionality of statute relating to disposition of unclaimed deposits. 31 A.L.R. 398.
- Cold Storage Acts as denying due process of law. 29 A.L.R. 1442.

CONSTITUTION OF NORTH DAKOTA.

Constitutionality of statute relating to absence of employee in private employment. 28 A.L.R. 616.

Extent of power of legislature to define hazardous employment. 28 A.L.R. 1222.

Appropriation of excess income of carrier. 33 A.L.R. 488.

Constitutionality of statute making possession of intoxicating liquors evidence of violation of law. 31 A.L.R. 1222.

Constitutionality of statute regulating newspapers or magazines. 35 A.L.R. 8.

Constitutionality of statute making unlawful possession of intoxicating liquors legally obtained or providing for its confiscation. 37 A.L.R. 1386.

Statute or ordinance authorizing assessment of railroad right of way. 37 A.L.R. 230.

Validity of regulations as to plumbers and plumbing. 36 A.L.R. 1342.

Provision for contribution to general fund in absence of dependents of deceased workman. 35 A.L.R. 1061.

Constitutionality of statute prohibiting assignment of wages or salary. 37 A.L.R. 872.

Right to speedy trial. 8 R. C. L. 70 et seq. and Supps.

Right to public trial. 8 R. C. L. 75 et seq. and Supps.

Compulsory process to secure attendance of witnesses. 8 R. C. L. 81.

Right to be heard and to have counsel. 8 R. C. L. 83 and Supps.

Constitutional provisions as to former jeopardy. 8 R. C. L. 135 and Supps.

Identification by foot prints as violation of rule against self-incrimination.

8 R. C. L. 195 and Supps.

Effect of habitual criminal statutes as placing defendant's life in jeopardy.

8 R. C. L. 272 and Supps.

Defense of former jeopardy. 8 R. C. L. 134 et seq. and Supps.

Former jeopardy laws applicable to newly acquired territory. 26 R. C. L. 668 and Supps.

Immunity from self-incrimination. 8 R. C. L. 77 and Supps.

Due process of law. 6 R. C. L. 433 et seq., and Supps.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived.

Requires payment of just compensation in money to property owner or into court. *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

The owner of property condemned for public use is entitled to costs incurred as part of his compensation. *Petersburg School Dist. v. Peterson*, 14 N. D. 344, 103 N. W. 756.

Legislature may provide for condemnation of land for public use and may prescribe rules of evidence as presumption of dedication by lapse of time. *Burleigh County v. Rhud*, 23 N. D. 362, 136 N. W. 1082.

Right to assert unconstitutionality of a statute in force prior to the adoption of the constitution waived by participation in proceedings. *Minneapolis, St. P. & S. Ste. M. R. Co. v. Nester*, 3 N. D. 480, 57 N. W. 510.

Railroad not entitled to damages for structural changes when city condemns part of right of way for street. *Grafton v. St. Paul, M. & M. R. Co.* 16 N. D. 313, 22 L.R.A.(N.S.) 1, 113 N. W. 598, 15 Ann. Cas. 10.

Payment of damages to property taken, must be in accordance with constitutional provisions. *Minot v. Olson*, 42 N. D. 246, 173 N. W. 458.

Payment into court of a city warrant for property condemned, improper. *Minot v. Olson*, 42 N. D. 246, 173 N. W. 458.

Requirement that full compensation be first paid the owner, before taking property for public use, includes costs of trial and appeal. *Montriel County v. Wilson*, 27 N. D. 277, 146 N. W. 531.

See also *Rothecker v. Wolhowe*, 39 N. D. 96, 166 N. W. 515. *Reichert v. Northern P. R. Co.* 39 N. D. 114, 167 N. W. 127; *Neer v. State Live Stock Sanitary Bd.* 40 N. D. 340, 168 N. W. 601; *Cosgriff v. Tri-State Teleph. & Teleg. Co.* 15 N. D. 210, 5 L.R.A.(N.S.) 1142, 107 N. W. 525; *Gram Const. Co. v. Minneapolis*

CONSTITUTION OF NORTH DAKOTA.

St. P. & S. S. M. R. Co. 36 N. D. 164, 161 N. W. 732; *Bigelow v. Draper*, 6 N. D. 152, 69 N. W. 570; *Redmon v. Chacey*, 7 N. D. 231, 73 N. W. 1081; *Twp. of Noble v. Aasen* 8 N. D. 77, 76 N. W. 990; *Donovan v. Allert*, 11 N. D. 289, 58 L.R.A. 775, 91 N. W. 441; *Northern P. R. Co. v. Boynton*, 17 N. D. 203, 115 N. W. 679.

See Constitutional Law, 12 C. J. p. 1252, §§ 1037-1041; Eminent Domain, 20 C. J. p. 516, § 3, pp. 641-689, §§ 122-299, pp. 999-1023, §§ 396-413.

Public use, taking property for, what is a. 16 Am. St. Rep. 610.

Public use, power of the legislature to determine what is a. 88 Am. St. Rep. 926.

Public use, power to regulate charges. 62 Am. St. Rep. 290.

Public use, taking property for, without compensation by municipal corporation. 84 Am. St. Rep. 924.

Are counties within constitutional provision requiring "municipal and other corporations" to make just compensation for property injured by public work. 18 L.R.A.(N.S.) 884.

Self-executing effect of constitutional provision that private property shall not be taken or damaged for public use without compensation. 16 L.R.A. 283.

Right to take private property for public use without compensation on the theory that it has been abandoned. 39 L.R.A.(N.S.) 1029.

Distinction between taking or damaging property and consequential injuries 47 L.R.A.(N.S.) 462.

What constitutes a "taking." 18 L.R.A. 166.

What is a "damaging." 36 L.R.A.(N.S.) 1194; 109 Am. St. Rep. 904.

Taking or damaging property by discharging sewers into waters. 48 L.R.A. 698.

Laying pipe through land as a taking for which compensation must be made. 24 L.R.A.(N.S.) 230.

Injury to riparian property by deflection of water by structure erected under statutory authority as a taking. 38 L.R.A.(N.S.) 1040.

Right under constitutional provision against "damaging" private property for public use without compensation, to compensation for consequential damages to property, no part of which is taken, from smoke, noise, dust, etc., incident to ordinary operation of railroads. 17 L.R.A.(N.S.) 1054; 40 L.R.A.(N.S.) 48.

Removal of lateral support as constituting damage or injury within meaning of constitutional provision against taking, damaging or injuring property for public use without compensation. 68 L.R.A. 699; 5 L.R.A.(N.S.) 1086.

Railroad in street as a taking of property. 14 L.R.A. 382.

Cutting off access to a highway as a taking or injury. 15 L.R.A.(N.S.) 49.

Grading of street as a "damaging" of property. 30 Am. St. Rep. 837.

Liability of municipality for injury to abutting property from bringing street to the grade established in the first instance, under constitutional provision against "damaging" private property for public use without compensation. 7 L.R.A.(N.S.) 108.

Municipal liability for injury to abutting property from changing street grade under constitutional provision against "damaging" private property for public use without compensation. 36 L.R.A.(N.S.) 1194.

Right of landowner to damages for obstruction of street or highway by railroad not adjacent to his property. 46 L.R.A.(N.S.) 615.

Necessity of making compensation on laying out street across railroad property. 24 L.R.A.(N.S.) 1226.

Right of railroad company to compensation for the crossing of its track, where it intersects a street or highway, by an electric road. 29 L.R.A. 485; 13 L.R.A.(N.S.) 916.

Power to authorize construction of telegraph or telephone line along railroad right of way, without compensation to railroad company. 29 L.R.A.(N.S.) 703.

Government's right to divert water from nontidal stream without compensation to riparian owner. 37 L.R.A.(N.S.) 307.

Right of riparian owner to compensation for damages to his property by construction, under legislative authority of dams or booms for floating or storing logs. 22 L.R.A.(N.S.) 641.

Right to compensation for appropriation of land for drain or sewer. 60 L.R.A. 199.

Right to obstruct or destroy wharf rights in navigable waters for public purposes, without compensation. 34 L.R.A.(N.S.) 423.

CONSTITUTION OF NORTH DAKOTA.

Right of property owner to compensation for interference with light or air by railroad structure on company's own property. 20 L.R.A.(N.S.) 1061.

Right of landowner to damages for obstruction of street or highway by railroad not adjacent to his property. 9 L.R.A.(N.S.) 496.

Right of abutting owner to damages for special injuries where street railway is not considered an additional burden. 25 L.R.A.(N.S.) 1265.

Right of abutting owner to compensation where street railway is located on the side, rather than in the center, of the street. 25 L.R.A.(N.S.) 1278.

Statute providing for removal of covenant restrictions on use of land. L.R.A. 1918E, 61.

Temporary use of or interference with property. L.R.A.1918E, 991.

Interference with view. L.R.A.1917C, 1135.

Right under constitutional provision against damaging private property for public use without compensation to compensation for consequential damages to property no part of which is taken, from smoke, noise, dust, etc., incident to ordinary operation of railroads. L.R.A.1916E, 445.

Requiring connection for joint use of properties of public service corporation as a taking for which compensation must be made. 50 L.R.A.(N.S.) 652; L.R.A.1916E, 759; L.R.A.1917E, 783.

Assessment for public improvement by the front-foot rule. L.R.A.1917D, 375.

Removal of lateral support as constituting damage within meaning of constitutional provision against taking or damaging property for public use without compensation. L.R.A.1917E, 576.

Compulsory use of private property in road work. L.R.A.1918D, 974.

Liability of municipal corporation for injury to abutting property by changing the grade of street. L.R.A.1915A, 383.

Right to compensation for property taken or damaged in construction of levees. L.R.A.1916F, 1187.

Compensation for right of redemption where property is taken in condemnation proceedings. L.R.A.1917F, 201.

Right to compensation for interference with switch connections for other shipping facilities. 52 L.R.A.(N.S.) 192.

Right of action by owner of upland for interference with access to navigable waters. L.R.A.1918E, 738.

Liability of railroad company in constructing its roadway for removal of lateral support to adjoining property. L.R.A.1918D, 714.

Liability of railroad company to abutting owner for damages from change of grade of highway necessary to carry it across tracks. L.R.A.1916D, 1078.

Right of railroad company to compensation for the crossing of its track where it intersects a street or highway by an electric road. L.R.A.1915D, 843.

Compensation in second eminent domain proceedings. 18 A.L.R. 569.

Compensation for confiscation or requisition of property during war. 25 A.L.R. 1181.

Building restriction as to property right for taking of which compensation must be made. 17 A.L.R. 554.

Right to compensation for damages to land left outside of levee. 29 A.L.R. 302.

Right under constitutional provision against taking or damaging to recover in other than an eminent domain proceeding for consequential damages to property no part of which is taken. 20 A.L.R. 516.

Depreciation of property by the erection of a hospital by a municipality as a taking or damaging within the constitutional provision. 4 A.L.R. 1012.

Statute prohibiting the manufacture of intoxicating liquors as a taking of property without compensation. 3 A.L.R. 286.

Statute requiring physical connection of telephone exchanges or lines as an exercise of the power of eminent domain requiring compensation for loss suffered. 11 A.L.R. 1213.

Constitutionality of city or town planning statutes or ordinances. 12 A.L.R. 679.

Constitutional limitation against taking or damaging property for public use without compensation as affecting power of legislature to relieve one authorized to construct a dam from liability for damage to adjoining property. 6 A.L.R. 1362.

Statute requiring railroad company to construct and maintain private crossing without compensation. 12 A.L.R. 227.

CONSTITUTION OF NORTH DAKOTA.

Statute creating liability of municipality for mob or riot as a taking of private property. 13 A.L.R. 758.

Constitutional right to compensation on destruction of diseased animals. 8 A.L.R. 70.

Statute for protection of vegetation against plant diseases as a taking of private property for public use. 12 A.L.R. 1136.

Abutting owner's right to compensation for railroad in street under constitutional provision against damaging property for public use without compensation. 22 A.L.R. 145.

Abutting owner's right to compensation for injury to property by noise, smoke, vibration, etc., from railroad in street under constitutional provision against damaging property for public use without compensation. 22 A.L.R. 183.

May paramount right of public to improve navigability of stream without compensating riparian owner for resulting damages, be extended to public improvements not in aid of navigation. 18 A.L.R. 403.

Right to damages for destruction of riparian owner's access to navigability by improvement of navigation. 21 A.L.R. 206.

Fee owner's right to compensation when telegraph or telephone line is erected along railroad right of way. 8 A.L.R. 1293; 19 A.L.R. 383.

Fee owner of land burdened with easement in nature of street, private or public, as entitled to compensation on condemnation for public street. 17 A.L.R. 1249.

Inchoate right of dower as entitling wife to compensation. 5 A.L.R. 1347.

Right of body having power of eminent domain to enter for purpose of exploration of land before proceedings to acquire it without making compensation. 29 A.L.R. 1409.

Erection of restricted residence districts within municipality from which business buildings are excluded. 33 A.L.R. 287.

Rural or urban character of street forming boundary of city as affecting right of abutting owners to compensation for use by public utilities. 30 A.L.R. 746.

Damage to property from proximity of cemetery. 36 A.L.R. 527.

Compensation for taking of property. 10 R. C. L. 124 and Supps.

Advanced or secured payments. 10 R. C. L. 127 and Supps.

Benefits as payment in money. 10 R. C. L. 161.

What constitutes trial by jury. 10 R. C. L. 188 and Supps.

§ 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

Guardian of infant plaintiff not liable to arrest for nonpayment of costs adjudged against infant plaintiff. *Granholm v. Sweigle*, 3 N. D. 476, 57 N. W. 509.

See also *Glynn v. Glynn*, 8 N. D. 233, 77 N. W. 594; *Ex parte Bellamy*, 17 N. D. 140, 114 N. W. 376; *State v. Gottlieb*, 21 N. D. 179, 129 N. W. 460.

See *Constitutional Law*, 12 C. J. pp. 939-941, §§ 446-448; *Arrest*, 5 C. J. pp. 438-530, §§ 81-270; *Executions*, 23 C. J. pp. 904-971, §§ 1100-1221.

Constitutionality of imprisonment for debt. 34 L.R.A. 634; L.R.A.1915B, 645.

Constitutionality of statute providing for imprisonment for breach of contract of labor or rental. 21 L.R.A.(N.S.) 242.

Constitutionality of statute providing for imprisonment for beating board bill. 21 L.R.A.(N.S.) 259.

What statutes violate prohibitions against imprisonment for debt. 37 Am. St. Rep. 758.

Statute authorizing arrest in action for personal injury. 33 A.L.R. 648.

Satisfaction of debt by arrest under body execution and discharge under Poor Debtor's Act. 14 A.L.R. 505.

Alimony or maintenance as debt within constitutional or statutory provisions against imprisonment for debt. 30 A.L.R. 130.

Worthless check acts as violating constitutional provision against imprisonment for debt. 23 A.L.R. 459.

Modification of particular remedies. 6 R. C. L. 363 and Supps.

When prohibition of imprisonment for debt applies. 6 R. C. L. 527.

CONSTITUTION OF NORTH DAKOTA.

Enforcement of payment of alimony by imprisonment. 1 R. C. L. 907 and Supps.

Penalty as debt under non-imprisonment statute. 21 R. C. L. 212.

§ 16. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

Constitutionality of statute relating to taxation of domestic corporations and associations, upheld. Grand Forks County v. Cream of Wheat Co. 41 N. D. 330, 170 N. W. 863.

See also State ex rel. Miller v. Buttzville State Bank, 26 N. D. 196, 144 N. W. 105; State ex rel. Arnot v. Flaherty, 45 N. D. 549, 178 N. W. 790; E. J. Lander & Co. v. Deemy, 46 N. D. 273, 176 N. W. 922; Merchants' State Bank v. Sawyer Farmers' Co-op. Asso. 47 N. D. 375, 14 A.L.R. 1353, 182 N. W. 263; First Nat'l Bank of Turtle Lake v. Bovey, Shute & Jackson, — N. D. —, 191 N. W. 765.

See Constitutional Law, 12 C. J. pp. 787-1108, §§ 593-823.

Ex post facto laws, what are and when valid. 37 Am. St. Rep. 582.

Statute affecting challenges to the jury as ex post facto. 31 L.R.A.(N.S.) 820.

Constitutionality of statute providing for increased punishment because of prior conviction. 34 L.R.A. 399.

Impairment of contract obligation by application to existing judgments of statute abolishing or diminishing exemptions. 25 L.R.A.(N.S.) 189.

Applicability to existing contracts of statute avoiding contractual stipulations limiting time for action. 38 L.R.A.(N.S.) 1016.

Privilege of using streets as a contract. 50 L.R.A. 142.

Contract as to extent of street railway company's liability for paving assessment. 46 L.R.A. 203.

Police regulation of electric companies. 31 L.R.A. 804.

Power of municipality to prevent laying an additional track under a franchise to lay double tracks. 36 L.R.A.(N.S.) 850.

Change of law as to effect of tax certificates as evidence of title. 4 L.R.A.(N.S.) 1074.

Constitutionality of succession tax. 33 L.R.A.(N.S.) 592.

Impairment of third person's rights on legalizing invalid private contract. 22 L.R.A. 385.

Contract exemptions against power of legislature to fix tolls, rates or price. 33 L.R.A. 186.

Statute limiting hours of labor. 65 L.R.A. 42.

Effect of legislation limiting cost of new insurance on existing contracts with agents. 19 L.R.A.(N.S.) 946.

Right under reserved power to amend or repeal charter of corporation to change the rights of stockholders as to voting the stock. 22 L.R.A.(N.S.) 420.

Statutes requiring railroad company to fence tracks and build cattle guards. 31 L.R.A.(N.S.) 866.

Validity of act changing remedy to enforce stockholder's liability. 3 L.R.A.(N.S.) 954; 33 L.R.A.(N.S.) 909.

Change of remedy of creditor of corporation against stockholder. 1 L.R.A.(N.S.) 1171.

Effect of change of judicial decision to impair the obligation of a contract. 16 L.R.A. 646; 5 L.R.A.(N.S.) 860; 23 L.R.A.(N.S.) 500.

Effect of forfeiture of property by attainder on rights of innocent persons therein. L.R.A.1916E, 344.

Statute providing for forfeiture of property upon which liquor is manufactured or sold as in effect a bill of attainder. 10 A.L.R. 1591.

Constitutionality of succession tax. 50 L.R.A.(N.S.) 994.

Right to reduce rates of public service corporation fixed by franchise or charter. L.R.A.1915C, 261.

Effect of contract with patrons to preclude regulation of rates of public service corporations. L.R.A.1915C, 282.

Statute regulating time of payment of wages. 51 L.R.A.(N.S.) 1097.

Impairment of contract obligations by Workmen's Compensation Act. L.R.A. 1916A, 426, L.R.A.1917D, 56.

Alteration of stockholders' liability as impairment of the obligation of contract. L.R.A.1915B, 797.

CONSTITUTION OF NORTH DAKOTA.

Privilege of using streets as a contract. L.R.A.1918E, 893.

Provision as to rates in franchise or charter of public service corporation as a contract. L.R.A.1915C, 268.

Effect of statutory declaration that murder committed by certain means or while engaged in commission of felony shall be murder in first degree upon right of jury to pass upon degree. L.R.A.1916D, 610.

Validity of act changing remedy to enforce stockholder's liability. L.R.A. 1915B, 802.

Power to prohibit possession of more than specified amount of intoxicating liquors acquired before statute went into effect. 2 A.L.R. 1098.

Impairment of obligation of contract by income tax on nonresident. 15 A.L.R. 1333.

Examination and supervision of banks by public officers as impairment of charter rights. 8 A.L.R. 898.

Constitutionality as applied to contract previously executed of statute declaring void any contract making acceptance of benefits from relief association a bar to an action against employer. 12 A.L.R. 494.

Child labor laws as impairing obligation of contracts. 12 A.L.R. 1221.

Impairment of obligation of convict labor contracts. 3 A.L.R. 1671.

Statute relating to amount for basis of computation upon settlement of life insurance policies. 17 A.L.R. 962.

Statute creating municipal liability for mobs or riots as impairment of obligation of contract. 13 A.L.R. 757.

Rent laws as impairment of contract obligations. 11 A.L.R. 1252; 16 A.L.R. 178.

Statute regulating time of payment of wages as impairing obligation of contract. 12 A.L.R. 635; 26 A.L.R. 1396.

Franchise provisions for free or reduced rates by public service corporations as contract protected from change under contract laws of Federal Constitution. 10 A.L.R. 499.

Power of state to increase franchise rates. 3 A.L.R. 737; 9 A.L.R. 1165.

Power of state to change private contract rates for public utilities. 9 A.L.R. 1423.

Service contract by public utility in consideration of conveyance of property by individual or private corporation as affected by public utility acts. 11 A.L.R. 460.

Paving ordinance as impairment of obligation of street railway franchise. 10 A.L.R. 897.

Public service commission's power with respect to regulation of street railways as affected by contract. 5 A.L.R. 44.

War legislation in nature of moratory statute as violation of contract obligation. 9 A.L.R. 6.

Constitutionality of statute extending time for redemption. 1 A.L.R. 143.

Statute making future possession of intoxicating liquors legally obtained unlawful or providing for its confiscation. 27 A.L.R. 1386.

Statute relating to preferences in assets of insolvent debtor as impairment of obligation of contract. 31 A.L.R. 790.

Statute relating to disposition of unclaimed bank deposits as impairment of obligation of contracts. 31 A.L.R. 398.

Cemetery association's rules and regulations as impairing obligation of contracts of lot owners. 32 A.L.R. 1412.

Power to acquire nonassenting creditors or bondholders of insolvent corporation to accept securities of or shares in new or reorganized corporations. 28 A.L.R. 1196.

Power of state to increase franchise rates. 28 A.L.R. 587.

Bills of attainder. 6 R. C. L. 252.

Mandatory character of prohibition. 6 R. C. L. 292.

Obligation of contracts. 6 R. C. L. 323, et seq., and Supps.

Constitutional prohibition of impairment of obligation of contracts as affecting police power. 6 R. C. L. 199 and Supps.

Construction of statutes forming contracts. 6 R. C. L. 87 and Supps.

Ex post facto laws. 6 R. C. L. 290 et seq., and Supps.

Inferiority of state laws and constitutions. 6 R. C. L. 38 and Supps.

CONSTITUTION OF NORTH DAKOTA.

§ 17. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

See Constitutional Law, 12 C. J. pp. 937-939, §§ 446-497; Peonage, 30 Cyc. 1382.

Restraint of freedom of child as creating involuntary servitude. 18 L.R.A.(N.S.) 893.

Constitutionality of statute requiring persons, regardless of financial condition, to engage in some business, profession, occupation, or employment. 9 A.L.R. 1366.

The 13th Amendment to the Federal Constitution. 5 R. C. L. 577 and Supps.

Rights of employee. 16 R. C. L. 414 and Supps.

§ 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Confers no right to a preliminary examination in a criminal case. *State v. Gottlieb*, 21 N. D. 179, 129 N. W. 460.

No issuance of warrant of arrest without probable cause in bastardy proceedings, where issued after filing of a verified complaint. *State v. McKnight*, 7 N. D. 444, 75 N. W. 790.

Description of premises in search warrant as a certain lot in a certain block sufficient where only one building thereon. *State v. Markuson*, 7 N. D. 155, 73 N. W. 82.

Criminal complaint must be positive in form, personal knowledge of complainant of facts not required. *State v. Ramsey*, 31 N. D. 626, 154 N. W. 731.

See also *Wallace v. Hughes Electric Co.* 41 N. D. 418, 171 N. W. 840; *Lynch v. District Ct. of Ward Co.* 48 N. D. 431, 185 N. W. 303; *State v. McCray*, 48 N. D. 625, 22 A.L.R. 530, 186 N. W. 280; *State v. Pauley*, — N. D. —, 192 N. W. 91; *State v. McGahay*, 12 N. D. 535, 97 N. W. 865; *State v. Newton*, 16 N. D. 151, 112 N. W. 52; *Rindlaub v. Rindlaub*, 19 N. D. 352, 125 N. W. 479; *State v. Hart*, 30 N. D. 368, 152 N. W. 672; *State v. Fahn*, — N. D. —, 202 N. W. 130.

See Searches and Seizures, 35 Cyc. 1265-1274.

Search of premises of private persons 101 Am. St. Rep. 328.

Searches and seizures, what deemed unreasonable offense. 32 Am. St. Rep. 643.

Gambling device as property within constitutional protection against. 12 L.R.A. (N.S.) 394.

Right of officer, in executing criminal process, to take possession of evidentiary articles. 18 L.R.A.(N.S.) 253.

Admissibility in evidence against accused of articles obtained by search. 59 L.R.A. 466.

To what extent may premises be damaged in executing search warrant. 22 L.R.A.(N.S.) 819.

Malicious prosecution for wrongful search of premises. 39 L.R.A.(N.S.) 205.

Right to compel public employee to submit to physical examination to determine fitness. 33 L.R.A.(N.S.) 259.

Constitutionality of statute authorizing seizure of animals by humane officers. 15 L.R.A.(N.S.) 554.

Compulsory examination for venereal disease. 2 A.L.R. 1332.

Seizure of property as a condition of an action for malicious prosecution of a civil action. L.R.A.1918D, 550.

Damages recoverable for wrongful search. 50 L.R.A.(N.S.) 1151.

Right of officer in executing criminal process to take possession of evidentiary articles. L.R.A.1916C, 1017.

Right to seize for purposes of evidence property of one person under a warrant of arrest against another. L.R.A.1915E, 399.

Admissibility of evidence against defendant of documents for articles taken from him. L.R.A.1915B, 834; L.R.A.1916E, 715.

Power to seize gambling devices in absence of charge of violation of laws against gambling. L.R.A.1915A, 233.

Liability of officer executing invalid search warrant. 49 L.R.A.(N.S.) 770.

Right to seize property under general delegation of power to guard against spread of contagious disease. 8 A.L.R. 840.

CONSTITUTION OF NORTH DAKOTA.

Statute authorizing arrest without warrant as violation of constitutional guaranty against unreasonable seizures. 1 A.L.R. 586.

Constitutional guarantees against unreasonable searches and seizures as applied to search for or seizure of intoxicating liquors. 3 A.L.R. 1514; 13 A.L.R. 1316; 27 A.L.R. 709.

Recovery of property wrongfully seized by public authorities and held for use as evidence in a criminal trial. 11 A.L.R. 681; 13 A.L.R. 1168.

Procedure relating to search warrants under Volstead Act. 10 A.L.R. 1553.

Power to issue warrant for search of train. 7 A.L.R. 121.

Sufficiency of showing of probable cause for search for intoxicating liquors. 3 A.L.R. 1517; 13 A.L.R. 1318; 24 A.L.R. 743.

Entry and search of premises for purpose of arrest without search warrant. 5 A.L.R. 263.

What articles or property may be seized without a search warrant upon making a lawful arrest. 32 A.L.R. 686.

Right of search and seizure incident to lawful arrest without a search warrant. 32 A.L.R. 680.

Distinction between fundamental rights and privileges of citizenship. 6 R. C. L. 277.

Wrongful search and seizure. 24 R. C. L. 717 et seq., and Supps.

Description of place. 24 R. C. L. 712 and Supps.

Description of property. 24 R. C. L. 714 and Supps.

Description of person. 24 R. C. L. 715 and Supps.

Authorized search and seizure. 24 R. C. L. 715 et seq., and Supps.

Constitutional limitations. 24 R. C. L. 702 et seq., and Supps.

Probable cause. 24 R. C. L. 707 and Supps.

Oath or affirmation. 24 R. C. L. 707 and Supps.

Evidence obtained by illegal search. 8 R. C. L. 196 and Supps.

Constitutional guaranty against searches and seizures. 10 R. C. L. 933 and Supps.

Summary seizure and destruction of gambling devices. 12 R. C. L. 733 and Supps.

Right of state in exercise of police power to provide for seizure and destruction of unfit food. 11 R. C. L. 1125 and Supps.

Search, seizure and forfeiture of intoxicating liquors. 15 R. C. L. 412 et seq., and Supps.

Search of person of prisoner. 2 R. C. L. 467 and Supps.

Seizure and destruction of property under police power. 10 R. C. L. 64 and Supps.

Seizure of man's private books or papers to be used in evidence against him as compelling him to be a witness against himself. 28 R. C. L. 437.

§ 19. Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

See Treason, 38 Cyc. 950; Insurrection and Sedition, 33 C. J. p. 158.

Criminal responsibility of corporation for treason. 2 B. R. C. 253.

Criminal liability of children for treason. 36 L.R.A. 208.

Evidence of other crimes in prosecution for treason. 62 L.R.A. 325.

Proof of corpus delicti in prosecution for treason. 68 L.R.A. 56.

Validity of legislation against political, social, or industrial propaganda deemed to be of a dangerous tendency as affected by provisions of Federal Constitution regarding treason. 20 A.L.R. 1538.

Forfeiture of rights of innocent persons in property forfeited for treason. L.R.A.1916E, 344.

Crimes admitting of accessories before the fact. 1 R. C. L. 146 and Supps.

Definition of treason. 8 R. C. L. 336 and Supps.

Capacity of alien to commit treason. 8 R. C. L. 337.

§ 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

CONSTITUTION OF NORTH DAKOTA.

Legislative classification provided as basis for distinctive or special operation of law, must be natural, not artificial. *State ex rel. Dorval v. Hamilton*, 20 N. D. 597, 129 N. W. 916.

Statute authorizing boards of county commissioners to grant exclusive ferry franchises for a term of years to highest bidders valid. *Patterson v. Wollmann*, 5 N. D. 608, 33 L.R.A. 536, 67 N. W. 1040.

Act requiring county treasurer to transfer bridge funds collected from city property to city treasurer where bridge constructed in city, valid. *State ex rel. Hagen v. Anderson*, 22 N. D. 65, 132 N. W. 433.

Laws of 1907, chap. 203, purporting to make every common carrier liable to any of its employees, valid. *Majavis v. Great N. R. Co.* 121 Minn. 431, 141 N. W. 806.

Chapter 285 of Laws of 1911, relating to Sunday theaters, is not special legislation. *State ex rel. Temple v. Barnes*, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215, Ann. Cas. 1913E, 930.

Law requiring registration and publication of internal tax receipts, invalid as special legislation. *State v. Hanson*, 16 N. D. 347, 113 N. W. 371.

See also *Klein v. Hutton*, — N. D. —, 191 N. W. 485; *Vermont Loan & Trust Co. v. Whithed*, 2 N. D. 82, 49 N. W. 318; *Beleal v. Northern P. R. Co.* 15 N. D. 318, 108 N. W. 33; *Morton v. Holes*, 17 N. D. 154, 115 N. W. 256; *Investors' Syndicate v. Pugh*, 25 N. D. 490, 142 N. W. 919; *Sundahl v. First State Bank*, 32 N. D. 373, 155 N. W. 794; *Moody v. Hagen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704; *Peterson v. Fargo-Moorehead Street R. Co.* 37 N. D. 440, 164 N. W. 42; *State v. First State Bank of Jud*, — N. D. —, 202 N. W. 391; *Green v. Frazier*, 44 N. D. 395, 176 N. W. 11; *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270.

See Constitutional Law, 12 C. J. pp. 1108-1140, §§ 824-873.

Equal privileges and immunities. 14 L.R.A. 579; 34 L.R.A.(N.S.) 481.

Constitutionality of statutes making railroad companies absolutely liable for damage to stock irrespective of negligence. 35 L.R.A.(N.S.) 1018.

Validity and enforceability of contract or covenant in relation to real property which discriminates against persons because of race, color or religion. L.R.A. 1916B, 1208.

Forbidding burial of negroes in cemetery controlled by white persons. L.R.A. 1917B, 948.

Validity of segregation statute or ordinance prohibiting persons of different race or color from living in the same locality. L.R.A.1915D, 684; L.R.A.1918C, 220.

Right of innkeeper to refuse to accept one as a guest on account of race or color. 52 L.R.A.(N.S.) 744.

What are places of amusement within Civil Rights Act. L.R.A.1918F, 829.

Applicability of Civil Rights Acts to bootblacking stands. 10 A.L.R. 991.

What constitutes hotel or inn within meaning of civil rights statute. 19 A.L.R. 532.

Question whether place is a public eating house or a boarding house within civil rights statute. 19 A.L.R. 539.

Applicability of Civil Rights Acts to restaurants. 31 A.L.R. 339.

Constitutional limitation on granting special privileges and immunities. 6 R. C. L. 405 et seq., and Supps.

§ 21. The provisions of this Constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise.

Section 109 of Constitution is not mandatory, but merely permissive. *Kermott v. Bagley*, 19 N. D. 347, 124 N. W. 397.

See also *State v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; *State v. Schultz*, 44 N. D. 269, 174 N. W. 81; *State ex rel. Langer v. Gamble-Robinson Fruit Co.* 44 N. D. 376, 9 A.L.R. 98, 176 N. W. 103; *State ex rel. Twichell v. Hall*, 44 N. D. 459, 171 N. W. 213; *State ex rel. Langer v. Olson*, 44 N. D. 614, 176 N. W. 528; *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104; *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263; *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281; *State v. Stark County*, 14 N. D. 368, 103 N. W. 913; *State v. Budge*, 14 N. D. 532, 105 N. W. 724; *Re Hart*, 29 N. D. 38, L.R.A.1915C, 1169, 149 N. W. 568.

See Constitutional Law, 12 C. J. pp. 740-741, §§ 145-152.

CONSTITUTION OF NORTH DAKOTA.

When "may" in constitutional provision deemed to be mandatory. 5 L.R.A. (N.S.) 340.

Mandatory and directory provisions. 6 R. C. L. 55 et seq., and Supps.

§ 22. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

Statute relating to fees of county court, invalid. *Malin v. LaMoure County*, 27 N. D. 140, 50 L.R.A.(N.S.) 997, 145 N. W. 582.

Sale of taxed property, for special assessments, and general tax, offered in one sum, void. *Trustee Loan Co. v. Batz*, 37 N. D. 230, 164 N. W. 14.

See also *Johnson v. Grand Forks County*, 16 N. D. 363, 113 N. W. 1071; *State v. Hall*, 35 N. D. 34, 159 N. W. 281; *State v. Crawford*, 36 N. D. 385, 162 N. W. 710; *State v. Frazier*, 39 N. D. 430, 167 N. W. 510; *Neer v. State Live Stock Sanitary Bd.* 40 N. D. 340, 168 N. W. 601; *Rosten v. Board of Education*, 43 N. D. 46, 173 N. W. 461; *Meyerle v. Pioneer Pub. Co.* 45 N. D. 568, 178 N. W. 792; *Tuttle v. Tuttle*, 48 N. D. 10, 181 N. W. 898; *Boehm v. Long*, 43 N. D. 1, 172 N. W. 862; *Wirtz v. Nestos*, — N. D. — 200 N. W. 524.

See Constitutional Law, 12 C. J. pp. 1287-1293, §§ 1100-1112; Courts, 12 C. J. p. 693.

Suit against railroad owned by or in which interest is held by state. 8 A.L.R. 995.

Suit against securities' commission as a suit against the state requiring the state's consent. 24 A.L.R. 535; 27 A.L.R. 1177.

Effect of statute permitting state to be sued upon the question of its liability for negligence or tort. 13 A.L.R. 1276.

Distinction between fundamental rights and privileges of citizenship. 6 R. C. L. 277 and Supps.

Access to courts. 6 R. C. L. 285 and Supps.

Equal protection of the laws, as to courts and legal remedies. 6 R. C. L. 428 and Supps.

Due process of law. 6 R. C. L. 433 et seq., and Supps.

Purpose of Eleventh Amendment to Federal Constitution prohibiting suits against the state. 6 R. C. L. 248.

§ 23. Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

See *State ex rel. Hughes v. Milhollan*, — N. D. —, 195 N. W. 292; *Siegel v. Marcus*, 18 N. D. 214, 20 L.R.A.(N.S.) 769, 119 N. W. 358; *State v. Anderson*, 22 N. D. 65, 132 N. W. 433.

See Constitutional Law, 12 C. J. p. 951, § 465; Labor Unions, 24 Cyc. 818-824; Conspiracy, 12 C. J. pp. 572-574, §§ 67-75, pp. 604-609, §§ 161-174.

Liability of labor union or its members to persons with whose employment it has interfered. L.R.A.1917C, 1056; 1 B. R. C. 514.

Boycott as weapon in industrial dispute. 6 A.L.R. 909, 16 A.L.R. 230.

Union employee's right to make discharge of other employees as condition of their continuing work. 6 A.L.R. 917; 16 A.L.R. 231; 29 A.L.R. 543.

Liability in damages for inducing discharge of employee. 29 A.L.R. 532.

Law as to picketing. 4 L.R.A.(N.S.) 302; 50 L.R.A.(N.S.) 412.

Closed shop or forcing employees to join union as legitimate subject of industrial disputes. 6 A.L.R. 918; 16 A.L.R. 231.

Legality of picketing in connection with industrial disputes. 6 A.L.R. 928; 16 A.L.R. 233.

Validity of statute or ordinance against picketing. L.R.A.1918C, 282; 35 A.L.R. 1200.

Right to labor. 6 R. C. L. 268 and Supps.

Blacklisting. 16 R. C. L. 460 and Supps.

Blacklisting employees. 15 R. C. L. 88.

CONSTITUTION OF NORTH DAKOTA.

Statutory prohibition of blacklisting. 16 R. C. L. 468 and Supps.
Boycotting. 16 R. C. L. 469 and Supps.
Ordering union employees not to serve employer. 16 R. C. L. 448 and Supps.
Rights of employee. 16 R. C. L. 414 and Supps.
Interference with nonunion employee. 16 R. C. L. 440 and Supps.
Interference with union workman. 16 R. C. L. 443.
Picketing. 16 R. C. L. 453, and Supps.

§ 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

See *State v. Frazier*, 39 N. D. 430, 167 N. W. 510; *State v. Milhollan*, — N. D. —, 195 N. W. 292.

See *Constitutional Law*, 12 C. J. p. 745, § 167.

ARTICLE 2.—THE LEGISLATIVE DEPARTMENT.

§ 25. The legislative power of this state shall be vested in a legislature consisting of a senate and a house of representatives. The people, however, reserve the power, first, to propose measures and to enact or reject the same at the polls; second, to approve or reject at the polls any measure or any item, section, part or parts of any measure enacted by the legislature.

The first power reserved is the initiative. Ten thousand electors at large may propose any measure by initiative petition. Every such petition shall contain the full text of the measure and shall be filed with the secretary of state not less than ninety days before the election at which it is to be voted upon.

The second power reserved is the referendum. Seven thousand electors at large may, by referendum petition, suspend the operation of any measure enacted by the legislature, except an emergency measure. But the filing of a referendum petition against one or more items, sections or parts of any measure shall not prevent the remainder from going into effect. Such petition shall be filed with the secretary of state not later than ninety days after the adjournment of the session of the legislature at which such measure was enacted.

Each measure initiated by or referred to the electors, shall be submitted by its ballot title, which shall be placed upon the ballot by the secretary of state and shall be voted upon at any state-wide election designated in the petition, or at any special election called by the governor. The result of the vote upon any measure shall be canvassed and declared by the board of canvassers.

Any measure, except an emergency measure submitted to the electors of the state, shall become a law when approved by a majority of the votes cast thereon. And such law shall go into effect on the thirteenth day after the election, unless otherwise specified in the measure.

If a referendum petition is filed against an emergency petition [measure], such measure shall be a law until voted upon by the electors. And if it is then rejected by a majority of the votes cast thereon, it shall be thereby repealed. Any such measure shall be submitted to the electors at a special election if so ordered by the governor or if the referendum petition filed against it shall be signed by thirty thousand electors at large. Such special election shall be called by the governor and shall be held not less than one hundred nor more than one hundred thirty days after the adjournment of the session of the legislature.

The secretary of state shall pass upon each petition, and if he finds it insufficient he shall notify the "committee for the petitioners" and allow twenty days for correction or amendment. All decisions of the secretary of state in regard to any such petition shall be subject to review by the supreme court. But if the sufficiency of such petition is being reviewed at the time the ballot

CONSTITUTION OF NORTH DAKOTA.

is prepared, the secretary of state shall place the measure on the ballot and no subsequent decision shall invalidate such measure if it is at such election approved by a majority of the votes cast thereon. If proceedings are brought against any petition upon any ground, the burden of proof shall be upon the party attacking it.

No law shall be enacted limiting the number of copies of a petition which may be circulated. Such copies shall become a part of the original petition when filed or attached thereto. Nor shall any law be enacted prohibiting any person from giving or receiving compensation for circulating the petition, nor in any manner interfering with the freedom in securing signatures to petitions.

Each petition shall have printed thereon a ballot title which shall fairly represent the subject matter of the measure, and the names of at least five electors who shall constitute the "committee for the petitioners" and who shall represent and act for the petitioners.

All measures submitted to the electors shall be published by the state as follows: "The secretary of state shall cause to be printed and mailed to each elector a publicity pamphlet, containing a copy of each measure together with its ballot title to be submitted at any election. Any citizen, or the officers of any organization may submit to the secretary of state, for publication in such pamphlet, arguments concerning any measure therein upon first subscribing their names and addresses thereto and paying the fee therefor, which, until otherwise fixed by the legislature, shall be the sum of two hundred dollars per page."

The enacting clause of all measures initiated by the electors, shall be: "Be it enacted by the people of the state of North Dakota." In submitting measures to the electors, the secretary of state and all other officials shall be guided by the election laws until additional legislation shall be provided.

In [If] conflicting measures initiated by or referred to the electors shall be approved by a majority of the votes cast thereon, the one receiving the highest number of affirmative votes shall become the law.

The word "measure" as used herein shall include any law or amendment thereto, resolution, legislative proposal or enactment of any character.

The veto power of the governor shall not extend to the measures initiated by or referred to the electors. No measures enacted or approved by a vote of the electors shall be repealed or amended by the legislature, except upon a yea and nay vote upon roll call of two thirds of all the members elected to each house.

This section shall be self-executing and all of its provisions shall be treated as mandatory. Laws may be enacted to facilitate its operation, but no law shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people. [Laws 1919, page 503.]

Explanatory note. This is the present form of this section and is Article 26 of Amendments of the Constitution, which was approved and ratified in 1918. An earlier amendment, approved and ratified in 1914, and constituting Article 15 of the Amendments, was as follows:

The legislative authority of the state of North Dakota shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power, at their own option, to approve or reject at the polls, any act, item, section or part of any act or measure passed by the legislative assembly. The first power reserved by the people is the initiative, or the power to propose measures for enactment into laws, and at least ten per cent of the legal voters to be secured in a majority of the counties of this state shall be required to propose any measure by initiative petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than thirty days before any regular session of the legislative assembly; he shall transmit the same to the legisla-

CONSTITUTION OF NORTH DAKOTA.

tive assembly as soon as it convenes. Such initiative measure shall take precedence over all other measures in the legislative assembly except appropriation bills, and shall be either enacted or rejected without change or amendment by the legislative assembly within forty days. If any such initiative measure shall be enacted by the legislative assembly it shall be subject to referendum petition or it may be referred by the legislative assembly to the people for approval or rejection. If it is rejected or no action is taken upon it by the legislative assembly within said forty days, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislative assembly may reject any measure so proposed by initiative petition and propose a different one to accomplish the same purpose, and in any such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular election. If conflicting measures submitted to the people at the next ensuing election shall be approved by a majority of the votes severally cast for and against the same, the one receiving the highest number of affirmative votes shall thereby become valid, and the other shall thereby be rejected. The second power is the referendum, or the power to order any act, item, or part of any act to be referred to the people for their approval or rejection at the polls, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), as to any measure or any parts, items or sections of any measures passed by the legislative assembly either by a petition signed by ten per cent of the legal voters of the state from a majority of the counties, or by the legislative assembly if a majority of the members elect vote therefor. When it is necessary for the immediate preservation of the public peace, health or safety that a law shall become effective without delay, such necessity and the facts creating the same shall be stated in one section of the bill, and if upon aye and nay vote in each house two-thirds of all the members elected to each house shall vote on a separate roll call in favor of the said law going into instant operation for the immediate preservation of the public peace, health or safety, such law shall become operative upon approval by the governor.

The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative. Referendum petitions against measures passed by the legislative assembly shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at biennial regular elections, except as provision may be made by law for a special election or elections. Any measure referred to the people shall take effect when it is approved by a majority of the votes cast thereon and not otherwise, and shall be in force from the date of the official declaration of the vote.

The enacting clause of all the initiative bills shall be, "Be it enacted by the people of the state of North Dakota." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for secretary of state at the regular election last preceding the filing of any petition for the initiative and referendum shall be the basis upon which the number of legal voters necessary to sign such petition shall be counted.

Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he and all other officers shall be guided by the general laws and the acts submitting this amendment until legislation shall be especially provided therefor.

This amendment shall be self-executing, but legislation may be enacted to facilitate its operation.

The original form of the section was as follows:

The legislative power shall be vested in a senate and house of representatives.

Act not invalid which authorizes the board of drain commissioners to make assessments for local improvements. *Soliah v. Cormack*, 17 N. D. 393, 117 N. W. 125.

Acts unconstitutional, authorizing district courts to exclude territory from corporate limits of cities. *Glaspell v. Jamestown*, 11 N. D. 86, 88 N. W. 1023.

Law giving to boards of county commissioners, discretionary authority to enforce payment of taxes on real property sold to state or county, not invalid, as

CONSTITUTION OF NORTH DAKOTA.

delegation of legislative authority. *Picton v. Cass County*, 13 N. D. 242, 100 N. W. 711.

Grant of power to determine manner of use of land granted for public buildings, is delegation of legislative power. *State v. Budge*, 14 N. D. 532, 105 N. W. 724.

Initiated measure amended or repealed only by a two-thirds vote of all members elected to each house. *State ex rel. Truax v. Smart*, 48 N. D. 326, 184 N. W. 623.

Legislative power vested in legislative assembly and in people through initiative and referendum. *State ex rel. Langer v. Olson*, 44 N. D. 614, 176 N. W. 528.

Secretary of State exercises duty and discretion concerning sufficiency of recall petitions. *State v. Hall*, — N. D. —, 186 N. W. 284.

Governor has power to accelerate time for holding referendum election. *State v. Hall*, — N. D. —, 197 N. W. 687.

Petition for initiation of amendment to constitution, not containing full text of proposed measure, insufficient. *Dyer v. Hall*, — N. D. —, 199 N. W. 754.

See also *State v. State Board of Canvassers*, 44 N. D. 126, 172 N. W. 80; *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104; *State v. Milhollan*, — N. D. —, 195 N. W. 292; *State v. Hall*, — N. D. —, 197 N. W. 687; *State ex rel. Baker v. Hanna*, 31 N. D. 570, 154 N. W. 704; *State ex rel. Hall*, 35 N. D. 34, 159 N. W. 281; *State v. Crawford*, 36 N. D. 385, 162 N. W. 710; *State ex rel. Twichell v. Hall*, 44 N. D. 459, 171 N. W. 213; *State v. Poindexter*, 48 N. D. 135, 183 N. W. 852.

See *Constitutional Law*, 12 C. J. p. 735, § 136, p. 805, § 237, p. 870, § 374; *Statutes*, 36 Cyc. 942, 962; *States*, 36 Cyc. 844-851.

Ratification of amendments to Federal Constitution, or other acts of state legislature under provisions of Federal Constitution, as subject to state referendum. 5 A.L.R. 1417; 10 A.L.R. 1510.

Effect of declaring emergency in enactment of law without declaring it free from operation of referendum. 7 A.L.R. 530.

Initiative and referendum. 50 L.R.A.(N.S.) 196; L.R.A.1917B, 16.

Legislature as separate department. 6 R. C. L. 152 et seq. and Supps.

Consistency of initiative and referendum with Republican form of government. 6 R. C. L. 45 and Supps.

Initiative and referendum. 19 R. C. L. 746 and Supps; 25 R. C. L. 804 and Supps.

Operation of initiative and referendum. 19 R. C. L. 909.

Manner of presenting referendum question on ballot. 9 R. C. L. 1059 and Supps.

§ 26. The senate shall be composed of not less than thirty nor more than fifty members.

Senate must be composed at all times of two classes of senators, as nearly equal in number as practicable. *State ex rel. Williams v. Meyer*, 20 N. D. 629, 127 N. W. 834.

See *States*, 36 Cyc. 848.

§ 27. Senators shall be elected for the term of four years, except as herein after provided.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891.

State ex rel. Williams v. Meyer, 20 N. D. 628, 127 N. W. 834.

See also *Leu v. Montgomery*, 31 N. D. 1, 148 N. W. 662.

See *States*, 36 Cyc. 848.

§ 28. No person shall be a senator who is not a qualified elector in the district in which he may be chosen, and who shall not have attained the age of twenty-five years, and have been a resident of the state or territory for two years next preceding his election.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prinderville*, 21 N. D. 245, 130 N. W. 224.

See *Elections*, 20 C. J. p. 46; *States*, 36 Cyc. 848.

Power of legislature over qualifications of voters in extraconstitutional elections. 9 R. C. L. 1025 and Supps.

Qualifications of electors. 9 R. C. L. 1040 et seq., and Supps.

CONSTITUTION OF NORTH DAKOTA.

Age. 22 R. C. L. 406.

Residence. 22 R. C. L. 404 and Supps.

§ 29. The legislative assembly shall fix the number of senators, and divide the state into as many senatorial districts as there are senators, which district as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof, so as to form a district. The districts as thus ascertained and determined shall continue until changed by law.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891. State ex rel. Williams v. Meyer, 20 N. D. 628, 127 N. W. 834.

See States, 36 Cyc. 845-848; Elections, 20 C. J. p. 88, § 67.

Effect of ordinance of 1787 upon apportionment of state into senatorial and assembly districts. 52 L.R.A.(N.S.) 311.

Apportionment law as not severable. 6 R. C. L. 128 and Supps.

Apportionment based on counties. 9 R. C. L. 1009.

Equal or local representations as compact and contiguous territory. 9 R. C. L. 1007 and Supps.

Questioning constitutionality of apportionment acts. 18 R. C. L. 272.

§ 30. The senatorial districts shall be numbered consecutively from one upwards, according to the number of districts prescribed, and the senators shall be divided into two classes. Those elected in the districts designated by even numbers shall constitute one class, and those elected in districts designated by odd numbers shall constitute the other class. The senators of one class elected in the year 1890 shall hold their office for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one-half of the senators, as nearly as practicable, may be elected biennially.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891. State ex rel. Williams v. Meyer, 20 N. D. 628, 127 N. W. 834.

See States, 36 Cyc. 845-849.

§ 31. The senate, at the beginning and close of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tempore, who may take the place of the lieutenant governor under rules prescribed by law.

See State v. Olson, 44 N. D. 614, 176 N. W. 528.

See States, 36 Cyc. 850, 855.

Power to select presiding officer. 25 R. C. L. 378.

§ 32. The house of representatives shall be composed of not less than sixty, nor more than one hundred and forty members.

See States, 36 Cyc. 848.

§ 33. Representatives shall be elected for the term of two years.

See States, 36 Cyc. 848.

§ 34. No person shall be a representative who is not a qualified elector in the district from which he may be chosen, and who shall not have attained the age of twenty-one years, and have been a resident of the state or territory for two years next preceding his election.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. Wagar v. Prinderville, 21 N. D. 245, 130 N. W. 224.

See Elections, 20 C. J. p. 46; States, 36 Cyc. 848.

Members of state legislature as public officers. 17 L.R.A. 247.

Right of women to legislative office. 38 L.R.A. 210.

CONSTITUTION OF NORTH DAKOTA.

Residence. 22 R. C. L. 404 and Supps.

Power of legislature over qualifications of voters in extra constitutional elections. 9 R. C. L. 1025 and Supps.

Age. 22 R. C. L. 406.

Qualifications of electors. 9 R. C. L. 1040 et seq., and Supps.

§ 35. The members of the house of representatives shall be apportioned to and elected at large from each senatorial district. The legislative assembly shall, in the year 1895, and every tenth year, cause an enumeration to be made of all the inhabitants of this state, and shall at its first regular session after each enumeration, and also after each federal census, proceed to fix by law the number of senators, which shall constitute the senate of North Dakota, and the number of representatives which shall constitute the house of representatives of North Dakota, within the limits prescribed by this constitution and at the same session shall proceed to reapportion the state into senatorial districts, as prescribed by this constitution, and to fix the number of members of the house of representatives to be elected from the several senatorial districts; provided, that the legislative assembly may at any regular session, redistrict the state into senatorial districts, and apportion the senators and representatives respectively.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891. State ex rel. Williams v. Meyer, 20 N. D. 628, 127 N. W. 834.

See Elections, 20 C. J. p. 88, § 67; States, 36 Cyc. 845-848; Census, 11 C. J. p. 70.

Election district; validity of apportionment. 15 L.R.A. 561.

Election districts; interference with, by annexation of property to municipality. 27 L.R.A. 744.

Election districts; effect of laches in questioning unconstitutional apportionment of. 10 L.R.A.(N.S.) 1184.

Inequality of population or lack of compactness of territory as invalidating apportionment of representatives. 2 A.L.R. 1337.

Questioning constitutionality of apportionment acts. 18 R. C. L. 272.

Basis of equal representation. 9 R. C. L. 1008.

Time when apportionment may be made. 9 R. C. L. 1005.

Apportionment based on counties. 9 R. C. L. 1009.

Apportionment law as not severable. 6 R. C. L. 128 and Supps.

§ 36. The house of representatives shall elect one of its members as speaker.

See States, 36 Cyc. 850.

Power to select presiding officer. 25 R. C. L. 378.

§ 37. No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this state, except in the militia or the office of attorney at law, notary public or justice of the peace, and no person holding any office of profit or honor under any foreign government, or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three hundred dollars, shall hold any office in either branch of the legislative assembly or become a member thereof.

See States, 36 Cyc. 848; Officers, 29 Cyc. 1381.

Legislative officers deemed incompatible. 22 R. C. L. 417.

§ 38. No member of the legislative assembly, expelled for corruption, and no person convicted of bribery, perjury or other infamous crime, shall be eligible to the legislative assembly, or to any office in either branch thereof.

See States, 36 Cyc. 848; Officers, 29 Cyc. 1385.

Crime as a disqualification. 22 R. C. L. 411.

Removal from office as a disqualification. 22 R. C. L. 411.

§ 39. No member of the legislative assembly shall, during the term for

CONSTITUTION OF NORTH DAKOTA.

which he was elected, be appointed or elected to any civil office in this state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the governor, or governor and senate, during the term for which he shall have been elected.

See *State v. Boucher*, 3 N. D. 389, 21 L.R.A. 539, 56 N. W. 142.

See *Officers*, 29 Cyc. 1381; *States*, 36 Cyc. 856.

Legislative officers deemed incompatible. 22 R. C. L. 417.

§ 40. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence, in favor of, or against any measures or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

See *Bribery*, 9 C. J. p. 401; *Officers*, 29 Cyc. 1385; *States*, 36 Cyc. 848.

§ 41. The term of service of the members of the legislative assembly shall begin on the first Tuesday in January, next after their election.

Applies only to legislatures subsequent to the first, elected in the regular manner, and at regular time. *State ex rel. Larabee v. Barnes*, 3 N. D. 319, 55 N. W. 883.

See *State v. Olson*, 44 N. D. 614, 176 N. W. 528.

See *States*, 36 Cyc. 849.

§ 42. The members of the legislative assembly shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same. For words used in any speech or debate in either house, they shall not be questioned in any other place.

See *Arrest*, 5 C. J. p. 388, § 7; *Libel and Slander*, 36 C. J. p. 1260, § 239, 37 C. J. p. 142, § 647.

Privileges of members as to service of process. 23 L.R.A. 632.

Civil responsibility of member of legislative body for his vote therein. 22 A.L.R. 125.

Privileged statements in connection with legislative proceedings. 17 R. C. L. 330 and Supps.

Privilege of legislators from arrest. 2 R. C. L. 481 and Supps.

Cessation of privilege from arrest on expulsion. 25 R. C. L. 379.

§ 43. Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon without the consent of the house.

See *Officers*, 29 Cyc. 1435.

CONSTITUTION OF NORTH DAKOTA.

§ 44. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislative assembly.

See Elections, 20 C. J. pp. 95-103, §§ 76-89.

Definition of vacancy. 22 R. C. L. 437 and Supps.

§ 45. Each member of the legislative assembly shall receive as a compensation for his services for each session, five dollars per day, and ten cents for every mile of necessary travel in going to and returning from the place of the meeting of the legislative assembly on the most usual route.

Explanatory note. An amendment of this section has been proposed. See Proposed Constitutional Amendments, page 118, post.

See State v. Poindexter, 48 N. D. 135, 183 N. W. 852.

See States, 36 Cyc. 851.

Per diem compensation of members and officers of legislature. 1 A.L.R. 286.

Illegal election or appointment as affecting right to salary. 7 A.L.R. 1682.

§ 46. A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such a manner, and under such a penalty, as may be prescribed by law.

See Wagoner v. Bodal, 37 N. D. 594, 164 N. W. 147.

See States, 36 Cyc. 850.

Majority of members, as constituting quorum. 25 R. C. L. 378.

Power to compel attendance of members. 25 R. C. L. 379.

§ 47. Each house shall be the judge of the election returns and qualifications of its own members.

Direction by court that county auditor put names of candidates for senator on primary election ballot, not infringement on right of senate to judge of qualifications of its members. State ex rel. Williams v. Meyer, 20 N. D. 628, 127 N. W. 834.

Legislature may vest in court's jurisdiction, to hear and decide contests, involving nomination of candidates for legislature. Leu v. Montgomery, 31 N. D. 1, 148 N. W. 662.

Primary to make nomination not an election. Leu v. Montgomery, 31 N. D. 1, 148 N. W. 662.

See also Walton v. Olson, 40 N. D. 571, 170 N. W. 107; State v. Poindexter, 48 N. D. 135, 183 N. W. 852.

See States, 36 Cyc. 848.

Power to determine qualification, election and terms of members. 25 R. C. L. 378.

§ 48. Each house shall have the power to determine the rules of proceeding, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two-thirds to expel a member; and shall have all other powers necessary and usual in the legislative assembly of a free state. But no imprisonment by either house shall continue beyond thirty days. Punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

See State v. Poindexter, 48 N. D. 135, 183 N. W. 852; Wilson v. Fargo, 48 N. D. 447, 186 N. W. 263.

See States, 36 Cyc. 848, 849, 851; Contempt, 13 C. J. p. 1.

Power of legislative body to punish for contempt. L.R.A.1917F, 288.

Implied restrictions on the power of. 17 L.R.A. 838.

Exception in constitutional prohibition as limitation upon legislative power. 36 L.R.A.(N.S.) 73.

Power of state legislatures with respect to naturalization. 30 L.R.A. 761.

Power of legislature, or branch thereof, to appoint a committee to sit after close of session. 10 L.R.A.(N.S.) 172.

Power of legislature to prescribe its rules of procedure. 25 R. C. L. 378.

Power to punish contempts. 25 R. C. L. 381.

Power to expel members. 25 R. C. L. 379.

N. D. C. L.—3.

CONSTITUTION OF NORTH DAKOTA.

§ 49. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one-sixth of those present.

See *State v. Schultz*, 44 N. D. 269, 174 N. W. 81; *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

See *States*, 36 Cyc. 851.

Records, and reports of proceedings. 25 R. C. L. 379.

Entries in journals. 25 R. C. L. 885 et seq. and Supps.

§ 50. The sessions of each house and of the committee of the whole shall be open unless the business is such as ought to be kept secret.

See *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

§ 51. Neither house shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which the two houses shall be sitting, except in case of epidemic, pestilence or other great danger.

See *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

See *States*, 36 Cyc. 849-850.

§ 52. The senate and house of representatives jointly shall be designated as the Legislative Assembly of the State of North Dakota.

See *State v. Olson*, 44 N. D. 614, 176 N. W. 528; *State v. Poindexter*, 48 N. D. 135, 183 N. W. 852.

§ 53. The legislative assembly shall meet at the seat of government at twelve o'clock noon on the first Tuesday after the first Monday in January, in the year next following the election of the members thereof.

Applies only to legislatures subsequent to the first, elected in the regular manner and at the regular time. *State ex rel. Larabee v. Barnes*, 3 N. D. 319, 55 N. W. 883.

See also *State v. Olson*, 44 N. D. 614, 176 N. W. 528; *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

See *States*, 36 Cyc. 849.

§ 54. In all elections to be made by the legislative assembly, or either house thereof, the members shall vote viva voce, and their votes shall be entered in the journal.

See *States*, 36 Cyc. 850-851.

§ 55. The sessions of the legislative assembly shall be biennial, except as otherwise provided in this constitution.

A special session is a session of the legislative assembly. *State v. Olson*, 44 N. D. 614, 176 N. W. 528.

See *States*, 36 Cyc. 849.

Sessions of legislature. 25 R. C. L. 804.

§ 56. No regular session of the legislative assembly shall exceed sixty days, except in case of impeachment, but the first session of the legislative assembly may continue for a period of one hundred and twenty days.

See *State v. Olson*, 44 N. D. 614, 176 N. W. 528.

See *States*, 36 Cyc. 849.

§ 57. Any bill may originate in either house of the legislative assembly, and a bill passed by one house may be amended by the other.

See *Statutes*, 36 Cyc. 948-952.

House of origin of bills. 25 R. C. L. 877 and Supps.

§ 58. No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its original purpose.

See *State v. Schultz*, 44 N. D. 269, 174 N. W. 81; *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104; *State v. Poindexter*, 48 N. D. 135, 183 N. W. 852; *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

See *Statutes*, 36 Cyc. 951, 955.

Definition and nature of amendatory acts. 25 R. C. L. 904 and Supps.

CONSTITUTION OF NORTH DAKOTA.

§ 59. The enacting clause of every law shall be as follows: "Be it Enacted by the Legislative Assembly of the State of North Dakota."

See *State v. Blaisdell*, 22 N. D. 86, 132 N. W. 769.

See Statutes, 36 Cyc. 967.

Enacting clause. 25 R. C. L. 775 and Supps.

§ 60. No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the fortieth day of the session, except by unanimous consent of the house in which it is sought to be introduced.

See Statutes, 36 Cyc. 948.

Time of introduction of bills. 25 R. C. L. 878.

§ 61. No bill shall embrace more than one subject, which shall be expressed in its title, but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed.

Complied with where number of act or section to be amended given in title of amendatory act and subject-matter of amendment germane to subject of original act and within title. *School Dist. v. King*, 20 N. D. 614, 127 N. W. 515.

Complied with where subject-matter of amendment is germane to subject of act of which amended section is a part and is within title of original act. *State v. Fargo Bottling Works Co.* 19 N. D. 396, 26 L.R.A. (N.S.) 872, 124 N. W. 387.

An act, the body of which is broader than its title, must be annulled so far as it transcends its title. *Divet v. Richland County*, 8 N. D. 65, 76 N. W. 993.

An act, which in its body embraces but a single subject, is not invalidated by fact that title expresses plurality of subjects. *Eaton v. Guarantee Co.* 11 N. D. 79, 88 N. W. 1029.

Section 1807 of Rev. Codes is part of the Political Code, which was adopted as a whole, and is valid. *Tribune Printing & Binding Co. v. Barnes*, 7 N. D. 591, 75 N. W. 904.

A statute entitled "An act to amend section 10 of chapter 38, Laws of 1887, being section 545 of the Compiled Laws," is valid where the amendment is germane to the subject of the original section. *Steele County v. Erskine*, 98 Fed. 215, 39 C. C. A. 173.

Section 155 of Laws of 1905, relating to limitations as to future assessments, is not violative of this section. *McKone v. Fargo*, 24 N. D. 53, 138 N. W. 967.

Provision in law that letting of premises knowing they will be used as common nuisance or otherwise permitting such use not broader than title concerning letting of building knowingly for such purposes. *State v. McGillie*, 25 N. D. 27, 141 N. W. 82.

Act permitting recovery of money paid at invalid tax sales germane to matter of collection of taxes on land by means of sale. *Sherwood v. Barnes County*, 22 N. D. 310, 134 N. W. 38; *Paine v. Dickey County*, 8 N. D. 581, 80 N. W. 770.

Title of act creating office and prescribing duties of state board of auditors does not express subject of security of state funds. *State ex rel. Standish v. Nomland*, 3 N. D. 427, 44 Am. St. Rep. 572, 57 N. W. 85.

Provision of act for election of first judge germane to title defining boundaries of judicial districts and providing terms of court. *State ex rel. Erickson v. Burr*, 16 N. D. 581, 113 N. E. 705.

Provision that list of names of voters at primary take place of first registration and that notice be given only of date of second day of registration not germane to title relating only to nomination. *Fitzmaurice v. Willis*, 20 N. D. 372, 127 N. W. 95.

Provision for length of term of officers of state militia germane to purpose of title providing that appointments to national guard be made from officers of field and line. *State ex rel. Poole v. Peake*, 18 N. D. 101, 120 N. W. 47.

An act permitting sale of intoxicating liquor for certain purposes, and prohibiting it for others, under regulation, only one subject—regulation of liquor traffic. *State v. Haas*, 2 N. D. 202, 50 N. W. 254.

Provisions of act giving lien to materialmen and laborers germane to title "regulating filing and foreclosure of mechanics' liens." *Powers Elevator Co. v. Pottner*, 16 N. D. 359, 113 N. W. 703.

Provision in body of act for return of weighmaster's certificate to local elevator

CONSTITUTION OF NORTH DAKOTA.

agents for posting germane to title providing for a return to local agents. *State v. Minneapolis & N. Elevator Co.* 17 N. D. 23, 138 Am. St. Rep. 691, 114 N. W. 482.

Bastardy law germane to title of criminal code, as proceedings are quasi-criminal. *State v. Brandner*, 21 N. D. 310, 130 N. W. 941.

Act containing provisions simply in furtherance of object of providing homes for orphans contains only one subject. *State ex rel. Kol v. North Dakota Children's Home Soc.* 10 N. D. 493, 88 N. W. 273.

Title of act to provide for punishment of any persons carrying concealed, dangerous weapons, sufficiently comprehensive to cover provision of act, making the carrying of concealed revolvers, and other dangerous weapons, unlawful, and providing punishment. *State v. Brown*, 38 N. D. 340, 165 N. W. 520.

Provision of act, exempting money or other benefit provided by any fraternal or beneficiary society, germane to title "Regulating Fraternal Beneficial Societies, Orders, or Associations." *Brown v. Steckler*, 40 N. D. 113, 1 A.L.R. 753, 168 N. W. 670.

Title of act, to define co-operative associations, and to authorize their incorporation, expresses subject providing that every corporation have power, to regulate transfer of stock by holders, and make by-laws for limitation of stock ownership. *Chafee v. Farmers Co-op. Elev. Co.* 39 N. D. 585, 168 N. W. 616.

Where title of an act fairly indicates general scope of a bill designed to accomplish a single object, it is valid. *Great Northern Ry. Co. v. Duncan*, 42 N. D. 346, 176 N. W. 992.

Title, to a bill designed to accomplish one general object, not multifarious, where it indicates that several subjects relating to that object, are embodied in the bill. *Great Northern Ry. Co. v. Duncan*, 42 N. D. 346, 176 N. W. 992.

Amendment to statute relating to change of judge for prejudice not invalid, because title does not mention affidavit for prejudice, required by the amendment. *State v. Peterson*, — N. D. —, 190 N. W. 309.

"An act to provide for organization and government of state banks," prohibiting all persons from doing banking business, except corporations, organized under the act, valid. *State ex rel. Goodsill v. Woodmansee*, 1 N. D. 246, 11 L.R.A. 420, 46 N. W. 970.

"An act to provide for establishing, constructing, and maintaining drains," providing, for appointment of drain commission, for levying assessments, for issuance of bonds, and for sinking fund to pay same, valid. *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

Body of act, title of which is to increase revenue, by changing boundaries of counties, providing for change of boundaries only, not expressed in title, and invalid. *Richard v. Stark County*, 8 N. D. 392, 79 N. W. 863.

Act entitled "An act relating to titles, to Real Property," although too general, expresses subject of act. *Power v. Kitching*, 10 N. D. 254, 86 N. W. 737.

Amendment entitled "An act to amend Section . . . 1466 of R. C. relating to establishment, construction, maintenance of drains," valid. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Act, amending provision of revised code, relating to fees of county court, invalid. *Malin v. Lamoure County*, 27 N. D. 140, 50 L.R.A.(N.S.) 997, 145 N. W. 582.

Title, expresses one subject. *State ex rel. Gaulke v. Turner*, 37 N. D. 635, 164 N. W. 924.

See also *Woodward v. Blake*, 38 N. D. 38, L.R.A.1918A, 88, 164 N. W. 156; *McCoy v. Davis*, 38 N. D. 328, 164 N. W. 951; *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; *Murray Bros. & Ward Land Co. v. Buttles*, 32 N. D. 565, 156 N. W. 207; *Moody v. Hagen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704; *Strauss v. State*, 36 N. D. 594, L.R.A. 1917E, 909, 162 N. W. 998; *Ray v. Beery*, 36 N. D. 646, 163 N. W. 269; *Martin v. Burleigh County*, 38 N. D. 373, 165 N. W. 520; *State v. Valley City Special School Dist.* 42 N. D. 464, 173 N. W. 750; *State ex rel. Amerland v. Hagan*, 44 N. D. 306, 175 N. W. 372; *State ex rel. Leach v. Olson*, 44 N. D. 367, 176 N. W. 833; *State ex rel. Langer v. Olson*, 44 N. D. 614, 176 N. W. 528; *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104; *Wanberg v. National Union Fire Insurance Co.* 46 N. D. 369, 179 N. W. 666; *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263; *State v. Poindexter*, — N. D. —, 190 N. W. 818; *Klein v. Hutton*, — N. D. —, 191 N. W. 485; *State ex rel. Larabee v. Barnes*,

CONSTITUTION OF NORTH DAKOTA.

3 N. D. 319, 55 N. W. 883; *Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72; *State v. McLean County*, 11 N. D. 356, 92 N. W. 385.

See Statutes, 36 Cyc. 1017-1053.

Effect of provisions requiring statute to embrace but one subject which shall be expressed in the title. 61 Am. Dec. 337; 64 Am. St. Rep. 70; 79 Am. St. Rep. 456.

Sufficiency of title of statute embodying a code or compilation of laws. 55 L.R.A. 836.

Validity of statute or ordinance authorizing a levy of taxes, incurring of indebtedness, or the appropriation of money, for two or more purposes. 14 L.R.A. (N.S.) 519.

Sufficiency of title of civil service laws. 34 L.R.A. (N. S.) 483.

Sufficiency of title of primary election laws. 22 L.R.A. (N.S.) 1137; 41 L.R.A. (N.S.) 133.

Validity of Workmen's Compensation Statute as affected by title. L.R.A. 1917D, 62.

Validity of statute providing for attorney's fees as affected by title to act. L.R.A. 1915E, 949.

Title of Torrens Act. L.R.A. 1916D, 20.

Sufficiency of title of statutes in relation to vinegar. 49 L.R.A. (N.S.) 1206.

Sufficiency of title of act as to licensing automobiles. 52 L.R.A. (N.S.) 956.

Sufficiency of title of primary election laws. L.R.A. 1917A, 260.

Necessity and sufficiency of reference in title of statute to appropriations to put its purpose into effect. L.R.A. 1917B, 812.

Sufficiency of title of statute regulating newspapers or magazines. 35 A.L.R. 10.

Title of mothers' pension acts. 3 A.L.R. 1233.

Sufficiency of title of fencing and stock laws. 6 A.L.R. 215; 18 A.L.R. 68.

Title of statute exempting proceeds of life or benefit insurance. 1 A.L.R. 760.

Title of anti-cigarette statutes. 20 A.L.R. 935.

Singleness of subject. 25 R. C. L. 841 et seq., and Supps.

Sufficiency of title. 25 R. C. L. 847 et seq., and Supps.

§ 62. The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Last sentence requires a specific appropriation for each subject other than those embraced in general appropriation bill. *State ex rel. McDonald v. Holmes*, 19 N. D. 286, 123 N. W. 884.

Appropriation may be made in act creating system of regulation, and for carrying out its provisions, and as part of it. *State v. Turner*, 37 N. D. 635, 164 N. W. 924.

See also *State v. Poindexter*, — N. D. —, 190 N. W. 818.

See Statutes, 36 Cyc. 967.

Separate appropriation bills. 25 R. C. L. 396 and Supps.

§ 63. Every bill shall be read three several times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill unless a reading at length be demanded. The first and third readings shall be at length. No legislative day shall be shorter than the natural day.

See *State v. Turner*, 37 N. D. 635, 164 N. W. 924; *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

See Statutes, 36 Cyc. 949-952; Time, 38 Cyc. 314.

Reading of bills. 25 R. C. L. 879 and Supps.

§ 64. No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated shall be re-enacted and published at length.

Does not refer to act complete in itself containing no reference to other statutes, although in operation it will by implication affect and modify other statutes. *State v. Fargo Bottling Works Co.* 19 N. D. 396, 26 L.R.A. (N.S.) 872, 124 N. W. 387.

CONSTITUTION OF NORTH DAKOTA.

Amendment unconstitutional as containing more than one subject, and also containing matter not germane to act. *Fitzmaurice v. Willis*, 20 N. D. 378, 127 N. W. 95.

See also *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

See Statutes, 36 Cyc. 969-971.

Validity of amendatory acts. 25 R. C. L. 905 and Supps.

Reference statutes. 25 R. C. L. 907 and Supps.

§ 65. No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the journal.

Presumption in favor of an enrolled bill, not conclusive, and where legislative journals show statute was never in fact passed it is void. *State v. Schultz*, 44 N. D. 269, 174 N. W. 81.

See also *State v. Poindexter*, 48 N. D. 135, 183 N. W. 852.

See Statutes, 36 Cyc. 952-958.

Effect of failure to make prescribed entries. 25 R. C. L. 885 and Supps.

Sufficiency of entries. 25 R. C. L. 886 and Supps.

Vote. 25 R. C. L. 881.

§ 66. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislative assembly; immediately before such signing their title shall be publicly read and the fact of signing shall be at once entered on the journal.

As to whether house journal should control over enrolled bill as authenticated by signatures of proper officers. *Woolfolk v. Albrecht*, 22 N. D. 36, 133 N. W. 310.

See also *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263; *State v. Dahl*, 6 N. D. 81, 34 L.R.A. 97, 68 N. W. 418.

See Statutes, 36 Cyc. 956, 963-964.

Signing of bills by presiding officers of legislature. 25 R. C. L. 883 and Supps.

Effect of failure to make prescribed entries. 25 R. C. L. 885 and Supps.

Sufficiency of entries. 25 R. C. L. 886 and Supps.

§ 67. No act of the legislative assembly shall take effect until July 1st after the close of the session, unless the legislature by a vote of two-thirds of the members present and voting, in each house shall declare it an emergency measure, which declaration shall be set forth in the act; provided, however, that no act granting a franchise or special privilege, or act creating any vested right or interest other than in the state, shall be declared an emergency measure. An emergency measure shall take effect and be in force from and after its passage and approval by the governor.

Explanatory note. The above is the present form of this section and is Article 27 of Amendments to the Constitution, which was approved and ratified in 1918. The original form of the section was as follows:

No act of the legislative assembly shall take effect until July first, after the close of the session, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislative assembly shall, by a vote of two-thirds of all the members present in each house, otherwise direct.

Act with emergency clause not unconstitutional. *State v. Bacon*, 14 S. D. 394, 85 N. W. 605.

Acts without emergency clause do not take effect until time provided by law. *Re Hendricks*, 5 N. D. 114, 64 N. W. 110.

Special session of legislature governed by constitutional provisions prescribing time when acts of legislature shall become operative as laws. *State ex rel. Langer v. Olson*, 44 N. D. 614, 176 N. W. 528.

See also *State v. Currie*, 3 N. D. 310, 55 N. W. 858; *State v. Dahl*, 6 N. D. 81, 34 L.R.A. 97, 68 N. W. 418; *State v. Rooney*, 12 N. D. 144, 95 N. W. 513; *State v. District Court*, 19 N. D. 819, 124 N. W. 417; *Re Minneapolis*, St. Paul & S. M. R. Co. 30 N. D. 221, 152 N. W. 513; *State ex rel. Langer v. Crawford*, 36 N. D. 385, 162 N. W. 710.

See Statutes, 36 Cyc. 1191-1198.

CONSTITUTION OF NORTH DAKOTA.

Effect of declaring an emergency in the enactment of a law without declaring it free from the operation of the referendum. 7 A.L.R. 530.

Time of statutes taking effect. 25 R. C. L. 796 et seq., and Supps.

§ 68. The legislative assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

See *Ex parte Corliss*, 16 N. D. 470, 114 N. W. 962.

See *Constitutional Law*, 12 C. J. pp. 729-739, §§ 106-144.

§ 69. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

1. For granting divorces.
2. Laying out, opening, altering, or working roads or highways, vacating roads, town plats, streets, alleys or public grounds.
3. Locating or changing county seats.
4. Regulating county or township affairs.
5. Regulating the practice of courts of justice.
6. Regulating the jurisdiction and duties of justices of the peace, police magistrates or constables.
7. Changing the rules of evidence in any trial or inquiry.
8. Providing for changes of venue in civil or criminal cases.
9. Declaring any person of age.
10. For limitation of civil actions, or giving effect to informal or invalid deeds.
11. Summoning or impaneling grand or petit juries.
12. Providing for the management of common schools.
13. Regulating the rate of interest on money.
14. The opening or conducting of any election or designating the place of voting.
15. The sale or mortgage of real estate belonging to minors or others under disability.
16. Chartering or licensing ferries, toll bridges or toll roads.
17. Remitting fines, penalties or forfeitures.
18. Creating, increasing or decreasing fees, percentages or allowances of public officers.
19. Changing the law of descent.
20. Granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever.
21. For the punishment of crimes.
22. Changing the names of persons or places.
23. For the assessment or collection of taxes.
24. Affecting estates of deceased persons, minors or others under legal disabilities.
25. Extending the time for the collection of taxes.
26. Refunding money into the state treasury.
27. Relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein.
28. Legalizing, except as against the state, the unauthorized or invalid act of any officer.
29. Exempting property from taxation.
30. Restoring to citizenship persons convicted of infamous crimes.
31. Authorizing the creation, extension or impairing of liens.
32. Creating offices, or prescribing the powers or duties of officers in counties, cities, townships, election or school districts, or authorizing the adoption or legitimation of children.

CONSTITUTION OF NORTH DAKOTA.

33. Incorporation of cities, towns or villages, or changing or amending the charter of any town, city or village.

34. Providing for the election of members of the board of supervisors in townships, incorporated towns or cities.

35. The protection of game or fish.

County seat removal statute, §§ 3233-3237, general, prescribing procedure only, and is valid. *Miller v. Norton*, 22 N. D. 196, 132 N. W. 1080.

Laws of 1890, chap. 56, regulating relocation of county seats, invalid as special legislation, arbitrarily classifying counties. *Edmonds v. Herbrandson*, 2 N. D. 270, 14 L.R.A. 725, 50 N. W. 970.

Act requiring county treasurer to transfer to city treasurer bridge funds collected from city property where bridge constructed in city, valid. *State ex rel. Hagen v. Anderson*, 22 N. D. 65, 132 N. W. 433.

A general law assessing and taxing grain in elevators, to the possessor, and providing for a lien as security for reimbursement, if not the owner, is valid. *Minneapolis & N. Elevator Co. v. Traill County*, 9 N. D. 213, 50 L.R.A. 266, 82 N. W. 727.

Act making arbitrary classification of counties for collection of taxes on certain property invalid. *Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72.

Act conferring upon boards of county commissioners of every county authority to enforce payment of taxes on unredeemed tax sale property valid. *Pieton v. Cass County*, 13 N. D. 242, 100 N. W. 711, 3 Ann. Cas. 345.

Act requiring counties to pay expenses of maintaining indigent inmates at institution for feeble minded valid. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

Act giving to materialmen and laborers a lien upon buildings erected upon government lands held under the laws of the United States valid. *Powers Elevator Co. v. Pottner*, 16 N. D. 359, 113 N. W. 703.

Law providing for organization of new common school districts, valid. *McDonald v. Hanson*, 37 N. D. 324, 164 N. W. 8.

Law providing for larger inheritance tax on nephew or niece, than on a cousin, uncle or aunt, valid. *Strauss v. State*, 36 N. D. 594, L.R.A.1917E, 909, 162 N. W. 908.

Special law, in subsection 5, means, one relating to particular persons or things, as distinguished from general law. Local law, in subsection 8, is one applying to a particular locality or spot. *State v. First State Bank*, — N. D. —, 202 N. W. 391.

See also *Plummer v. Borsheim*, 8 N. D. 565, 80 N. W. 690; *Glaspell v. Jamestown*, 11 N. D. 86, 88 N. W. 1023; *State ex rel. Hagen v. Anderson*, 22 N. D. 65, 132 N. W. 433; *Miller v. Norton*, 22 N. D. 196, 132 N. W. 1080; *Morton v. Holes*, 17 N. D. 154, 115 N. W. 256; *Vermont Loan & Trust Co. v. Whithed*, 2 N. D. 82, 49 N. W. 318; *Patterson v. Wollmann*, 5 N. D. 608, 33 L.R.A. 536, 67 N. W. 1040; *Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72; *Waslien v. Hillsboro*, 48 N. D. 1113, 188 N. W. 738.

See *Adoption of Children*, 1 C. J. p. 1372, § 3; *Bridges*, 9 C. J. pp. 444-448, §§ 30-36; *Constitutional Law*, 12 C. J. p. 838, § 322, pp. 978-982, §§ 574-576, p. 1140, § 873, p. 1171, §§ 910, 1185-1187, §§ 953-955; *Corporations*, 14 C. J. p. 95, § 58; *Counties*, 15 C. J. pp. 420-444, §§ 53-90; *Courts*, 15 C. J. p. 901, § 275; *Criminal Law*, 16 C. J. p. 1351, § 3187; *Deeds*, 18 C. J. p. 189, § 79; *Descent and Distribution*, 18 C. J. p. 806, § 4; *Divorce*, 19 C. J. p. 17, § 5; *Elections*, 20 C. J. p. 62, § 16; *Ferries*, 25 C. J. pp. 1052, 1053, § 5; *Fines, Forfeitures and Penalties*, 25 C. J. p. 1168, § 42, p. 1177, § 71, p. 1213, § 156; *Fish*, 26 C. J. p. 625, § 43; *Game*, 27 C. J. p. 946, § 10; *Infants*, 31 C. J. p. 1008, § 37, p. 1037, § 100; *Interest*, 33 C. J. p. 186, § 26; *Justices of the Peace*, 35 C. J. p. 490, § 58; *Municipal Corporations*, 28 Cyc. 139-143; *Officers*, 29 Cyc. 1427; *Railroads*, 14 C. J. p. 95, § 58; *Statutes*, 36 Cyc. 994-996, 998, 999, 1001-1003, 1008, 1010, 1012-1016; *Taxation*, 37 Cyc. 729-737, 886-888, 1190; *Towns*, 38 Cyc. 611; *Venue*, 40 Cyc. 116.

What is special legislation forbidden by constitution. 21 Am. St. Rep. 780.

What are local or private statutes. 23 Am. Dec. 543; 1 Am. St. Rep. 903.

Validity of classification in Sunday law. 14 L.R.A.(N.S.) 1259; 32 L.R.A.(N.S.) 1190.

Primary election law as special or local law. 41 L.R.A.(N.S.) 135.

CONSTITUTION OF NORTH DAKOTA.

Statute providing for commission form of government as special and local legislation. 41 L.R.A.(N.S.) 112.

Curative act as special legislation. 5 L.R.A.(N.S.) 327; 22 L.R.A.(N.S.) 534; 42 L.R.A.(N.S.) 465.

Consideration of extrinsic evidence to show unconstitutionality of statute attacked as local. 14 L.R.A. 459.

Attack on enrolled bill for failure to give notice of application for passage of. 40 L.R.A.(N.S.) 28.

Absentee voters law as local or special legislation. 14 A.L.R. 1265; 19 A.L.R. 308.

Moratory statute as special legislation. 9 A.L.R. 14.

Statutes relating to fencing or stock districts as local or special laws. 6 A.L.R. 222; 18 A.L.R. 68.

Statute requiring license to keep inn, hotel, boarding or lodging house or restaurant as a special or local law. L.R.A.1915B, 1101.

The Torrens Law as special or local. L.R.A.1916D, 20.

Statute licensing automobiles as local or special act. 52 L.R.A.(N.S.) 957.

Validity of special or local acts in particular cases. 25 R. C. L. 826 et seq.

§ 70. In all other cases where a general law can be made applicable, no special law shall be enacted; nor shall the legislative assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

Applies only to cases other than those enumerated in section 69, which embraces all laws locating or changing county seats. *Edmonds v. Herbrandson*, 2 N. D. 270, 14 L.R.A. 725, 50 N. W. 790.

Law providing for larger inheritance tax on property devised or inherited by nephew or niece, than on property devised, or inherited by cousin, aunt or uncle, valid. *Strauss v. State*, 36 N. D. 595, L.R.A.1917E, 909, 162 N. W. 908.

Law providing methods for organizing new, common school districts, valid. *McDonald v. Hanson*, 37 N. D. 324, 164 N. W. 8.

See Statutes, 36 Cyc. 985-1016.

Special or local legislation where general laws can be made applicable. 93 Am. St. Rep. 106.

General laws must be enacted where applicable; legislative discretion. 14 L.R.A. 566.

Origin, purpose and scope of constitutional restrictions against special or local legislation. 25 R. C. L. 820 and Supps.

Power to repeal existing special laws. 25 R. C. L. 823.

ARTICLE 3.—EXECUTIVE DEPARTMENT.

§ 71. The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of two years and until his successor is elected and duly qualified.

See *State ex rel. Wehe v. Frazier*, 47 N. D. 314, 182 N. W. 545; *Wirtz v. Nestos*, — N. D. —, 200 N. W. 524; *State v. Boucher*, 3 N. D. 389, 21 L.R.A. 539, 56 N. W. 142; *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281.

See *States*, 36 Cyc. 855, 859; *Officers*, 29 Cyc. 1395-1399; *Constitutional Law*, 12 C. J. pp. 897-904, §§ 401-411.

Nature of office and relation to government. 12 R. C. L. 999.

Eligibility, election and tenure of governor. 12 R. C. L. 1000 and Supps.

§ 72. A lieutenant governor shall be elected at the same time and for the same term as the governor. In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office, or the disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted or the disability be removed, shall devolve upon the lieutenant governor.

See *States*, 36 Cyc. 855; *Officers*, 29 Cyc. 1403.

Vacancy in office of governor. 12 R. C. L. 1010 and Supps.

Devolution of office of governor on lieutenant-governor. 22 R. C. L. 442.

CONSTITUTION OF NORTH DAKOTA.

§ 73. No person shall be eligible to the office of governor or lieutenant governor unless he be a citizen of the United States, and a qualified elector of the state, who shall have attained the age of thirty years, and who shall have resided five years next preceding the election within the state or territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prindle*, 21 N. D. 245, 130 N. W. 224.

See *States*, 36 Cyc. 856; *Officers*, 29 Cyc. 1381.

Qualifications as to constitutional officers. 22 R. C. L. 401.

Citizenship. 22 R. C. L. 404.

Residence. 22 R. C. L. 404 and Supps.

Age. 22 R. C. L. 406.

Eligibility, election and tenure of governor. 12 R. C. L. 1000 and Supps.

§ 74. The governor and lieutenant governor shall be elected by the qualified electors of the state at the time and places of choosing members of the legislative assembly. The persons having the highest number of votes for governor and lieutenant governor respectively shall be declared elected, but if two or more shall have an equal and highest number of votes for governor or lieutenant governor, the two houses of the legislative assembly at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

See *States*, 36 Cyc. 857; *Elections*, 20 C. J. p. 205, § 205, pp. 193-197, §§ 245-249.

Eligibility, election and tenure of governor. 12 R. C. L. 1000 and Supps.

Qualifications of electors. 9 R. C. L. 1040, et seq., and Supps.

§ 75. The governor shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion. He shall have power to convene the legislative assembly on extraordinary occasions. He shall at the commencement of each session communicate to the legislative assembly, by message, information of the condition of the state, and recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislative assembly and shall take care that the laws be faithfully executed.

See *State ex rel. Langer v. Olson*, 44 N. D. 614, 176 N. W. 528; *State ex rel. Wehe v. Frazier*, 47 N. D. 314, 182 N. W. 545.

See *Militia*, 27 Cyc. 492-504; *States*, 36 Cyc. 850, 865; *Riot*, 34 Cyc. 1789-1790.

Power to proclaim and maintain martial law. 65 L.R.A. 195.

Power to disband militia. 23 L.R.A. 510.

Power of, in exercise of power to suppress insurrection, to authorize arrest and detention of persons without turning them over to the civil authorities. 12 L.R.A.(N.S.) 979.

Power to declare martial law apart from military occupation or operations. 24 A.L.R. 1183.

Powers and duties generally of governor. 12 R. C. L. 1001 and Supps.

Military status of governor. 12 R. C. L. 1006 and Supps.

Power of governor to convene legislature on extraordinary occasions. 25 R. C. L. 382.

Relation of governor to legislature generally. 12 R. C. L. 1005.

§ 76. The governor shall have power in conjunction with the board of pardons, of which the governor shall be ex officio a member and the other members of which shall consist of the attorney-general of the state of North Dakota, the chief justice of the supreme court of the state of North Dakota, and two qualified electors who shall be appointed by the governor, to

CONSTITUTION OF NORTH DAKOTA.

remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction of treason the governor shall have the power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. The governor shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by the board of pardons, stating the name of the convict, the crime for which he is convicted, the sentence and its date and the date of remission, commutation, pardon or reprieve, with their reasons for granting the same.

Explanatory note. The above is the present form of this section, and is Article 3 of Amendments to the Constitution. The original form of this article was as follows:

The governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. He shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime for which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

Vests exclusive power to grant commutations and pardons in board of pardons.

Re Hart, 29 N. D. 38, L.R.A.1915C, 1169, 149 N. W. 568.

See also State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.

See Pardons, 29 Cyc. 1563-1564; Treason, 38 Cyc. 951.

Power of executive to pardon one committed for contempt. 23 A.L.R. 524; 26 A.L.R. 21.

Personal liability of governors. L.R.A.1915A, 175.

Constitutionality of restrictions upon governor's pardoning power. L.R.A. 1915F, 519.

Power of court to inquire into motives of governor in exercising pardoning power. 52 L.R.A.(N.S.) 113.

Power of the governor to pardon. 12 R. C. L. 1003 and Supps.

§ 77. The lieutenant governor shall be president of the senate, but shall have no vote unless they be equally divided. If, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

See States, 36 Cyc. 855, 856, 860, 865.

Power to pardon or commute sentence as one which devolves upon lieutenant governor during absence or disability of governor. 32 A.L.R. 1162.

Pardon by lieutenant governor as governor pro tem. 47 L.R.A.(N.S.) 1036.

Secretary of state. 25 R. C. L. 386.

§ 78. When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

Governor may fill vacancies only where neither constitution nor law has made provision therefor. State ex rel. Standish v. Boucher, 3 N. D. 389, 21 L.R.A. 539, 56 N. W. 142.

Governor may declare vacancies, and may appoint officers to fill them, where officers, continue to hold, after right to hold ceases. State ex rel. Langer v. Scow, 38 N. D. 246, 164 N. W. 959.

CONSTITUTION OF NORTH DAKOTA.

See also State ex rel. Langer v. Crawford, 36 N. D. 385, 162 N. W. 710; State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.

See Statutes, 36 Cyc. 860; Officers, 29 Cyc. 1400.

Power of governor to make ad interim appointment to an office whose fixed term expires before the senate's adjournment, where the incumbent is authorized to hold over until his successor is appointed. 46 L.R.A.(N.S.) 1202.

Appointment by governor of public officers. 12 R. C. L. 1004 and Supps.

Governor's power to fill vacancies. 22 R. C. L. 441.

§ 79. Every bill which shall have passed the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign, but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members-elect shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members-elect, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law unless the legislative assembly, by its adjournment, prevent its return, in which case it shall be a law unless he shall file the same with his objections, in the office of the secretary of state, within fifteen days after such adjournment.

In computing fifteen days' period Sundays are not excepted. State ex rel. Watkins v. Norton, 21 N. D. 473, 131 N. W. 257.

As to whether house journal should control over enrolled bill as authenticated by signatures of proper officers. Woolfolk v. Albrecht, 22 N. D. 36 133 N. W. 310.

See also State v. Poindexter, 48 N. D. 135, 183 N. W. 852. State ex rel. Temple v. Barnes, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215.

See Statutes, 36 Cyc. 958-963, 956-958.

Power of governor to veto part only of statute. 55 L.R.A. 882.

Attack on enrolled bill for nonapproval by governor. 40 L.R.A.(N.S.) 23.

Resort to legislative journals to show passage of bill over governor's veto. 40 L.R.A.(N.S.) 34.

Right of the executive to sign a bill after the adjournment of the legislative bodies. 37 L.R.A. 391.

Disapproval by governor of a bill in part or with modifications. 35 A.L.R. 600.

Power of governor to veto initiative measure. 50 L.R.A.(N.S.) 208; L.R.A. 1917B. 24.

Veto and approval of laws. 12 R. C. L. 1005 and Supps.

Executive approval and veto of laws. 25 R. C. L. 886 et seq. and Supps.

§ 80. The governor shall have power to disapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items, and part or parts disapproved shall be void, unless enacted in the following manner: If the legislative assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

See Statutes, 36 Cyc. 962.

Partial or qualified approval or disapproval by governor of laws. 25 R. C. L. 891.

§ 81. Any governor of this state who asks, receives or agrees to receive

CONSTITUTION OF NORTH DAKOTA.

any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the legislative assembly shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislative assembly, or who threatens any member that he, the said governor, will remove any person or persons from office or position with intent in any manner to influence the action of said member, shall be punished in the manner now, or that may hereafter, be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this state.

See *State ex rel. Wehe v. Frazier*, 47 N. D. 314, 182 N. W. 545.

See *Bribery*, 9 C. J. p. 401; *Corruption*, 14a C. J. pp. 1430-1431; *States*, 36 Cyc. 869; *Officers*, 29 Cyc. 1413.

§ 82. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, three commissioners of railroads, an attorney general and one commissioner of agriculture and labor, who shall have attained the age of twenty-five years, shall be citizens of the United States, and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government, for the term of two years and until their successors are elected and duly qualified, but no person shall be eligible to the office of treasurer for more than two consecutive terms.

Explanatory note. An amendment of this section has been proposed. See Proposed Constitutional Amendments, page 118, post.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prindeville*, 21 N. D. 245, 130 N. W. 224.

Act granting specific power to board of administration to act as to courses of study in schools, valid. *State ex rel. Langer v. Totten*, 44 N. D. 557, 175 N. W. 563.

Law changing salary of secretary of commissioners of railroads, void. *State ex rel. Edgerly v. Currie Jr.*, 3 N. D. 310, 55 N. W. 858.

See also *McDonald v. Nielson*, 43 N. D. 346, 175 N. W. 361; *State ex rel. Hughes v. Milhollan*, — N. D. —, 195 N. W. 292; *Kretschmer v. School Bd.* 34 N. D. 403, 158 N. W. 993.

See *States*, 36 Cyc. 854-859; *Officers*, 29 Cyc. 1384; *Schools and School Districts*, 35 Cyc. 859-862; *Insurance*, 32 C. J. p. 984, §§ 12-13; *Railroads*, 33 Cyc. 45-52; *Attorney General*, 6 C. J. p. 804; *Agriculture*, 2 C. J. p. 988, § 2.

Qualifications of electors. 9 R. C. L. 1040 et seq., and Supps.

Treasurer. 25 R. C. L. 386.

Auditor. 25 R. C. L. 387.

Appointment, qualifications and tenure of office of attorney general. 2 R. C. L. 914.

§ 83. The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, attorney general, and commissioner of agriculture and labor, shall be as prescribed by law.

Attorney general has right to appear before grand jury in matters relating to enforcement of prohibition law. *State ex rel. Miller v. District Ct.* 19 N. D. 822, 124 N. W. 417, Ann. Cas. 1912D, 935.

State treasurer is custodian of funds under Workmen's Compensation Act. *State ex rel. Stearns v. Olson*, 43 N. D. 619, 175 N. W. 714.

CONSTITUTION OF NORTH DAKOTA.

Superintendent of public instruction has no power to prepare courses of study in schools. *State ex rel. Langer v. Totten*, 44 N. D. 557, 175 N. W. 363.

Examination of Bank of North Dakota, not part of duties of state auditor. *State ex rel. Kozitzky v. Waters*, 45 N. D. 115, 176 N. W. 913.

See also *Cofman v. Ousterhous*, 40 N. D. 390, 18 A.L.R. 219, 168 N. W. 826; *City Commission v. Bismarek Water Supply Co.* 47 N. D. 179, 187 N. W. 596; *State ex rel. Wehe v. Frazier*, 47 N. D. 314, 182 N. W. 545; *State ex rel. Hughes v. Milhollan*, — N. D. —, 195 N. W. 292; *State ex rel. Edgerly v. Currie Jr.* 3 N. D. 310, 55 N. W. 858; *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767; *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281.

See *States*, 36 Cyc. 865; *Officers*, 29 Cyc. 1431; *Schools and School Districts*, 35 Cyc. 860-862; *Insurance*, 32 C. J. p. 984, § 13; *Railroads*, 33 Cyc. 45-52; *Attorney General*, 6 C. J. pp. 809-817, §§ 12-30; *Agriculture*, 2 C. J. p. 988 § 2.

Power of courts to enforce ministerial duties of state officers. 52 L.R.A. (N.S.) 436.

Powers and duties of attorney general. 2 R. C. L. 915 et seq., and Supps.

Duties of secretary of state. 25 R. C. L. 385.

Duties of treasurer. 25 R. C. L. 386.

Duties of auditor. 25 R. C. L. 387.

§ 84. Until otherwise provided by law, the governor shall receive an annual salary of three thousand dollars; the lieutenant governor shall receive an annual salary of one thousand dollars; the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads and attorney general shall each receive an annual salary of two thousand dollars; the salary of the commissioner of agriculture and labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the state treasury.

Repealed territorial law providing for salary of secretary of railroad commissioners; salary governed by later statute. *State ex rel. Edgerly v. Currie*, 3 N. D. 310, 55 N. W. 858.

The balance of fees in the hands of a state superintendent of public instruction, remaining after disbursements, must be accounted for to the state. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

See *States*, 36 Cyc. 863-865; *Officers*, 29 Cyc. 1422-1430.

ARTICLE 4.—JUDICIAL DEPARTMENT.

§ 85. The judicial power of the state of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.

Statute is not unconstitutional merely because it imposes administrative powers upon district judges. *Kermott v. Bagley*, 19 N. D. 346, 124 N. W. 397.

Certiorari appropriate writ to review the proceedings of a court-martial in order to determine whether or not it exceeds its jurisdiction. *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

Provision of act for hearing upon notice before secretary of state upon complaint filed of unfair discrimination by corporation and imposition of penalty, invalid. *State ex rel. Standard Oil Co. v. Blaisdell*, 22 N. D. 86, 132 N. W. 769. *Ann. Cas.* 1913E, 1089.

Invalidity of statute giving state's attorneys power to subpoena and examine witnesses concerning violation of liquor law can be raised only by individual witness. *State v. Stevens*, 19 N. D. 249, 123 N. W. 888.

Board of railroad commissioners has right to inquire into past transactions of surety on bond of grain elevator operator and into their fairness. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

Statute vesting power in governor to remove certain public officers for malfeasance in office and disregard of official duty, valid. *State ex rel. Shaw v. Frazier*, 39 N. D. 430, 167 N. W. 510.

CONSTITUTION OF NORTH DAKOTA.

Public utilities act, conferring on board of railroad commissioners power to conduct inquiries, and make orders relating to Public Utilities, valid. State ex rel. Hughes v. Milhollan, — N. D. —, 195 N. W. 292.

Judicial office or court, created by constitution, cannot be abolished by statute. McDermott v. Dinnie, 6 N. D. 278, 69 N. W. 294.

See also State v. Koonce, 48 N. D. 108, 183 N. W. 279; State v. Kelsey, — N. D. —, 190 N. W. 817; Enderlin Bank v. Rose, 4 N. D. 319, 26 L.R.A. 593, 58 N. W. 514; State v. Nuchols, 18 N. D. 233, 20 L.R.A.(N.S.) 413, 119 N. W. 632; Re First Nat'l Bank of Hillsboro, 25 N. D. 635, L.R.A.1915C, 386, 146 N. W. 1064; State ex rel. Linde v. Hall, 35 N. D. 34, 159 N. W. 281.

See Courts, 15 C. J. pp. 854-875, §§ 178-215.

Creation of courts by the constitution. 7 R. C. L. 977 and Supps.

Vesting of judicial power in courts. 6 R. C. L. 157 and Supps.

§ 86. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

Supreme court has appellate jurisdiction only, and is the supreme appellate tribunal of the state. Re Peterson, 22 N. D. 480, 134 N. W. 751.

Supreme court is given superintending control over inferior courts, and has power to issue any of writs named in above sections and such others as may be necessary to exercise of such control. State ex rel. Red River Brick Corp. v. District Ct. 24 N. D. 28, 138 N. W. 988.

Mandamus issuable to compel lower court to proceed with hearing where dismissed erroneously before final hearing. State ex rel. Heffron v. District Ct. — N. D. —, 143 N. W. 143.

Mandamus issuable to compel county auditor to give notice that question of division of county would be submitted to voters at general election. State ex rel. Steel v. Fabrick, 17 N. D. 532, 117 N. W. 860.

Court will issue writ of prohibition directed to county judge, only in exceptional cases, involving questions of great public importance. Selzer v. Bagley, 19 N. D. 698, 124 N. W. 426.

Writ of prohibition issuable only by virtue of superintending power over inferior courts, or where necessary in pending cause. Court-martial not an inferior court. State ex rel. Poole v. Nuchols, 18 N. D. 233, 20 L.R.A.(N.S.) 413, 119 N. W. 632.

Certiorari appropriate writ to review the proceedings of a court-martial in order to determine whether or not it exceeds its jurisdiction. State ex rel. Poole v. Peake, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

In divorce actions, Supreme Court has appellate jurisdiction only. Gray v. Gray, 44 N. D. 89, 176 N. W. 7.

Jurisdiction of Supreme Court on trial de novo. Patterson Land Co. v. Lynn, 44 N. D. 251, 175 N. W. 211.

Supreme Court has only such jurisdiction as is granted by constitution. Guilford School Dist. v. Dakota Trust Co. 46 N. D. 307, 178 N. W. 727.

Supreme Court may frame its process as exigencies require. State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408.

Section vests in Supreme Court general superintending control over inferior courts. State ex rel. Lenike v. District Ct., — N. D. —, 186 N. W. 381.

Supreme Court has original jurisdiction in mandamus. State v. Archibald, 5 N. D. 359, 66 N. W. 234.

Statute providing that all cases shall on appeal be tried de novo, valid. Christianson v. Farmers' Warehouse Asso. 5 N. D. 438, 32 L.R.A. 730, 67 N. W. 300.

Supreme court loses jurisdiction in making final order in cause on appeal, where judgment has been entered in court below. Youmans v. Hanna, 35 N. D. 513, 161 N. W. 797.

See also Lien v. Savings Loan & Trust Co. 43 N. D. 260, 174 N. W. 621; Lowe v. District Court, 48 N. D. 1, 181 N. W. 92; Re Minneapolis St. Paul & S. S. M. R. Co. 30 N. D. 221, 152 N. W. 513; Erickson v. Wiper, 33 N. D. 193, 157 N. W. 592; Griffith v. Frankfort General Ins. Co. 34 N. D. 540, 159 N. W. 19; Thompson v. Scott, 34 N. W. 503, 159 N. W. 21; State ex rel. McArthur v. McLean, 35 N. D.

CONSTITUTION OF NORTH DAKOTA.

203, 159 N. W. 847; Youmans v. Hanna, 35 N. D. 479, 160 N. W. 705; Goldstein v. Northern P. R. Co. 37 N. D. 602, L.R.A.1918A, 612, 164 N. W. 143; Wagoner v. Bodal, 37 N. D. 594, 164 N. W. 147; State v. First State Bank, — N. D. —, 202 N. W. 391; State ex rel. Birdzell v. Jorgenson, 25 N. D. 539, 142 N. W. 450; Johnson v. Kittleson, — N. D. —, 189 N. W. 837; Colter v. Dill, — N. D. —, 193 N. W. 662; State v. District Court, — N. D. —, 194 N. W. 745; Baker v. Lenhart, — N. D. —, 195 N. W. 16; State v. Judge of District Court, 3 N. D. 43, 53 N. W. 433; Re Simpson, 9 N. D. 379, 83 N. W. 541; State v. Fisk, 15 N. D. 219, 107 N. W. 191; State ex rel. Murphy v. Gottbreht, 17 N. D. 543, 117 N. W. 864.

See Courts, 15 C. J. pp. 1104-1106, §§ 535-536.

Jurisdiction of appellate courts. 7 R. C. L. 1072 and Supps.

§ 87. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction, and shall have authority to hear and determine the same; provided, however, that no jury trial shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial.

Supreme court has appellate jurisdiction only, and is the supreme appellate tribunal of the state. Re Peterson, 22 N. D. 480, 134 N. W. 751.

Mandamus issuable to compel county auditor to give notice that question of division of county would be submitted to voters at general election. State ex rel. Steel v. Fabrick, 17 N. D. 532, 117 N. W. 860.

Mandamus issuable against city auditor to prevent use of ballots allowing cumulative voting for candidates for city commissioners, state being directly interested. State ex rel. Shaw v. Thompson, 21 N. D. 426, 131 N. W. 231.

Mandamus not issuable to compel district court to punish guilty parties in contempt proceedings where only special exigency is that financial affairs of districts sought to be annexed to a city will be temporarily involved. State ex rel. Red River Brick Corp. v. District Ct. 24 N. D. 28, 138 N. W. 988.

Writ of prohibition issuable only by virtue of superintending power over inferior courts, or where necessary in pending cause. State ex rel. Poole v. Nuchols, 18 N. D. 233, 20 L.R.A.(N.S.) 413, 119 N. W. 632.

Writ of quo warranto issuable to test legality of appointment of district judge by governor where law provides for general election. State ex rel. Erickson v. Burr, 16 N. D. 581, 113 N. W. 705.

Jurisdiction of supreme court primarily appellate, quo warranto proceedings not to be initiated against advice of attorney general in absence of special need. State ex rel. Walker v. McLean County, 11 N. D. 356, 92 N. W. 385.

Where taxpayer seeking to annul tax and avoid payment, remedy in district court. Writ of certiorari to board of equalization will not issue. Duluth Elevator Co. v. White, 11 N. D. 534, 90 N. W. 12.

Supreme Court will not modify decree of divorce on original application. Gray v. Gray, 44 N. D. 89, 176 N. W. 7.

Supreme court has only such power as is granted by constitution. Guilford School Dist. v. Dakota Trust Co. 46 N. D. 307, 178 N. W. 727.

Exercise of original jurisdiction by supreme court. State ex rel. Lofthus v. Larger, 46 N. D. 462, 177 N. W. 408.

Certiorari does not lie to review sufficiency of evidence where jurisdiction is shown. State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.

Certiorari appropriate to review governor's jurisdiction in removing commissioner of Workmen's Compensation bureau. State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.

Writs of certiorari, issuable only to determine jurisdiction of court below. Baker v. Lenhart, — N. D. —, 195 N. W. 16.

Original jurisdiction of supreme court defined. State v. Nelson County, 1 N. D. 88, 8 L.R.A. 283, 45 N. W. 33.

Judgment on certiorari is entered in supreme court. State ex rel. Enderlin State Bank v. Rose, 4 N. D. 319, 26 L.R.A. 593, 58 N. W. 514.

Mandamus is proper remedy to compel one who has no color of title to an office, to surrender same to one who has prima facie title. State ex rel. Moore v. Archibald, 5 N. D. 359, 66 N. W. 234.

Supreme court has original jurisdiction only in excepted case mentioned in

CONSTITUTION OF NORTH DAKOTA.

constitution. *Christianson v. Farmer's Warehouse Asso.* 5 N. D. 438, 37 L.R.A. 730, 67 N. W. 300.

Supreme court has power to disbar attorneys for unprofessional conduct. *Re Simpson*, 9 N. D. 379, 83 N. W. 541.

Writ of injunction issuable only upon an information, filed by attorney general, and by leave of court first obtained, under name of State. *Anderson v. Gordon*, 9 N. D. 480, 52 L.R.A. 134, 83 N. W. 993.

Supreme Court has no jurisdiction to entertain motion for allowance of counsel fees, to enable counsel to prepare and present an appeal, while action for divorce is pending. *Tonn v. Tonn*, 16 N. D. 17, 111 N. W. 609.

Original jurisdiction of Supreme Court, to issue writs, extends to cases, public injuries, wherein are directly involved, sovereignty of state, its franchises or prerogatives, or liberties of its people. *State ex rel. Murphy v. Gottbreht*, 17 N. D. 543, 117 N. W. 864.

Writ of mandamus, involves prerogatives, rights, and franchise of state government, and invokes original jurisdiction of Supreme Court. *State ex rel. Birdzell v. Jorgenson*, 25 N. D. 539, 49 L.R.A.(N.S.) 67, 142 N. W. 450.

Writ of injunction correlative with mandamus, and may be resorted to in all cases affecting the sovereignty of state, its franchise or prerogatives, or liberties of its people. *State ex rel. McArthur v. McLean*, 35 N. D. 203, 159 N. W. 847.

Controversy between members of court, and successful candidates at last election, is of such public interest as to warrant exercise of original jurisdiction by petition of attorney general. *State ex rel. Linde v. Robinson*, 35 N. D. 410, 160 N. W. 512.

See also *State ex rel. Amerland v. Hagan*, 44 N. D. 306, 175 N. W. 372; *State v. District Ct.* — N. D. —, 186 N. W. 381; *Re Minneapolis, St. P. & S. Ste. M. R. Co.* 30 N. D. 221, 152 N. W. 513; *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281; *Youmans v. Hanna*, 35 N. D. 479, 160 N. W. 705, 161 N. W. 797; *State v. First State Bank*, — N. D. —, 202 N. W. 391; *State ex rel. Northern P. R. Co. v. Judge of District Ct.* 3 N. D. 43, 53 N. W. 433.

See *Courts*, 15 C. J. pp. 1104-1106, §§ 535-536; *Habeas Corpus*, 29 C. J. pp. 117-123, §§ 115-120; *Quo Warranto*, 32 Cyc. 1428-1430; *Certiorari*, 11 C. J. pp. 139-140, §§ 104-115; *Injunctions*, 32 C. J. pp. 287-290, §§ 458-464½; *Juries*, 35 C. J. p. 151, § 17.

Jurisdiction of Supreme Court to issue original and remedial writs. 7 R. C. L. 1074 and Supps.

§ 88. Until otherwise provided by law three terms of the supreme court shall be held each year, one at the seat of government, one at Fargo, in the county of Cass, and one at Grand Forks, in the county of Grand Forks.

See *Courts*, 15 C. J. pp. 875-900, §§ 216-271, p. 1026, § 446.

Number of judges necessary to transact business. 7 R. C. L. 998 and Supps.

§ 89. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain; provided, however, that in no case shall any legislative enactment or law of the state of North Dakota be declared unconstitutional unless at least four of the judges shall so decide.

Explanatory note. This is the present form of this section, and is Article 25 of Amendments to the Constitution, which was approved and ratified in 1918. An earlier amendment, approved and ratified in 1918, and constituting Article 10 of the Amendments was as follows:

The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum or pronounce a decision; but one or more of said judges may adjourn the court from day to day or to a day certain.

The original form of the section was as follows:

The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.

District judges, when called by members of Supreme Court, have when reporting for duty, all the powers of justices of Supreme Court, same as though elected and acting justices. *State ex rel. Linde v. Robinson*, 35 N. D. 417, 160 N. W. 514.

N. D. C. L.—4.

CONSTITUTION OF NORTH DAKOTA.

Four judges of Supreme Court necessary to decide statute unconstitutional. *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104.

Statute may not be held unconstitutional unless four Supreme Court judges so decide. *Wilson v. Fargo*, 48 N. D. 447, 186 N. W. 263.

Act empowering governor to nominate and Senate confirm nominations for officers on State Board of Regents, at same session of legislature, at which the offices were created, not in conflict with this article. *State v. Crawford*, 36 N. D. 385, 162 N. W. 710.

See also *State ex rel. Linde v. Robinson*, 35 N. D. 410, 160 N. W. 512; *State ex rel. Langer v. Olson*, 44 N. D. 614, 176 N. W. 523; *State ex rel. Frazier v. Hall*, — N. D. —, 197 N. W. 687; *Green v. Frazier*, 44 N. D. 395, 176 N. W. 11; *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270; *State ex rel. Bank v. Wallace*, 48 N. D. 803, 187 N. W. 728.

See Courts, 15 C. J. pp. 963-966, §§ 360-363.

Power of courts to declare statutes void. 6 R. C. L. 70 et seq., and Supps.

§ 90. The judges of the supreme court shall be elected by the qualified electors of the state at large, and except as may be otherwise provided herein for the first election for judges under this constitution, said judges shall be elected at general elections.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prindle*, 21 N. D. 245, 130 N. W. 224.

District judges, when called by members of Supreme Court, have, when reporting for duty, powers of Supreme Court justices, same as though elected and acting justices. *State ex rel. Linde v. Robinson*, 35 N. D. 417, 160 N. W. 514.

See Judges, 33 C. J. pp. 936-937, §§ 20-24.

Qualifications of electors. 9 R. C. L. 1040 et seq., and Supps.

Appointment or election. 15 R. C. L. 513 and Supps.

§ 91. The term of office of the judges of the supreme court, except as in this article otherwise provided, shall be six years, and they shall hold their offices until their successors are duly qualified.

See *State ex rel. Linde v. Robinson*, 35 N. D. 417, 160 N. W. 514.

See Judges, 33 C. J. pp. 940-946, §§ 32-52.

Term of office. 15 R. C. L. 525.

§ 92. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot so that one shall hold his office for the term of three years, one for the term of five years, and one for the term of seven years from the first Monday in December, A. D. 1889. The lots shall be drawn by the judges, who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of the territory and filed in his office, unless the secretary of state of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be chief justice and shall preside at all terms of the supreme court and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

Reference to tenure of officer of Supreme Court justices, is only to those first elected. *State ex rel. Linde v. Robinson*, 35 N. D. 417, 160 N. W. 514.

See also *O'Laughlin v. Carlson*, 30 N. D. 213, 152 N. W. 675.

See Judges, 33 C. J. pp. 925-926, § 2, pp. 941-943, §§ 38-41.

§ 93. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof, and who shall hold their offices during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law and by rules of the supreme court not inconsistent with law. The legislative assembly shall make provision for the publication and distribution of the decisions of the supreme court and for the sale of the published volumes thereof.

See Clerks of Court, 11 C. J. p. 845; Reports, 34 Cyc. 1614-1618.

CONSTITUTION OF NORTH DAKOTA.

Reports of decisions. 7 R. C. L. 1017 and Supps.

Appointment of clerk and reporter. 15 R. C. L. 524.

Officers of courts. 7 R. C. L. 985 and Supps.

§ 94. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this state or the territory of Dakota three years next preceding his election.

See Judges, 33 C. J. pp. 938-940, §§ 25-32.

Eligibility of suspended or disbarred attorney to judicial office. L.R.A.1917B, 803.

Qualifications as to constitutional officers. 22 R. C. L. 401.

Citizenship. 22 R. C. L. 404.

Residence. 22 R. C. L. 404 and Supps.

Age. 22 R. C. L. 406.

Eligibility to office. 15 R. C. L. 512 and Supps.

§ 95. Whenever the population of the state of North Dakota shall equal 600,000 the legislative assembly shall have the power to increase the number of the judges of the supreme court to five, in which event a majority of said court, as thus increased, shall constitute a quorum.

See State ex rel. Linde v. Robinson, 35 N. D. 417, 160 N. W. 514.

See Courts, 15 C. J. pp. 859-862, §§ 184-187, p. 964, § 360.

§ 96. No duties shall be imposed by law upon the supreme court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

Statute is not unconstitutional merely because it imposes administrative duties upon district judges. Kermott v. Bagley, 19 N. D. 349, 124 N. W. 397.

An act requiring children's home societies to secure a certificate of trustworthiness from the supreme court is not an imposition of nonjudicial duties. State ex rel. Kol v. North Dakota Children's Home Soc. 10 N. D. 493, 88 N. W. 273.

See also Re First National Bank, 25 N. D. 635, L.R.A.1915C, 386, 146 N. W. 1064; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 N. D. 221, 152 N. W. 513; State ex rel. Lofthus v. Langer, 46 N. D. 462, 177 N. W. 408; State v. First State Bank. — N. D. —, 202 N. W. 391.

See Courts, 12 C. J. p. 810, § 242, pp. 853-857, §§ 346-355; Judges, 33 C. J. p. 960, § 80.

Power of legislature to impose nonjudicial functions on courts. 7 R. C. L. 982 and Supps.

Administrative or ministerial powers; appointment of officers. 15 R. C. L. 523.

§ 97. The style of all process shall be "The State of North Dakota." All prosecutions shall be carried on in the name and by the authority of the State of North Dakota, and conclude "against the peace and dignity of the State of North Dakota."

Omission to show prosecution is carried on in name of state or by its authority, fatal. State v. Hazledahl, 2 N. D. 521, 16 L.R.A. 150, 52 N. W. 315.

Information entitled in name of "State of North Dakota" valid where parties otherwise properly referred to and recites appearance of state's attorney by authority of state. State v. Bednor, 18 N. D. 484, 121 N. W. 614, 20 Ann. Cas. 458.

A summary contempt proceeding for a criminal contempt committed in open court is not a prosecution. State v. Crum, 7 N. D. 299, 74 N. W. 992.

Order in proceedings upon execution to show cause why a writ should not be issued restraining further proceedings not process. Northern P. R. Co. v. Jurgenson. 25 N. D. 14, 141 N. W. 70.

"State of North Dakota v. A. B." sufficient to show that prosecution is carried on in name, and by the authority of the state. State v. Kerr, 3 N. D. 523, 58 N. W. 27.

See Process, 32 Cyc. 429; Indictments and Informations, 31 C. J. p. 610, § 96, pp. 613-614, §§ 102-104.

§ 98. Any vacancy happening by death, resignation or otherwise in the

CONSTITUTION OF NORTH DAKOTA.

office of judge of the supreme court shall be filled by appointment, by the governor, which appointment shall continue until the first general election thereafter, when said vacancy shall be filled by election.

See *State ex rel. Wehe v. Frazier*, 47 N. D. 314, 182 N. W. 545.

See *Judges*, 33 C. J. pp. 747-751, §§ 53-63.

Governor's power to fill vacancies. 22 R. C. L. 441 and Supps.

Filling vacancies generally. 15 R. C. L. 552 and Supps.

§ 99. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

Legislative act providing for expenses of judges, payable quarterly, without itemized statements, valid. *State ex rel. Langer v. Kositzky*, 38 N. D. 616, L.R.A. 1918D, 237, 166 N. W. 534.

See *Judges*, 33 C. J. pp. 951-958, §§ 64-78.

Income tax as reduction of salary. 11 A.L.R. 532; 22 A.L.R. 293.

Compensation. 15 R. C. L. 524 and Supps.

§ 100. In case a judge of the supreme court shall be in any way interested in a cause brought before said court, the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said cause.

Participation in a judicial capacity in other proceedings against accused as disqualifying judge to preside at trial. 45 L.R.A.(N.S.) 525.

Participation by judge in movement to enforce criminal law on particular subject as disqualifying him to preside at trial. 45 L.R.A.(N.S.) 519.

Belief in guilt or innocence of accused as disqualification of judge in criminal case. 45 L.R.A.(N.S.) 511.

Political affiliations as ground for disqualification of judge. 19 L.R.A.(N.S.) 602.

Membership in bar association as disqualification of judge to preside at disbarment proceedings instituted by association. 39 L.R.A.(N.S.) 116.

Relationship to attorney in case of disqualifying judge. 42 L.R.A.(N.S.) 1172.

Right of judge who may be affected by the result to hear election cases. 42 L.R.A.(N.S.) 788.

Qualification of judge to sit on trial of one for contempt consisting of reflection upon himself. 11 L.R.A.(N.S.) 619.

Disqualifications without regard to statute, from having been of counsel in the cause. 25 L.R.A. 117.

Decision of district court judges, acting as supreme court judges, same as though rendered by supreme court justices elected. *Youmans v. Hanna*, 35 N. D. 513, 161 N. W. 797.

Presence and participation of judge disqualified because of interest in result, does not render proceedings and judgment void, if his presence is not necessary to a quorum, and his vote does not determine result. *State ex rel. Langer v. Kositzky*, 38 N. D. 616, L.R.A.1918D, 237, 166 N. W. 534.

District judge called to sit in place of supreme court judge, is a supreme court judge for all purposes, and is invested with same power and authority conferred upon supreme court judge. *State ex rel. Linde v. Robinson*, 35 N. D. 410, 160 N. W. 512.

See also *Youmans v. Hanna*, 35 N. D. 479, 160 N. W. 705; *Tuttle v. Tuttle*, 48 N. D. 10, 181 N. W. 898.

See *Courts*, 15 C. J. p. 965, § 361; *Judges*, 33 C. J. pp. 988-1023, §§ 128-202.

Disqualification of judge by relationship to attorney in case. L.R.A.1918F, 1036; 11 A.L.R. 1325.

Disqualification of judge from interest. 15 R. C. L. 526 et seq., and Supps.

Disqualification by relation to party. 20 R. C. L. 662 and Supps.

Deprivation of jurisdiction because of interest in case. 18 R. C. L. 92.

§ 101. When a judgment or decree is reversed or confirmed by the supreme court, every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme

CONSTITUTION OF NORTH DAKOTA.

court and preserved with a record of the case. Any judge dissenting therefrom may give the reasons of his dissent in writing over his signature.

Requires decision only upon the necessary and controlling points, which the record presents clearly and fully. *Heald v. Strong*, 24 N. D. 120, 138 N. W. 1114.

See also *State v. Jorgenson*, 25 N. D. 539, 49 L.R.A.(N.S.) 767, 142 N. W. 450; *Rhea v. Board of Education*, 41 N. D. 449, 171 N. W. 103; *State v. Hall*, 44 N. D. 459, 171 N. W. 213; *Young v. Salzer Lumber Co.* — N. D. —, 204 N. W. 8.

See *Courts*, 15 C. J. pp. 967-971, §§ 364-379.

Definition of opinion and duty of court in respect thereto. 7 R. C. L. 1015.

Preparation of opinion. 7 R. C. L. 1016.

§ 102. It shall be the duty of the court to prepare a syllabus of the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

See *Courts*, 15 C. J. p. 971, § 380.

§ 103. The district courts shall have original jurisdiction, except as otherwise provided in this constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same.

Statute is not unconstitutional merely because it imposes administrative duties upon district judges. *Kernott v. Bagley*, 19 N. D. 346, 124 N. W. 397.

Trial de novo in testamentary and probate matters may be had in district court upon appeal from county court. *Re Peterson*, 22 N. D. 480, 134 N. W. 751.

Action for separate maintenance maintainable by husband against wife where unable to support himself and wife has ample property, and he did not desert her. *Hogert v. Hogert*, 22 N. D. 290, 38 L.R.A.(N.S.) 966, 133 N. W. 1035.

County courts of increased jurisdiction are not vested with concurrent jurisdiction with district courts in equity cases, by section 111 of constitution. *Mead v. First Nat. Bank*, 24 N. D. 12, 138 N. W. 365.

District court is court of general jurisdiction, and where parties adopt certain mode of procedure, it is presumed to be regular. *Trott v. State*, 41 N. D. 614, 4 A.L.R. 1372, 171 N. W. 827.

In action for mandamus, court may exercise equitable discretion, and refuse writ, where purposes are not shown proper. *Lien v. Savings, Loan, & T. Co.* 43 N. D. 269, 174 N. W. 621.

Writ of prohibition issuable only when proceedings are outside or in excess of jurisdiction. *State ex rel. McDonald v. Hanley*, 43 N. D. 388, 175 N. W. 569.

Prohibition lies only when inferior court or body has no jurisdiction or is about to act in excess of jurisdiction. *Lynch v. District Ct.* 48 N. D. 431, 185 N. W. 303.

District courts and judges have original jurisdiction in quo warranto proceedings. *State v. McLean County*, 11 N. D. 356, 92 N. W. 385.

Where tax payer seeking to annul tax and avoid payment, remedy in district court. *Duluth Elevator Co. v. White*, 11 N. D. 534, 90 N. W. 12.

See also *Erickson v. Wiper*, 33 N. D. 193, 157 N. W. 592; *Griffith v. Frankfort General Ins. Co.* 34 N. D. 540, 159 N. W. 19; *Thompson v. Scott*, 34 N. D. 503, 159 N. W. 21; *State ex rel. Brunette v. Pollock*, 35 N. D. 430, 160 N. W. 511; *Wagoner v. Bodal*, 37 N. D. 594, 164 N. W. 147; *Moore v. Palmer*, 43 N. D. 99, 174 N. W. 93; *Guilford School Dist. v. Dakota Trust Co.* 46 N. D. 307, 178 N. W. 727; *State ex rel. Lofthus v. Langer*, 46 N. D. 462, 177 N. W. 408; *Baker v. Lenhart*, — N. D. —, 195 N. W. 16; *State v. Broute*, — N. D. —, 197 N. W. 871; *State v. Nelson County*, 1 N. D. 88, 8 L.R.A. 283, 45 N. W. 33; *Christianson v. Farmers' Warehouse Asso.* 5 N. D. 438, 32 L.R.A. 730, 67 N. W. 300; *State v. Russell*, 18 N. D. 357, 121 N. W. 918; *State ex rel. Wehe v. Frazier*, 47 N. D. 314, 182 N. W. 545; *Gardner Hotel Co. v. Hagaman*, 47 N. D. 434, 182 N. W. 685; *State v. Kelsey*, — N. D. —, 190 N. W. 817; *Brissman v. Thistlethwaite*, — N. D. —, 192 N. W. 85; *Kranz v. Tavis*, — N. D. —, 192 N. W. 176; *State v. First State Bank*, — N. D. —, 202 N. W. 391.

See *Courts*, 15 C. J. p. 981, § 407, p. 1004, § 418, p. 1106, § 536; *Habeas Corpus*. 29 C. J. pp. 117-123, §§ 115-120; *Quo Warranto*. 32 Cyc. 1428-1430; *Certiorari*. 11 C. J. pp. 139-140, §§ 104-115; *Injunctions*. 32 C. J. pp. 287-290, §§ 458-464.

CONSTITUTION OF NORTH DAKOTA.

§ 104. The state shall be divided into six judicial districts, in each of which there shall be elected at general elections, by the electors thereof, one judge of the district court therein, whose term of office shall be four years from the first Monday in January succeeding his election and until his successor is duly qualified. This section shall not be construed as governing the first election of district judges under this constitution.

See State v. First State Bank, — N. D. —, 202 N. W. 391.

See Judges, 33 C. J. pp. 936-937, §§ 20-24, pp. 940-946, §§ 33-52.

Circuits, districts, and divisions of courts. 7 R. C. L. 983.

§ 105. Until otherwise provided by law said districts shall be constituted as follows:

District No. One shall consist of the counties of Pembina, Cavalier, Walsh, Nelson and Grand Forks.

District No. Two shall consist of the counties of Ramsey, Towner, Benson, Pierce, Rolette, Bottineau, McHenry, Church, Renville, Ward, Stevens, Mountrail, Garfield, Flannery and Buford.

District No. Three shall consist of the counties of Cass, Steele and Traill.

District No. Four shall consist of the counties of Richland, Ransom, Sargent, Dickey and McIntosh.

District No. Five shall consist of the counties of Logan, LaMoure, Stutsman, Barnes, Wells, Foster, Eddy and Griggs.

District No. Six shall consist of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Williams, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux Indian reservation lying north of the seventh standard parallel.

See Courts, 15 C. J. p. 868, § 199.

§ 106. The legislative assembly may whenever two-thirds of the members of each house shall concur therein, but not oftener than once in four years increase the number of said judicial districts and the judges thereof; such districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during the term for which he may have been elected or appointed.

See Courts, 15 C. J. p. 868, § 199, pp. 944-946.

Increase in number of judicial districts. 7 R. C. L. 984.

§ 107. No person shall be eligible to the office of district judge, unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States, nor unless he shall have resided within the State or Territory of Dakota at least two years next preceding his election, nor unless he shall at the time of his election be an elector within the judicial district for which he is elected.

See Judges, 33 C. J. pp. 938-939, §§ 25-32.

Eligibility to office. 15 R. C. L. 512 and Supps.

Qualifications as to constitutional officers. 22 R. C. L. 401.

Citizenship. 22 R. C. L. 404.

Residence. 22 R. C. L. 404 and Supps.

Age. 22 R. C. L. 406.

Qualifications, as to constitutional officers. 22 R. C. L. 401.

§ 108. There shall be a clerk of the district court in each organized county in which a court is holden who shall be elected by the qualified electors of the county, and shall hold his office for the same term as other county officers. He shall receive such compensation for his services as may be prescribed by law.

See Clerks of Court, 11 C. J. pp. 851-884, §§ 5-63.

Court clerks. 7 R. C. L. 985 and Supps.

Qualifications of electors. 9 R. C. L. 1040 et seq., and Supps.

§ 109. Writs of error and appeals may be allowed from the decisions of the

CONSTITUTION OF NORTH DAKOTA.

district courts to the supreme court under such regulations as may be prescribed by law.

Act imposing duties relative to druggists' permits upon district judges not invalid where duties are purely administrative. *Kermott v. Bagley*, 19 N. D. 345, 124 N. W. 397.

Appeal pertains to remedy, and legislature has power to prescribe causes which may be reviewed. *Stimson v. Stimson*, 30 N. D. 78, 152 N. W. 132.

See also *State ex rel. Twichell v. Hall*, 44 N. D. 459, 171 N. W. 213; *Youmans v. Hanna*, 35 N. D. 479, 160 N. W. 705; *Youmans v. Hanna*, 35 N. D. 513, 161 N. W. 797.

See Courts, 15 C. J. p. 1026, § 446; Appeal and Error, 3 C. J. pp. 1039-1252, §§ 1031-1365.

COUNTY COURTS.

§ 110. There shall be established in each county a county court, which shall be a court of record open at all times and holden by one judge, elected by the electors of the county, and whose terms of office shall be two years.

See *McDermont v. Dinnie*, 6 N. D. 278, 69 N. W. 294.

See Courts, 15 C. J. pp. 981-1024, §§ 407-444, p. 1004, § 418; Judges, 33 C. J. pp. 936-937, §§ 20-24, pp. 940-946, §§ 33-52.

Creation by the constitution. 7 R. C. L. 977 and Supps.

Division of courts. 7 R. C. L. 984.

§ 111. The county court shall have exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law; provided, that whenever the voters of any county having a population of two thousand or over shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this constitution, then said county court shall have concurrent jurisdiction with the district courts 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, and in case it is decided by the voters of any county to so increase the jurisdiction of said county court, the jurisdiction in cases of misdemeanors arising under state laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except that he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

Beyond power of legislature to confer upon county courts power to inventory and distribute funds which are not part of decedent's estate. *Finn v. Walsh*, 19 N. D. 61, 121 N. W. 766.

Act requiring county judges to direct disposition of orphan children to orphanages or to adopting families, valid. *State ex rel. Kol v. North Dakota Children's Home Soc.* 10 N. D. 493, 88 N. W. 273.

Does not prohibit a trial de novo in district court upon appeal from county court in probate and testamentary matters. *Re Peterson*, 22 N. D. 480, 134 N. W. 751.

County courts of increased jurisdiction, no equity powers; jurisdiction limited to law actions where not more than \$1,000 involved. *Mead v. First Nat. Bank*, 24 N. D. 12, 138 N. W. 365.

"Majority vote" means majority of votes cast on question of increased jurisdiction, and not majority of all votes cast at the election. *State ex rel. Davis v. Fabrick*, 18 N. D. 402, 121 N. W. 65.

CONSTITUTION OF NORTH DAKOTA.

Power of county court to vacate or open up final decree. *Reichert v. Reichert*, 41 N. D. 253, 170 N. W. 621.

County court has no jurisdiction to determine escheats. *Delaney v. State*, 42 N. D. 630, 174 N. W. 290.

Section confers upon county court exclusive jurisdiction to determine validity of claims against estates. *Johnson v. Rutherford*, 28 N. D. 87, 147 N. W. 390.

Final decree of distribution by county court, ranks with judgment of other courts of record. *Fischer v. Dolwig*, 29 N. D. 561, 151 N. W. 431.

Under the section, after county court has taken jurisdiction to administer estate, an heir cannot sue for partition of estate in district court against other heirs. *Honsinger v. Stewart*, 34 N. D. 513, 159 N. W. 12.

"Mother's Pension Act," providing for protection of destitute minors of tender years, not in conflict with this section. *Cass County v. Nixon*, 35 N. D. 601, L.R.A.1917C, 897, 161 N. W. 204.

See also *Moore v. Palmer*, 43 N. D. 99, 174 N. W. 93; *State ex rel. Byerly v. State Bd. of Canvassers*, 44 N. D. 126, 172 N. W. 80; *Christenson v. Grandy*, 46 N. D. 418, 180 N. W. 18; *Pierce County v. Rugby*, 47 N. D. 301, 181 N. W. 954; *Gardner Hotel Co. v. Hagaman*, 47 N. D. 434, 182 N. W. 685; *Kranz v. Tavis*, — N. D. —, 192 N. W. 176; *McDermont v. Dinnie*, 6 N. D. 278, 69 N. W. 294; *Clapp v. Houg*, 12 N. D. 600, 65 L.R.A. 757, 98 N. W. 710; *State v. Russell*, 18 N. D. 357, 121 N. W. 918.

See *Courts*, 15 C. J. pp. 981-1024, §§ 407-444, p. 1004, § 418; *Executors and Administrators*, 23 C. J. pp. 1006-1018, §§ 28-53; *Guardian and Ward*, 28 C. J. pp. 1066-1070, §§ 25-31; *Wills*, 40 Cyc. 1245-1254.

Determination of jurisdiction by amount in controversy. 7 R. C. L. 1052.

Jurisdiction in matters of administration of decedent's estate. 11 R. C. L. 60 et seq.

JUSTICES OF THE PEACE.

§ 112. The legislative assembly shall provide by law for the election of justices of the peace in each organized county within the state. But the number of said justices to be elected in each organized county shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions when the amount in controversy, exclusive of costs, does not exceed two hundred dollars, and (in counties where no county court with criminal jurisdiction exists) they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall said justices of the peace have jurisdiction when the boundaries of or title to real estate shall come in question. The legislative assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of county courts or elsewhere.

Justices of peace have concurrent jurisdiction with district court in all civil actions, in amounts not exceeding \$200. *Jorgenson v. Farmers' & M. Bank*, 44 N. D. 98, 170 N. W. 894.

Jurisdiction of justice of peace to award judgment on notes, and to foreclose chattel mortgage. *Palmer v. Donovan*, 44 N. D. 348, 175 N. W. 866.

Proceedings for condemnation and destruction of intoxicating liquors, unlawfully imported into state, is not a civil action, under this section. *Blumardt v. McDonald*, 36 N. D. 518, 162 N. W. 409.

See also *E. J. Lander & Co. v. Deemy*, 46 N. D. 273, 176 N. W. 922; *McDermont v. Dinnie*, 6 N. D. 278, 69 N. W. 294; *Searl v. Shanks*, 9 N. D. 204, 82 N. W. 734.

See *Justices of the Peace*, 35 C. J. pp. 454-456, §§ 6-8, pp. 487-552, §§ 57-126; *Criminal Law*, 16 C. J. pp. 154-159, §§ 179-184.

Power of justice of peace to take affidavit as basis for warrant of arrest. 16 A.L.R. 923.

Power of legislature to add to or vary constitutional method of selecting justices of the peace. L.R.A.1916E, 850.

Creation and abolition of office. 16 R. C. L. 331.

Manner of selecting. 16 R. C. L. 333.

CONSTITUTION OF NORTH DAKOTA.

Legislative control over justices of the peace. 16 R. C. L. 352.
Jurisdiction of actions involving title to real estate. 16 R. C. L. 355 and Supps.
Amount in controversy as affecting jurisdiction. 16 R. C. L. 357 et seq.
Criminal jurisdiction. 16 R. C. L. 363 and Supps.

POLICE MAGISTRATES.

§ 113. The legislative assembly shall provide by law for the election of police magistrates in cities, incorporated towns, and villages, who in addition to their jurisdiction of all cases arising under the ordinances of said cities, towns and villages, shall be ex-officio justices of the peace of the county in which said cities, towns and villages may be located. And the legislative assembly may confer upon said police magistrates the jurisdiction to hear, try and determine all cases of misdemeanors, and the prosecutions therein shall be by information.

A police magistrate court cannot be abolished or superseded by statute creating a municipal court. *McDermont v. Dinnie*, 6 N. D. 278, 69 N. W. 294.

See Constitutional Law, 15 C. J. p. 863, § 189; Justices of the Peace, 35 C. J. pp. 487-552, §§ 57-126; Criminal Law, 16 C. J. p. 152, § 177, pp. 154-159, §§ 179-184; Indictments and Informations, 31 C. J. pp. 625-648, §§ 130-166, pp. 569-572, §§ 16-19; Municipal Corporations, 28 Cyc. 786.

Power of police court to punish for contempt. 8 A.L.R. 1564.

Police magistrates as public officers. 22 R. C. L. 393 and Supps.

§ 114. Appeals shall lie from the county court, final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

See Criminal Law, 17 C. J. pp. 13-14, §§ 3261-3262, p. 21, § 3277; Justices of the Peace, 35 C. J. pp. 717-895, §§ 386-698; Municipal Corporations, 28 Cyc. 823.

MISCELLANEOUS PROVISIONS.

§ 115. The time of holding courts in the several counties of a district shall be as prescribed by law, but at least two terms of the district court shall be held annually in each organized county, and the legislative assembly shall make provision for attaching unorganized counties or territories to organized counties for judicial purposes.

See *State v. Dinger*, — N. D. —, 199 N. W. 196.

See Courts, 15 C. J. pp. 875-900, §§ 216-271, p. 414, § 41.

Time of holding court. 7 R. C. L. 987, 988 and Supps.

§ 116. Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law.

See *State v. First State Bank*, — N. D. —, 202 N. W. 291.

See Judges, 33 C. J. pp. 978-981, §§ 112-114.

Place of holding court. 7 R. C. L. 992 and Supps.

§ 117. No judge of the supreme or district court shall act as attorney or counselor at law.

See Judges, 33 C. J. p. 933, § 16.

§ 118. Until the legislative assembly shall provide by law for fixing the terms of courts, the judges of the supreme and district courts shall fix the terms thereof.

A special term of district court may be convened for trial of criminal case.

State ex rel. Baker v. Boucher, 8 N. D. 277, 78 N. W. 988.

See Courts, 15 C. J. p. 878, § 224.

Time of holding court. 7 R. C. L. 987.

§ 119. No judge of the supreme or district courts shall be elected or appointed to any other than judicial offices or be eligible thereto during the term for which he was elected or appointed such judge. All votes or appoint-

CONSTITUTION OF NORTH DAKOTA.

ments for either of them for any elective or appointive office except that of judge of the supreme court or district court, given by the legislative assembly or the people, shall be void.

See *State ex rel. Lofthus v. Langer*, 46 N. D. 462, 177 N. W. 408.

See *Judges*, 33 C. J. p. 935, § 17; *Officers*, 29 Cyc. 1381.

Incompatibility of office of judge and office in military service. 26 A.L.R. 143.

Incompatibility of judicial offices. 22 R. C. L. 416 and Supps.

§ 120. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

Statute providing for conciliation of controversies, in amounts up to \$200, valid.

Klein v. Hutton, — N. D. —, 191 N. W. 485.

See also *Lewis v. Gallup*, 5 N. D. 384, 67 N. W. 137.

See *Courts*, 15 C. J. p. 982, § 413.

Creation of particular courts. 7 R. C. L. 980 and Supps.

ARTICLE 5.—ELECTIVE FRANCHISE.

§ 121. Every person of the age of twenty-one years or upwards, belonging to either of the following classes who shall have resided in the state one year and in the county ninety days and in the precinct thirty days next preceding any election shall be a qualified elector at such election. First, citizens of the United States; second, civilized persons of Indian descent who have severed their tribal relation two years next preceding such election.

Explanatory note. This is the present form of this section, and is Article 37 of the Amendments to the Constitution, which was approved and ratified in 1920. An earlier amendment, constituting the first part of Article 2 of Amendments of the Constitution was as follows:

Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state one year and in the county six months, and in the precinct ninety days next preceding any election, shall be a qualified elector at such election.

First—Citizens of the United States.

Second—Civilized persons of Indian descent, who shall have severed their tribal relations two years next preceding such election.

The original form of the section was as follows:

Every male person of the age of twenty-one years or upwards belonging to either of the following classes, who shall have resided in the state one year, in the county six months and in a precinct ninety days next preceding any election, shall be deemed a qualified elector at such election:

1. Citizens of the United States.

2. Persons of foreign birth who shall have declared their intention to become citizens, one year and not more than six years prior to such election, conformably to the naturalization laws of the United States.

3. Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election.

Qualified electors are male persons only possessing the other qualifications therein enumerated. *Wagar v. Prindeville*, 21 N. D. 245, 130 N. W. 224.

The word "electors" as used in section 168 means all persons possessing the qualifications prescribed by section 121 in order to entitle them to vote. *State ex rel. McCue v. Blaisdell*, 18 N. D. 31, 119 N. W. 360.

Does not prescribe rule of voting; election held by city officials at one place instead of in four separate wards as required by statute, valid. *Kerlin v. Devils Lake*, 25 N. D. 207, 141 N. W. 756.

Prescribes the qualifications for voters at any election including a primary election. *Johnson v. Grand Forks County*, 16 N. D. 363, 125 Am. St. Rep. 662, 113 N. W. 1071.

CONSTITUTION OF NORTH DAKOTA.

A primary election is a special or partisan election, the purposes thereof determinable by legislature. State ex rel. Miller v. Flaherty, 23 N. D. 313, 41 L.R.A. (N.S.) 132, 136 N. W. 76.

A law restricting right of Indians to vote of no effect where not adopted by majority of voters at general election. State ex rel. Tompton v. Denoyer, 6 N. D. 586, 72 N. W. 1014.

Section does not preclude legislature from authorizing women to vote for village officers. Spatgen v. O'Neill, 40 N. D. 618, 169 N. W. 491.

Trust-patent Indians who have severed tribal relation and become civilized may become qualified electors, under subdivision 2. Swift v. Leach, 45 N. D. 437, 178 N. W. 437.

See also State ex rel. Stevenson Twp. v. Nichols, 39 N. D. 4, 166 N. W. 813; State ex rel. Fargo v. Wetz, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; Englund v. Townley, 43 N. D. 118, 174 N. W. 755; State ex rel. Byerley v. St. Bd. of Canvassers, 44 N. D. 126, 172 N. W. 80.

See Elections, 20 C. J. pp. 67-81, §§ 24-52.

How far right to vote is absolute. 25 L.R.A. 480.

Does "residence," as a qualification of voters mean "domicil." 19 L.R.A. (N.S.) 759.

Acquiring residence as a voter while attending school or public institution. 23 L.R.A. 215; 40 L.R.A. (N.S.) 168.

Right of women to vote. L.R.A. 1915B, 247.

Age as qualification. 9 R. C. L. 1043.

Residence. 9 R. C. L. 1030 et seq., and Supps.

Right to vote as citizenship. 9 R. C. L. 1023 and Supps.

Right of legislature to determine qualifications of voters. 9 R. C. L. 1024 and Supps.

Woman's suffrage generally. 9 R. C. L. 1028 and Supps.

§ 122. The legislative assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion, to all citizens of mature age and sound mind, not convicted of crime without regard to sex; but no law extending or restricting the right of suffrage shall be in force until adopted by a majority of the electors of the state voting at a general election.

Primary election special or partisan election, purposes thereof determinable by legislature. State ex rel. Miller v. Flaherty, 23 N. D. 313, 41 L.R.A. (N.S.) 132, 136 N. W. 76.

A law restricting right of Indians to vote of no effect where not adopted by majority of voters at general election. State ex rel. Tompton v. Denoyer, 6 N. D. 586, 72 N. W. 1014.

See also Spatgen v. O'Neil, 40 N. D. 618, 169 N. W. 491; State ex rel. Byerley v. St. Bd. of Canvassers, 44 N. D. 126, 172 N. W. 80.

See Elections, 20 C. J. p. 61, § 15.

Constitutionality of primary election law imposing new restrictions or qualifications on voters. L.R.A. 1917A, 261.

Validity of statute requiring information as to age, sex, residence, etc., as condition of right to vote. 14 A.L.R. 260.

Woman's suffrage. 9 R. C. L. 1028, 1029 and Supps.

Right of legislature to determine qualifications of voters. 9 R. C. L. 1024 and Supps.

Power of legislature over qualifications of voters in extra-constitutional elections. 9 R. C. L. 1025 and Supps.

Power of legislature to regulate right of suffrage and elections. 9 R. C. L. 982 and Supps.

§ 123. Electors shall in all cases except treason, felony, breach of the peace or illegal voting, be privileged from arrest on the days of election during their attendance at, going to and returning from such election, and no elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

See Arrest, 5 C. J. p. 388, § 7.

Privilege of electors from arrest. 2 R. C. L. 482 and Supps.

CONSTITUTION OF NORTH DAKOTA.

§ 124. The general elections of the state shall be biennial, and shall be held on the first Tuesday after the first Monday in November; provided, that the first general election under this constitution shall be held on the first Tuesday after the first Monday in November, A. D. 1890.

Fixes time of holding of general election, legislature simply to prescribe regulations and officers to be elected. State ex rel. Miller v. Flaherty, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

See also O'Laughlin v. Carlson, 30 N. D. 213, 152 N. W. 675.

See Elections, 20 C. J. p. 101, § 87.

Time for holding elections. 9 R. C. L. 998 and Supps.

§ 125. No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States.

See Elections, 20 C. J. p. 73, § 32, p. 81, § 51.

Residence of persons in Federal or state service. 9 R. C. L. 1034 and Supps.

§ 126. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of his being stationed therein.

See Elections, 20 C. J. p. 81, § 51.

Residence of persons in Federal or state service and seamen. 9 R. C. L. 1034 and Supps.

§ 127. No person who is under guardianship, non compos mentis or insane, shall be qualified to vote at any election; nor any person convicted of treason or felony unless restored to civil rights; and the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting or refusing to vote at any general election.

Explanatory note. This is the present form of this section, and is the latter part of Article 2 of the Amendments of the Constitution. The original form of the section was as follows:

No person who is under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, unless restored to civil rights.

Incompetent for legislature to prescribe qualifications of voters or candidates, in addition to those fixed in constitution. Johnson v. Grand Forks County, 16 N. D. 363, 113 N. W. 1071.

See also State ex rel. Fargo v. Wetz, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; Swift v. Leach, 45 N. D. 437, 178 N. W. 437.

See Elections, 20 C. J. p. 80, § 49, pp. 79-80, §§ 44-46, p. 74, § 34.

Crime as disqualifying voter. 25 L.R.A. 483.

Disqualification of elector for crime. 9 R. C. L. 1042 and Supps.

Educational qualifications of electors. 9 R. C. L. 1043.

Constitutionality of literacy tests. 9 R. C. L. 1044.

§ 128. Any woman having the qualifications enumerated in section 121 of this article as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote for all school officers, and upon all questions pertaining solely to school matters, and be eligible to any school office.

Does not make women electors, but places them in a separate class of citizens, and gives them a limited elective franchise. Wagar v. Prinderville, 21 N. D. 245, 130 N. W. 224.

Legislature may authorize women to vote for village officers. Spatgen v. O'Neill, 40 N. D. 618, 169 N. W. 491.

See also McDonald v. Nielson, 43 N. D. 346, 175 N. W. 361.

See Elections, 20 C. J. p. 78, § 42; Schools and School Districts, 35 Cyc. 864, 875, 881.

Right of women to vote. L.R.A.1915B, 247.

Limited right of woman's suffrage. 9 R. C. L. 1029.

Qualifications of electors in school matters. 24 R. C. L. 567.

CONSTITUTION OF NORTH DAKOTA.

§ 129. All elections by the people shall be by secret ballot, subject to such regulations as shall be provided by law.

Constitution permits legislature to prescribe regulations for fair and free elections. *Fitzmaurice v. Willis*, 20 N. D. 381, 127 N. W. 95.

Not impaired by requiring voter at continuation of June primary at general election to call for party ballot in voting for senator. *State ex rel. McCue v. Blaisdell*, 18 N. D. 55, 24 L.R.A.(N.S.) 465, 138 Am. St. Rep. 741, 118 N. W. 141.

A primary election is a special or partisan election, purposes thereof determinable by the legislature. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

Votes cast, where election judge accompanied to booth voters, where no disability appeared, illegal. *Grubb v. Dewing*, 48 N. D. 774, 187 N. W. 157.

Statute requiring stamping of ballots, mandatory, and valid. *Miller v. Schallern*, 8 N. D. 395, 79 N. W. 865.

Australian ballot law construed. *Perry v. Hackney*, 11 N. D. 148, 90 N. W. 483.

See also *Kerlin v. Devils Lake*, 25 N. D. 207, 141 N. W. 756.

See Elections, 20 C. J. p. 175, § 212.

Secrecy in voting by ballot. 9 R. C. L. 1046 and Supps.

ARTICLE 6.—MUNICIPAL CORPORATIONS.

§ 130. The legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money and contracting debts, and money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

Legislature has power to organize people within state into cities and villages. *State ex rel. Johnson v. Clark*, 21 N. D. 517, 131 N. W. 715.

Debts of city, contracted for paving and sewer purposes, not computed in ascertaining whether debt limit has been reached. *Vallelly and Brookhoff v. Park Com'rs*, 16 N. D. 25, 15 L.R.A.(N.S.) 61, 111 N. W. 615.

Under this section legislature is given plenary control over taxing power of municipalities. *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835.

Powers of municipal corporations. *Stern v. Fargo*, 18 N. D. 289, 26 L.R.A.(N.S.) 665, 122 N. W. 403.

Law creating office of state fire marshal, not unconstitutional interference with local government of cities and villages. *Runge v. Glerum*, 37 N. D. 618, 164 N. W. 284.

See also *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392; *Rolph v. Fargo*, 7 N. D. 640, 42 L.R.A. 646, 76 N. W. 242; *Glaspell v. Jamestown*, 11 N. D. 86, 88 N. W. 1023; *Stinson v. Thorson*, 34 N. D. 372, 158 N. W. 351; *State ex rel. Shaw v. Frazier*, 39 N. D. 430, 167 N. W. 510; *Spatgen v. O'Neil*, 40 N. D. 618, 169 N. W. 491; *Great Northern R. Co. v. Duncan*, 42 N. D. 346, 176 N. W. 992; *Boettcher v. McDowell*, 43 N. D. 178, 174 N. W. 759; *City Commission v. Bismarck Water Supply Co.* 47 N. D. 179, 181 N. W. 596; *Waslien v. Hillsboro*, 48 N. D. 1113, 188 N. W. 738; *Enderson v. Hildenbrand*, — N. D. —, 204 N. W. 356.

See Municipal Corporations, 28 Cyc. 1533, 1576, 1658-1668, 1730.

Right of state to authorize or direct diversion of county funds to purpose other than that for which collected. L.R.A.1915D, 274.

Power of legislature to aid municipal corporations. 19 R. C. L. 730 and Supps.

Legislative control over form of municipal government. 19 R. C. L. 739.

Legislative control over municipal funds. 19 R. C. L. 766 and Supps.

Legislative control over municipal contracts and franchises. 19 R. C. L. 768 and Supps.

ARTICLE 7.—CORPORATIONS OTHER THAN MUNICIPAL.

§ 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the legislative assembly shall provide by general laws for the organization of all

CONSTITUTION OF NORTH DAKOTA.

corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

See Mohall Farmers Elevator Co. v. Hall, 44 N. D. 430, 176 N. W. 131; State v. First State Bank, — N. D. —, 202 N. W. 391.

See Corporations, 14 C. J. p. 95, § 58, p. 107, § 85, p. 116, § 106, p. 184, § 189. Regulation of rates of public service corporations fixed by franchise or charter as exercise of reserved power to alter charter. L.R.A.1915C, 277.

Incorporation under general laws. 7 R. C. L. 48 and Supps.

Creation of corporations. 25 R. C. L. 829.

Special charters in general. 7 R. C. L. 45 and Supps.

§ 132. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

See Corporations, 14 C. J. p. 110, § 95.

Nonacceptance of corporate charter as rendering it inoperative. 7 R. C. L. 45.

§ 133. The legislative assembly shall not remit the forfeiture of the charter to any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

See Corporations, 14 C. J. pp. 197-199, §§ 203-204.

Waiver by legislature of forfeiture of charter. 7 R. C. L. 721.

Alteration in amendment of charter. 7 R. C. L. 111 et seq., and Supps.

§ 134. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of this state shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the state.

See Constitutional Law, 12 C. J. p. 912, § 423, pp. 1038-1041, §§ 663-665; Eminent Domain, 20 C. J. p. 516, §§ 3-4, p. 594, § 84, p. 598, § 87; Corporations, 14a C. J. p. 340, § 2185.

Eminent domain as inherent and inalienable power. 10 R. C. L. 11 and Supps.

Condemnation of franchises. 10 R. C. L. 75 and Supps.

What property is subject to eminent domain. 10 R. C. L. 181 and Supps.

Inalienability of police power. 6 R. C. L. 190 and Supps.

Compelling corporation to comply with police regulations as impairment of obligation of contracts. 6 R. C. L. 348 and Supps.

§ 135. In all elections for directors and managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer; provided, any co-operative corporation may adopt by-laws limiting the voting power of its stockholders.

Explanatory note. This is the present form of this section, and is Article 23 of Amendments of the Constitution, which was approved and ratified in 1918. The original form of the section was as follows:

In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

Cumulative voting in election of city commissioners was not authorized by chapter 45 of Laws of 1907. State ex rel. Shaw v. Thompson, 21 N. D. 426, 131 N. W. 231.

See Corporations, 14a, C. J. p. 58, § 1811.

Right to issue stock without voting power. 21 A.L.R. 643.

Regulation by by-laws as to right to vote. 18 L.R.A. 583.

CONSTITUTION OF NORTH DAKOTA.

Right under reserved power to amend or repeal charter to change rights of stockholders as to voting stock. 22 L.R.A.(N.S.) 420.
Election of directors. 7 R. C. L. 423 and Supps.

§ 136. No foreign corporation shall do business in this state without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

Single transaction not "doing business" in state. Hart Parr Co. v. Robb-Lawrence Co. 15 N. D. 55, 106 N. W. 406.

Entering into contract for public work by nonresident corporation, not doing business in state. Will v. Bismarek, 36 N. D. 570, 163 N. W. 550.

Noncompliance by foreign corporations, with state laws, relating to doing of business, defense to actions by such corporations, which must be alleged and proved by defendant. Brioschi-Miuniti Co. v. Elson-Williams Constr. Co. 41 N. D. 628, 172 N. W. 239.

See also State ex rel. Linde v. Taylor, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561.

See Corporations, 14a C. J. p. 1258, § 3960.

Compelling designation of person upon whom process may be served as a condition of right to do business. 1 L.R.A.(N.S.) 558.

Right of foreign corporation to set up noncompliance with conditions of doing business in order to defeat recovery against it. 25 L.R.A. 569.

What constitutes "doing business" as prohibited by statute. 24 L.R.A. 295.

Single or isolated transaction by foreign corporation as "doing business" within the state. 2 L.R.A.(N.S.) 127; 10 L.R.A.(N.S.) 693.

Soliciting trade as doing business within the state. 9 L.R.A.(N.S.) 1214; 23 L.R.A.(N.S.) 834.

Sale by foreign corporation of goods stored in state as intrastate business. 18 L.R.A.(N.S.) 134.

Establishing agency to handle a corporation's product within the state as doing business therein. 18 L.R.A.(N.S.) 142.

Transactions pursuant to agreement with local dealer to sell product of foreign corporation within state as doing business therein. 44 L.R.A.(N.S.) 1094.

Distinction between domesticating foreign corporation and licensing to do domestic business. 18 A.L.R. 131.

Effect of agreement by foreign corporation as to installing within state articles sold, to bring transaction within state control. 11 A.L.R. 614.

For that stock of foreign corporation seeking to do business within state has no par value as affecting its admission. 19 A.L.R. 132.

Lease of its property as affecting liability of foreign corporation to tax upon privilege of doing business within state. L.R.A.1917D, 1073.

Purchase of supplies by foreign mining or manufacturing corporation as doing business within the state. L.R.A.1917E, 1157.

Soliciting trade as doing business within state. L.R.A.1916E, 236; 6 B. R. C. 801.

Effect of agreement by foreign corporation to install article within state to bring it within statute regulating foreign corporations. L.R.A.1917C, 1014.

When may foreign corporation which has entered into contract for local handling of its product be considered as doing business within state. L.R.A.1916F, 334.

Exclusiveness of service on designated persons. 21 R. C. L. 1349.

Effect of failure to make designation. 21 R. C. L. 1350 and Supps.

Power of state to prescribe mode of service of person to be served. 21 R. C. L. 1347 and Supps.

What constituted "doing business," generally. 21 R. C. L. 1341 and Supps.

Revocation of agency. 21 R. C. L. 1344 and Supps.

§ 137. No corporation shall engage in any business other than that expressly authorized in its charter.

See Corporations, 14a C. J. pp. 306-337, §§ 2163-2177.

General extent of powers of corporations. 7 R. C. L. 526 and Supps.

What business may be carried on by corporations. 7 R. C. L. 544, 545 and Supps.

CONSTITUTION OF NORTH DAKOTA.

§ 138. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law.

A note is property, and is not within this provision. *German Mercantile Co. v. Wanner*, 25 N. D. 479, 52 L.R.A.(N.S.) 453, 142 N. W. 463.

Stock issued as bonus, void. *Lavell v. Bullock*, 43 N. D. 135, 174 N. W. 764.

"Entire Capital Stock," in statute relating to vote to increase capital stock, means entire issued or subscribed stock. *Missouri Valley Groc. Co. v. Hall*, 45 N. D. 419, 178 N. W. 193.

See *Corporations*, 14 C. J. pp. 428-463, §§ 590-656, pp. 491-506, §§ 723-751; 14a C. J. pp. 618-621, §§ 2572-2577, pp. 612-616, §§ 2565-2570.

Commercial paper as payment of subscription to stock. 35 L.R.A.(N.S.) 80.

Bona fide holder of negotiable paper given in payment of stock subscription in violation of law. 4 A.L.R. 1330.

Payment of stock subscriptions in good will. 24 A.L.R. 1285.

May corporation issue stock in payment of or as security of its antecedent debts under statute prohibiting the issue except for money, labor done, or money or property actually received. L.R.A.1916E, 570.

Validity of issuance of stock for note of subscriber, under provisions against issuing stock except for money, labor done, or money or property actually received. 52 L.R.A.(N.S.) 454.

Assets of corporation as consideration for increase of stock. 50 L.R.A.(N.S.) 68.

Increase of capital stock. 7 R. C. L. 202 et seq., and Supps.

Adequacy of consideration for subscription to stock. 7 R. C. L. 359 et seq., and Supps.

Adequacy of consideration for bonds. 7 R. C. L. 597.

§ 139. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.

See *State v. Miller*, 3 N. D. 433, 57 N. W. 193; *Western Electric Co. v. Jamestown*, 47 N. D. 157, 181 N. W. 363.

See *Street Railroads*, 36 Cyc. 1378-1382; *Telegraphs and Telephones*, 37 Cyc. 1622-1629; *Electricity*, 20 C. J. p. 324, § 25.

Necessity of consent of municipal authorities to street railways. 25 R. C. L. 1140 and Supps.

Power of municipality over streets and highways. 19 R. C. L. 761.

Necessity of consent of municipality to use of streets by telegraph and telephone companies. 26 R. C. L. 505.

Consent of municipality to electrical apparatus in streets. 9 R. C. L. 1188 and Supps.

§ 140. Every railroad corporation organized and doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively; the amount of stock paid in and by whom, and the transfers of said stock; the amount of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by

CONSTITUTION OF NORTH DAKOTA.

law, and the legislative assembly shall pass laws enforcing by suitable penalties the provisions of this section; provided, the provisions of this section shall not be so construed as to apply to foreign corporations.

See Corporations, 14a C. J. pp. 343-344 §§ 2201-2202, pp. 1261-1262 §§ 3964-3965.

Maintenance of place of business and books and records in state of incorporation. 7 R. C. L. 152 and Supps.

Annual reports of financial condition. 7 R. C. L. 514 and Supps.

§ 141. No railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

See Railroads 33 Cyc. 381-441, 76; Corporations, 14a C. J. pp. 1056-1058, §§ 3632-3639, p. 1094, § 3687.

Restrictions on consolidation of parallel or competing railroads. 22 R. C. L. 1159.

Consent of stockholders. 22 R. C. L. 1158.

Noncompliance with conditions. 22 R. C. L. 1158.

Restrictions on consolidation of parallel and competing railroads. 7 R. C. L. 163, 164.

§ 142. Railways heretofore constructed, or that may hereafter be constructed, in this state are hereby declared public highways, and all railroads, sleeping car, telegraph, telephone, and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the legislative assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers, from one point to another in this state; provided, that appeal may be had to the courts of this state from the rates so fixed; but the rates fixed by the legislative assembly or board of railroad commissioners shall remain in force pending the decision of the courts.

Legislature has power to fix and regulate rates upon intrastate traffic, provided such rates are reasonably remunerative and not confiscatory. *State ex rel. McCue v. Northern P. R. Co.* 19 N. D. 45, 25 L.R.A.(N.S.) 1001, 120 N. W. 869, affirmed in 216 U. S. 579, 54 L. ed. 624, 30 Sup. Ct. Rep. 423.

When statute prescribing rates is held invalid under Federal Constitution, shipper not obliged to make reparation to carrier. *Minneapolis St. P. & S. M. Ry. Co. v. Washburn Lignite Coal Co.* 40 N. D. 69, 12 A.L.R. 744, 168 N. W. 684.

See also *Merrick Co. v. Minneapolis, S. P. & S. S. M. Ry. Co.* 35 N. D. 331, 160 N. W. 140.

See Carriers, 10 C. J. pp. 39-63 §§ 9-52, pp. 405-463 §§ 624-732; Railroads, 33 Cyc. 37, 43, 73; Telegraphs and Telephones, 37 Cyc. 1629-1638; Highways, 29 C. J. p. 363, § 1.

Delegation by legislature of power to fix rates. 32 L.R.A.(N.S.) 649.

Power of legislature to delegate to commissions the right to fix rates. 18 L.R.A.(N.S.) 713.

Power of judiciary to fix rates to be charged by public service corporations. 8 L.R.A.(N.S.) 529.

Valuation of property of railroads and other public service corporations for purpose of fixing rates. 48 L.R.A.(N.S.) 1037; 48 L.R.A.(N.S.) 1092; 48 L.R.A.(N.S.) 1146; 48 L.R.A.(N.S.) 1196.

Allowance for depreciation in plant in fixing rates. 38 L.R.A.(N.S.) 1209.

Elements entering into determination of reasonableness of railroad rates prescribed by the state for local traffic. 15 L.R.A.(N.S.) 108; 25 L.R.A.(N.S.) 1001.

Power to require carriers to give reduced rates to classes of persons. 11 L.R.A.(N.S.) 973; 33 L.R.A.(N.S.) 956; 41 L.R.A.(N.S.) 524.

CONSTITUTION OF NORTH DAKOTA.

Validity of statute requiring issuance of mileage books at reduced rates; 7 L.R.A.(N.S.) 1086.

Injunction against enforcement of railroad rate legislation under unconstitutional statute as affected by other remedies. 8 L.R.A.(N.S.) 124.

Incorporation of territory into a municipality as affecting existing contract of carrier as to rates in that territory. L.R.A.1916A, 1071.

Right of state to maintain action to recover excess rates or charges exacted of individuals by carrier. L.R.A.1916C, 336.

Power of state court to review rulings of interstate commerce commission. L.R.A.1917E, 919.

Right of carrier having line haul to make extra charge for switching or spotting cars at terminals or sidetracks. L.R.A.1918A, 164.

Necessity of filing schedules affording transit privileges. L.R.A.1918A, 187.

Jurisdiction of public utilities commission over rates as limited by constitutional or statutory power of municipality to regulate utilities. L.R.A.1918D, 315.

Power of public service commission to regulate commutation rates. L.R.A. 1918C, 480.

Right to raise rates of public service corporation, fixed by franchise. L.R.A. 1915C, 287.

Effect of contract with patron to preclude regulation of rates. L.R.A.1915C, 282.

Regulation of fares charged by jitney busses. L.R.A.1916B, 1159; L.R.A. 1918B, 915; L.R.A.1918F, 476.

Right to reduce rates fixed by franchise or charter. L.R.A.1915C, 261.

Effect of fact that return as a whole is reasonable on right to require railroad to transport commodity for less than reasonable compensation. L.R.A.1917F, 1158.

Right to discriminate as to rates on material to be used for a purpose that is expected to increase carrier's business. L.R.A.1918A, 774.

Giving of free service or reduced rates to governmental agencies, cities, schools, school children, charities, and the like as an unlawful discrimination. L.R.A. 1918D, 904.

Is pass issued as part of consideration for contract within statute prohibiting free transportation of passengers or discrimination in passenger rates. L.R.A. 1918B, 1116.

Injunction against action in state court in railroad rate cases because of pendency of action in Federal court. 24 A.L.R. 1095.

Judicial release of carrier from contract rates which had become inadequate. 6 A.L.R. 1659.

Transportation act as continuing existing rates. 10 A.L.R. 958; 19 A.L.R. 683.

Validity of statute requiring submission of claims for refund of overcharges to public service commission. 3 A.L.R. 203.

Who may maintain action to recover back excessive freight charges. 13 A.L.R. 289.

Necessity of filing rates for services which carrier is not bound to render as a common carrier. 19 A.L.R. 982.

Contract for service by carrier in consideration of conveyance of property as affected by public utility acts. 11 A.L.R. 460.

Power of state to change contract rates. 9 A.L.R. 1432.

Federal control of rates of carriers under war legislation. 4 A.L.R. 704; 8 A.L.R. 981; 10 A.L.R. 956; 11 A.L.R. 1452; 19 A.L.R. 678.

Federal government's power over interstate rates. 14 A.L.R. 454; 22 A.L.R. 1100.

Franchise provisions for free or reduced rates as a contract protected from change under contract laws of Federal constitution. 10 A.L.R. 499.

Power of public service commission to increase franchise rates. 3 A.L.R. 730; 9 A.L.R. 1165; 28 A.L.R. 587; 29 A.L.R. 256.

Jurisdiction of action to enjoin Director General of Railroads and railroad company from changing rates. 4 A.L.R. 1714.

Jurisdiction of public service commission to fix rates for carriers transporting by motor trucks or busses. 1 A.L.R. 1460.

Public service commission's power with respect to regulation of street railway fares. 5 A.L.R. 60.

CONSTITUTION OF NORTH DAKOTA.

Special services or facilities afforded by shipper as a factor in fixing carrier's rates. 25 A.L.R. 191.

Right to rates which will permit amortization of cost of road. 9 A.L.R. 1232.
Consideration of body of rates in determining the reasonableness of carrier's rates for a particular commodity. 15 A.L.R. 185.

Right of railroad to discriminate in respect of switching charges. 2 A.L.R. 585.
Rights and remedies of one whose contract for reduced rates in consideration of a grant of property or privileges is nullified by public authority. 14 A.L.R. 252.

Franchise provisions for free or reduced rates as within constitutional or statutory provision prohibiting discrimination. 10 A.L.R. 504; 15 A.L.R. 1200.

Service contract by carrier in consideration of conveyance of property as affected by public utility acts. 11 A.L.R. 460.

Railroads as highways. 13 R. C. L. 17; 22 R. C. L. 743 and Supps.

Railroads and street railways as common carriers. 4 R. C. L. 553 and Supps.

Carrier of passengers as common carrier. 4 R. C. L. 552.

Control and regulation of carriers. 4 R. C. L. 560 et seq., and Supps.

Legislative control of rates. 4 R. C. L. 606 et seq., and Supps.

Regulation of railroads. 22 R. C. L. 777 et seq., and Supps.

Telegraph and telephone companies as common carriers. 4 R. C. L. 558; 26 R. C. L. 487 and Supps.

Regulation of telegraph and telephone rates. 26 R. C. L. 520 et seq.

Regulation and control of telegraph and telephone companies. 26 R. C. L. 510 et seq.

Regulation of sleeping car companies. 25 R. C. L. 21, 22.

§ 143. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with the railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other; and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

See Railroads 33 Cyc. 123-124, 240-257. Carriers, 10 C. J. pp. 65-66 §§ 54-55.

Connection with other roads. 22 R. C. L. 793 and Supps.

Power to connect with other railroads. 22 R. C. L. 817.

Power of interchange cars with other roads. 22 R. C. L. 809 and Supps.

Duty to receive and transport goods and cars of other carriers. 4 R. C. L. 669.

§ 144. The term "corporation," as used in this article, shall not be understood as embracing municipalities or political subdivisions of the state unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

See Corporations, 14 C. J. p. 49 § 1.

§ 145. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the state treasurer for the redemption of such notes or bills.

See Banks and Banking, 7 C. J. p. 480 §§ 10-11, p. 595 § 238.

Issuance by bank of circulating and time notes. 3 R. C. L. 421.

Bank notes. 3 R. C. L. 599, et seq.

§ 146. Any combination between individuals, corporations, associations or either, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

Quo warranto lies to annul corporate franchises for unlawful combination to

CONSTITUTION OF NORTH DAKOTA.

fix prices, notwithstanding other remedies. State ex rel. *Langer v. Gamble-Robinson Fruit Company*, 44 N. D. 376, 9 A.L.R. 98, 176 N. W. 103.

See **Monopolies**, 27 Cyc. 888; **Conspiracy**, 12 C. J. p. 565, § 43, p. 610 § 176.

Illegal trusts under modern anti-trust laws. 64 L.R.A. 689.

Validity of contract provision for control of price on resale. 27 L.R.A.(N.S.) 396.

Rights of manufacturer, not protected by patent or copyright, with respect to interference by third parties with selling system by which he seeks to control retail price. 12 L.R.A.(N.S.) 135.

Validity of automobile distribution contract. L.R.A.1915B, 113.

Necessity for beneficent purpose as excuse for justification for combination to raise price of commodity. 51 L.R.A.(N.S.) 344.

Contracts in partial restraint of trade as affected by modern anti-trust acts. L.R.A.1917A, 379.

Exempting wage earners from anti-trust laws. 52 L.R.A.(N.S.) 525.

Validity of contract provision seeking to control price for which an article shall be resold. 51 L.R.A.(N.S.) 522; L.R.A.1917A, 1285.

Who are common carriers within the constitutional or statutory provision directed specifically against suppression of competition between carriers. L.R.A. 1915C, 865.

Validity of contract for material patented or held in monopoly where a public letting to the lowest bidder is required. L.R.A.1917A, 442.

Open competition plan, gentlemen's agreement, and the like as violation of anti-trust acts. 21 A.L.R. 1109.

Illegality of combinations or agreements between insurance companies or agents under anti-trust and monopoly statutes. 21 A.L.R. 551.

Applicability of state anti-trust act to interstate transaction. 24 A.L.R. 787.

Validity of agreement by bailee of instrumentality to purchase his supplies from bailor. 14 A.L.R. 114; 17 A.L.R. 393.

Steel corporation case and the Sherman anti-trust act. 8 A.L.R. 1140.

Right of manufacturer, producer or wholesaler to control resale price. 7 A.L.R. 449; 19 A.L.R. 925; 32 A.L.R. 1087.

Co-operative marketing of farm products by producers' association. 25 A.L.R. 1113; 33 A.L.R. 247.

Legality of combination among farmers. 11 A.L.R. 1185.

Agreement between carriers not to enter into competition as in unlawful restraint of trade. 3 A.L.R. 253.

Federal control as affecting right to punish railroads for violation of state anti-trust statutes. 19 A.L.R. 696.

Interference in operation of plant producing goods for shipment out of state as within Sherman Anti-trust Act. 28 A.L.R. 1015; 33 A.L.R. 517.

Laundry business as within statute relating to monopolies. 31 A.L.R. 533.

Right of manufacturer to make its warranties conditional on nonuse of accessories manufactured by others, and to require its agents not to handle them. 29 A.L.R. 235.

General public policy toward monopolies. 19 R. C. L. 10 and Supps.

Fixing prices. 19 R. C. L. 38 and Supps.

Control of prices and markets. 19 R. C. L. 132 et seq., and Supps.

Conspiracy in restraint of trade. 5 R. C. L. 1071 and Supps.

ARTICLE 8.—EDUCATION.

§ 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without consent of the United States and the people of North Dakota.

Children not to be excluded from schools on sole ground of nonvaccination. *Rhea v. Board of Education*, 41 N. D. 449, 171 N. W. 103.

CONSTITUTION OF NORTH DAKOTA.

Power to prescribe courses of study, in legislature. State ex rel. Langer v. Totten, 44 N. D. 557, 175 N. W. 563.

See also LaDuke v. Melin, 45 N. D. 349, 177 N. W. 673; Kretchmer v. School Bd. of Dist. No. 12, 34 N. D. 403, 158 N. W. 993; State ex rel. Haig v. Hauge, 37 N. D. 583, L.R.A.1918A, 522, 164 N. W. 289.

See Schools and School Districts, 35 Cyc. 817-820, 1110-1116, 1126.

Religious exercises or instruction in public schools. 16 L.R.A.(N.S.) 860; 105 Am. St. Rep. 151.

Right to require or prohibit the wearing of uniforms or religious garb in public school or college. 42 L.R.A.(N.S.) 337.

Religious exercises or instruction in public schools. L.R.A.1915D, 941.

Right of Indian children to school privileges. 50 L.R.A.(N.S.) 147.

Sectarianism in schools. 5 A.L.R. 866; 20 A.L.R. 1381; 31 A.L.R. 1125.

Wearing of religious garb by teachers in school. 5 A.L.R. 877.

Permitting use of schoolhouse for religious meetings. 5 A.L.R. 886.

Conducting public school in sectarian building. L.R.A.1917D, 462.

Theory of education. 24 R. C. L. 558 and Supps.

Duty of legislature to provide school system. 24 R. C. L. 559 and Supps.

Use of public funds for private and sectarian schools. 24 R. C. L. 595 and Supps.

Religious exercises and instruction in schools. 24 R. C. L. 657 et seq., and Supps.

§ 148. The legislative assembly shall provide, at its first session after the adoption of this constitution, for a uniform system for free public schools throughout the state, beginning with the primary and extending through all grades up to and including the normal and collegiate course.

Normal school, part of free-school system, under this section. State v. Valley School Dist., 42 N. D. 464, 173 N. W. 750.

See also Harrison School Dist. v. Minot, 48 N. D. 1189, 189 N. W. 338.

See Schools and School Districts, 35 Cyc. 817-820; Colleges and Universities, 11 C. J. p. 971.

Duty of legislature to provide uniform system of common schools. 24 R. C. L. 559 and Supps.

§ 149. In all schools instructions shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.

See Schools and School Districts, 35 Cyc. 1125.

Power of legislature to prescribe subjects to be taught in public schools. 47 L.R.A.(N.S.) 200.

Studies and text-books. 24 R. C. L. 633 et seq., and Supps.

§ 150. A superintendent of schools for each county shall be elected every two years, whose qualifications, duties, powers and compensation shall be fixed by law.

Provides for the biennial election of a county superintendent of schools, leaving it to the legislature to determine time of election and term of office. Jenness v. Clark, 21 N. D. 150, 129 N. W. 357, Ann. Cas. 1913B, 675.

See also Goughnour v. Brant, 47 N. D. 368, 182 N. W. 309; O'Laughlin v. Carlson, 39 N. D. 213, 152 N. W. 675; Kretchmer v. School Bd. of Dist. No. 12, 34 N. D. 403, 158 N. W. 993.

See Schools and School Districts, 35 Cyc. 862.

School officers. 24 R. C. L. 568 et seq., and Supps.

Powers of school officers. 24 R. C. L. 573 et seq., and Supps.

§ 151. The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific and agricultural improvements.

Power to prescribe courses of study in legislature. State ex rel. Langer v. Totten, 44 N. D. 557, 175 N. W. 563.

CONSTITUTION OF NORTH DAKOTA.

See Schools and School Districts, 35 Cyc. 817-820; Agriculture, 2 C. J. p. 989 § 3; Colleges and Universities, 11 C. J. pp. 985-987 §§ 10-13.

Power of legislature to prescribe subjects to be taught in public schools. 47 L.R.A.(N.S.) 200.

Duty of legislature to provide school systems. 24 R. C. L. 559 and Supps.

Uniformity in course of study. 24 R. C. L. 561.

Studies and textbooks. 24 R. C. L. 633 et seq., and Supps.

§ 152. All colleges, universities and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.

See State v. Valley City Special School District, 42 N. D. 464, 173 N. W. 750.

See Colleges and Universities, 11 C. J. p. 975-978 §§ 2-3, pp. 985-987 §§ 10-13; Schools and School Districts, 35 Cyc. 817-821, 1126.

Use of public money for support or education of children committed to sectarian schools. L.R.A.1918B, 210.

Legislative control of universities and colleges. 27 R. C. L. 135 and Supps.

State aid to sectarian institutions. 27 R. C. L. 147.

Sectarian character of college. 27 R. C. L. 134.

Use of school funds for sectarian schools. 24 R. C. L. 595 and Supps.

ARTICLE 9.—SCHOOL AND PUBLIC LANDS.

§ 153. All proceeds of the public lands that have heretofore been, or may hereafter be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that shall fall to the state by escheat; the proceeds of all gifts and donations to the state for common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a perpetual fund for the maintenance of the common schools of the state. It shall be deemed a trust fund, the principal of which shall forever remain inviolate and may be increased but never diminished. The state shall make good all losses thereof.

Land granted to state by congress for educational purposes, and proceeds of sale thereof, permanent trust fund. Bd. of Univ. and School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

Lands granted by United States to state for schools, held in trust, and not subject to taxation for benefits arising from construction of drains. Erickson v. Cass County, 11 N. D. 494, 92 N. W. 841.

See Public Lands, 32 Cyc. 867-929; Schools and School Districts, 35 Cyc. 820-830; Colleges and Universities, 11 C. J. pp. 985-991 §§ 10-18; Escheat, 21 C. J. pp. 860-861 §§ 36-41.

Private donations and bequests to universities and colleges. 27 R. C. L. 149.

Appropriation of escheats to state university. 27 R. C. L. 148.

Appropriations and land grants. 27 R. C. L. 147.

Acquisition, tenure and disposition of funds for colleges and universities. 27 R. C. L. 146.

Donations and subscriptions to school funds. 24 R. C. L. 598.

School funds as trust funds. 24 R. C. L. 593 and Supps.

School land grants. 22 R. C. L. 337; 24 R. C. L. 586 and Supps.

§ 154. The interest and income of this fund together with the net proceeds of all fines for violation of state laws, and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the state, and shall be for this purpose apportioned among and between all the several common school corporations of the state in proportion to the number of children in each of school age, as may be fixed by law, and no part of the fund shall ever be diverted even temporarily, from

CONSTITUTION OF NORTH DAKOTA.

this purpose or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the state; provided, however, that if any portion of the interest or income aforesaid be not expended during any year, said portion shall be added to and become a part of the school fund.

Board of University & School Lands v. McMillan, 12 N. D. 280; 96 N. W. 310; State v. Bickford, 28 N. D. 36; 147 N. W. 407; State v. Valley City Special School District, 42 N. D. 464, 173 N. W. 750.

See Fines, Forfeitures, and Penalties, 25 C. J. p. 1165 § 40; Schools and School Districts, 35 Cyc. 817-830.

Distribution and investment of school funds. 24 R. C. L. 593 and Supps.

School funds as trust funds. 24 R. C. L. 593 and Supps.

Remedy for wrongful use of school funds. 24 R. C. L. 597 and Supps.

§ 155. After one year from the assembling of the first legislative assembly the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions and no other. No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become saleable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the state shall never be sold, but the legislative assembly may by general laws provide for leasing the same. The words "coal lands" shall include lands bearing lignite coal.

See Board of University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310; State ex rel. Haig v. Hauge, 37 N. D. 583, L.R.A.1918A, 522, 164 N. W. 289.

See Public Lands, 32 Cyc. 876-896; Schools and School Districts, 35 Cyc. 821; Mines and Minerals, 27 Cyc. 548, 623.

School lands. 22 R. C. L. 337; 24 R. C. L. 586 and Supps.

Reservation of mineral lands from school land grants. 18 R. C. L. 1108 and Supps.

§ 156. The superintendent of public instruction, governor, attorney general, secretary of state and state auditor shall constitute a board of commissioners, which shall be denominated the "Board of University and School Lands," and subject to the provisions of this article and any law that may be passed by the legislative assembly, said board shall have control of the appraisal, sale, rental and disposal of all school and university lands, and shall direct the investment of the funds arising therefrom in the hands of the state treasurer, under the limitations in section 160 of this article.

Impliedly vests board of university and school lands with discretion in performance of its duties, except where limited by statute. Fuller v. University & School Lands, 21 N. D. 212, 129 N. W. 1029.

See also Board of University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

See Public Lands, 32 Cyc. 874-901; Schools and School Districts, 35 Cyc. 820-831,

School lands. 22 R. C. L. 337; 24 R. C. L. 586; 27 R. C. L. 147 and Supps.

§ 157. The county superintendent of common schools, the chairman of the county board, and the county auditor shall constitute boards of appraisal and under the authority of the state board of university and school lands shall appraise all school lands within their respective counties which they may from time to time recommend for sale at their actual value under the prescribed terms and shall first select and designate for sale the most valuable lands.

See Public Lands, 32 Cyc. 874-901; Schools and School Districts, 35 Cyc. 820-821, 867.

§ 158. No land shall be sold for less than the appraised value, and in

CONSTITUTION OF NORTH DAKOTA.

no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows:

One-fifth in five years, one-fifth on or before the expiration of ten years, one-fifth on or before the expiration of fifteen years, and one-fifth on or before the expiration of twenty years, with interest at the rate of not less than five per cent per annum, payable annually in advance; provided, that when payments are made before due they shall be made at an interest paying date, and one year's interest in advance shall be paid on all moneys so paid. All sales shall be held at the county seat of the county in which the land to be sold is situated, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the land to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for such lands shall issue until payment is made for the same; provided that the land contracted to be sold by the state shall be subject to taxation from the date of contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then thereupon the contract of sale for such lands shall, if the board of university and school lands so determine, become null and void. Any lands under the provisions of section 158 of the constitution of the state of North Dakota that have heretofore been sold, may be paid for, except as to interest, as provided, further, that any school or institution lands that may be required for townsite purposes, school house sites, church sites, cemetery sites, sites for other educational or charitable institutions, public parks, fair grounds, public highways, railroad right of way, or for other railroad uses and purposes, reservoirs for the storage of water for irrigation, drain ditches or irrigation ditches, and lands that may be required for any of the purposes over which the right of eminent domain may be exercised under the constitution and the laws of the state of North Dakota, may be sold under the provisions of this section, and shall be paid for, principal and interest, in full in advance, at the time of sale, or at any time thereafter, and patent issued therefor, when principal and interest are paid.

Explanatory note. This is the present form of this section, and is Article 13 of Amendments of the Constitution, which was approved and ratified in 1912. An earlier amendment, approved and ratified in 1910, and constituting Article 11 of the Amendments was as follows:

No lands shall be sold for less than the appraised value and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash and the remaining four-fifths as follows: One-fifth in five years, one-fifth on or before the expiration of ten years, one-fifth on or before the expiration of fifteen years, and one-fifth on or before the expiration of twenty years, with interest payable at the rate of not less than five per centum per annum payable annually in advance; provided, that when payments are made before due they shall be made at an interest paying date, and one year's interest in advance shall be paid on all moneys so paid. All sales shall be held at the county seat of the county in which the land to be sold is situated, and be at public auction and to the highest bidder after sixty days' advertisement of the same in a newspaper in general circulation in the vicinity of the land to be sold, and also published in a newspaper published at the county seat, and also in a newspaper published at the seat of government. Such lands as shall not have been especially subdivided shall be offered in tracts of one-quarter section, and those subdivided in the smallest subdivision. All lands designated for sale and not sold within two years after appraisal shall be re-appraised before they are sold. No grant or patent for such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any

CONSTITUTION OF NORTH DAKOTA.

year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall, if the board of university and school lands so determine become null and void. Any lands under the provisions of section 158 of the constitution of the state of North Dakota that have heretofore been sold may be paid for, except as to interest, as provided herein; provided, further, that any school or institution lands that may be required for township purposes, may be paid for at any time and patent issued therefor.

A still earlier amendment, approved and ratified in 1908, and constituting Article 9 of the Amendments was as follows:

No lands shall be sold for less than the appraised value, and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years, with interest at the rate of not less than six per centum, payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided, shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal, shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contracts of sale of such lands shall, at the election of the board of university and school lands, become null and void; and no such contract heretofore made shall be held void for nonpayment of taxes accruing on the lands described therein; provided such taxes shall have been paid before this amendment takes effect; provided, further, that any school or institution land that may be required for town site purposes may be paid for at any time and patent issued therefor.

The original form of the section was as follows:

No land shall be sold for less than the appraised value and in no case for less than \$10 per acre. The purchaser shall pay one-fifth of the price in cash and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall become null and void.

See *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

See *Public Lands*, 32 Cyc. 876-896; *Schools and School Districts*, 35 Cyc. 820-821.

§ 159. All land, money or other property donated, granted or received from the United States or any other source for a university, school of mines, reform school, agricultural college, deaf and dumb asylum, normal school or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased but shall never be diminished, and the

CONSTITUTION OF NORTH DAKOTA.

interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses thereof.

Lands granted to state by congress for educational purposes, and proceeds from sale thereof, constitute permanent trust fund; interest and income of which can only be used by state for support of schools designated in constitution. Board of University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

See Public Lands, 32 Cyc. 867-901; Schools and School Districts, 35 Cyc. 820-830; Colleges and Universities, 11 C. J. pp. 985-991 §§ 10-18; Asylums, 5 C. J. p. 1417 §§ 4-5; Reformatories, 34 Cyc. 1002; Charities, 11 C. J. p. 297.

School land grants. 22 R. C. L. 337 and Supps.

School lands. 24 R. C. L. 586.

Appropriations and land grants. 27 R. C. L. 147.

Distribution of funds of college or university. 27 R. C. L. 147.

Trusts for educational purposes. 5 R. C. L. 330 et seq., and Supps.

Gifts for support of hospital or asylum. 5 R. C. L. 334 and Supps.

§ 160. All lands mentioned in the preceding section shall be appraised and sold in the same manner and under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the benefit of common schools; but a distinct and separate account shall be kept by the proper officers of each of said funds; provided, that the limitations as to the time in which school land may be sold shall apply only to lands granted for the support of common schools.

See Board of University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

See Public Lands, 32 Cyc. 876-896; Schools and School Districts, 35 Cyc. 820-821.

School lands. 22 R. C. L. 337; 24 R. C. L. 586; 27 R. C. L. 147 and Supps.

§ 161. The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes and at a public auction after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

Provided further, that coal lands may also be leased for agricultural cultivation upon such terms and conditions and for such a period, not exceeding five years as the legislature may provide.

Explanatory note. This is the present form of this section and is Article 34 of Amendments of the Constitution, which was approved and ratified in 1920. The original form of the section was as follows:

The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes and at a public auction after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

See Public Lands, 32 Cyc. 896-901; Schools and School Districts, 35 Cyc. 821; Mines and Minerals, 27 Cyc. 623.

School lands. 22 R. C. L. 337; 24 R. C. L. 586; 27 R. C. L. 147.

Reservation of mineral lands from school land grants. 18 R. C. L. 1108 and Supps.

§ 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations or of counties, or of townships, or of municipalities within the state, bonds issued for the construction of drains under authority of law within the state, bonds of the United

CONSTITUTION OF NORTH DAKOTA.

States, bonds of the state of North Dakota, or on first mortgages on farm lands in this state, not exceeding in amount one-half of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands.

Explanatory note. An earlier amendment, approved and ratified in 1908, and constituting Article 8 of the Amendments was as follows:

The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations or of counties, or of townships, or of municipalities within the state, bonds issued for the construction of drains under authority of law within the state, bonds of the United States, bonds of the state of North Dakota, bonds of other states; provided, such states have never repudiated any of their indebtedness, or on first mortgages on farm lands in this state, not exceeding in amount one third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands.

The original form of the section was as follows:

The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations within the state, bonds of the United States, bonds of the state of North Dakota or in first mortgages on farm lands in the state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisers of school lands.

Bonds issued by state normal trustees to secure money for school buildings bonds of state when authorized. State ex rel. University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

See Schools and School Districts, 35 Cyc. 825-830; Public Lands, 32 Cyc. 900-901.

Investment of school funds. 24 R. C. L. 593 and Supps.

§ 163. No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish, either directly or indirectly, the purchase price of said lands.

See Erickson v. Cass County, 11 N. D. 494, 92 N. W. 841.

See Public Lands, 32 Cyc. 881, 1086-1098.

School land grants. 22 R. C. L. 337 and Supps.

§ 164. The legislative assembly shall have authority to provide by law for the sale or disposal of all public lands that have been heretofore, or may hereafter be granted by the United States to the state for purpose other than set forth and named in sections 153 and 159 of this article. And the legislative assembly, in providing for the appraisalment, sale, rental and disposal of the same, shall not be subject to the provisions and limitations of this article.

See Public Lands, 32 Cyc. 1086-1098.

Grant of public lands, to states. 22 R. C. L. 332 et seq., and Supps.

§ 165. The legislative assembly shall pass suitable laws for the safe keeping, transfer and disbursement of the state school funds; and shall require all officers charged with the same or the safe keeping thereof to give ample bonds for all moneys and funds received by them, and if any of said officers shall convert to his own use in any manner or form, or shall loan with or without interest or shall deposit in his own name, or otherwise than in the name of the state of North Dakota or shall deposit in any banks or with any person or persons, or exchange for other funds or property any portion of the school funds aforesaid, or purposely allow any portion of the same to remain in his own hands uninvested, except in the manner prescribed by law, every such act

CONSTITUTION OF NORTH DAKOTA.

shall constitute an embezzlement of so much of the aforesaid school funds as shall be thus taken or loaned, or deposited, or exchanged, or withheld, and shall be a felony; and any failure to pay over, produce or account for, the state school funds or any part of the same entrusted to any such officer, as by law required or demanded, shall be held and be taken to be prima facie evidence of such embezzlement.

See Board of University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

See Schools and School Districts, 35 Cyc. 820-830; Public Lands, 32 Cyc. 900-901; Embezzlement, 20 C. J. p. 426, § 16, p. 431, § 19, p. 453, §§ 45-46; Officers, 29 Cyc. 1450.

Liability of officer for money lost. 24 R. C. L. 598.

Liability of bondsmen. 24 R. C. L. 599.

Liability of officers for public funds. 22 R. C. L. 468 et seq., and Supps.

Embezzlement by public officers. 9 R. C. L. 1286 and Supps.

ARTICLE 10.—COUNTY AND TOWNSHIP ORGANIZATION.

See State ex rel. Ahern v. Anders, 30 N. D. 572, 152 N. W. 801; State ex rel. Linde v. Taylor, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561; Daly v. Beery, 45 N. D. 287, 178 N. W. 104.

§ 166. The several counties in the territory of Dakota lying north of the seventh standard parallel, as they now exist, are hereby declared to be counties of the state of North Dakota.

See State ex rel. Byerley v. State Bd. of Canvassers, 44 N. D. 126, 172 N. W. 80; State v. Stark County, 14 N. D. 368, 103 N. W. 913; Braaten v. Olson, 28 N. D. 235, 148 N. W. 829.

See Counties, 15 C. J. p. 393 § 4.

§ 167. The legislative assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines; but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than one thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

Petition requesting withdrawal of six townships from county, containing only twenty-four townships, violates this section and mandamus will not lie to compel commissioners to withdraw counties in violation of constitution. State ex rel. Ulander v. Co. Commissioners, — N. D. —, 190 N. W. 549.

See also State v. Nohle, 16 N. D. 168, 112 N. W. 141; Braaten v. Olson, 28 N. D. 235, 148 N. W. 829; State ex rel. Ahern v. Anders, 30 N. D. 572, 152 N. W. 801.

See Counties, 15 C. J. pp. 393-405, §§ 4-26, pp. 417-421, §§ 45-54, p. 424, § 58. Creation of new counties and change in boundary lines. 7 R. C. L. 926 et seq., and Supps.

§ 168. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties to be affected thereby at a general election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

Applies to organized counties only; act authorizing submission of proposed change also to voters of unorganized counties whose territory is to be annexed, invalid. State ex rel. Frieß v. Stark County, 14 N. D. 368, 103 N. W. 913.

An act to settle boundary disputes and to confirm nonjurisdictional acts is invalid in part where it contains no provision for submission to voters. Schaffner v. Young, 10 N. D. 245, 86 N. W. 733.

Where majority of affirmative votes for division of existing county did not

CONSTITUTION OF NORTH DAKOTA.

exceed one-half of all votes cast at such election, new county was not created. State ex rel. Minehan v. Thompson, 24 N. D. 273, 139 N. W. 960.

Majority of votes in question of change of county boundaries instead of majority of entire vote cast, sufficient. State ex rel. McCue v. Blaisdell, 18 N. D. 31, 119 N. W. 360; State ex rel. Davis v. Willis, 19 N. D. 225, 124 N. W. 706; State ex rel. Miller v. Flaherty, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

See also State ex rel. Byerley v. State Bd. of Canvassers, 44 N. D. 126, 172 N. W. 80; State v. Blaisdell, 18 N. D. 31, 119 N. W. 360.

See Counties, 15 C. J. pp. 399-405, §§ 18-26, pp. 407-414, §§ 33-40.

Upon what basis majority essential to adoption of constitutional or other special proposition submitted at general election is to be computed. 22 L.R.A. (N.S.) 478.

Effect of change of boundaries of counties. 7 R. C. L. 930 and Supps.

Liabilities and their apportionment. 7 R. C. L. 932 and Supps.

§ 169. The legislative assembly shall provide by general law for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

Election to determine whether county seat should be removed, is one for removal and not relocation of said county seat. State ex rel. Ahern v. Anders, 30 N. D. 572, 152 N. W. 801.

See Counties, 15 C. J. pp. 428-444, §§ 66-90.

County seats. 7 R. C. L. 924 and Supps.

§ 170. The legislative assembly shall provide by general law for township organization under which any county may organize, whenever a majority of all the legal voters of such county, voting at a general election shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners may be dispensed with by a majority vote of the people voting at any general election; and the affairs of said county may be transacted by the chairmen of the several township boards of said county and such others as may be provided by law for incorporated cities, towns or villages, within such county.

See State ex rel. Byerley v. State Bd. of Canvassers, 44 N. D. 126, 172 N. W. 80; Daly v. Beery, 45 N. D. 287, 178 N. W. 104; Martin v. Tyler, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

See Counties, 15 C. J. pp. 445-480, §§ 92-138; Towns, 38 Cyc. 620-633.

§ 171. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such a manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of government, then such system shall cease in said county and the affairs of said county shall then be transacted by a board of county commissioners as is now provided by the laws of the territory of Dakota.

Power to construct drains not part of system of government, and may be conferred where legislature deems fit. Martin v. Tyler, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

See also Braaten v. Olson, 28 N. D. 235, 148 N. W. 829; State ex rel. Byerley v. State Bd. of Canvassers, 44 N. D. 126, 172 N. W. 80; Daley v. Beery, 45 N. D. 287, 178 N. W. 104.

See Counties, 15 C. J. p. 445, § 92.

County officers and boards. 7 R. C. L. 936, et seq., and Supps.

§ 172. Until the system of county government by the chairmen of the several township boards is adopted by any county the fiscal affairs of said county shall be transacted by a board of county commissioners. Said board shall consist of not less than three and not more than five members whose terms

CONSTITUTION OF NORTH DAKOTA.

of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business, as shall be provided by law.

Act requiring payment of expense of maintenance by auditor of county of feeble-minded persons at state institution not invalid because not audited by board. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

Drainage not "fiscal affair" of county. *Martin v. Tyler*, 25 A.L.R. 838, 4 N. D. 278, 60 N. W. 392.

Legislature has power to fix term of office of county commissioners. *O'Laughlin v. Carlson*, 30 N. D. 213, 152 N. W. 675.

Mother's pension act providing for protection of minors of tender years, whose natural guardians are unable to support them, not in violation of this section. *Cass County v. Nixon*, 35 N. D. 601, L.R.A.1917C, 897, 161 N. W. 204.

See also *Boettcher v. McDowell*, 43 N. D. 178, 174 N. W. 759; *Daley v. Beery*, 45 N. D. 287, 178 N. W. 104; *Goughnor v. Brant*, 47 N. D. 368, 182 N. W. 309; *State ex rel. Farmers' State Bank v. Wallace*, 48 N. D. 803, 187 N. W. 728; *State ex rel. Kopriva v. Larson*, 48 N. D. 1144, 189 N. W. 626; *Murphy v. Swanson*, — N. D. —, 32 A.L.R. 82, 198 N. W. 116; *State ex rel. Bd. of University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310; *Braaten v. Olson*, 28 N. D. 235, 148 N. W. 829.

See *Counties*, 15 C. J. pp. 445-480, §§ 92-138.

County officers and boards. 7 R. C. L. 936 et seq., and Supps.

§ 173. At the first general election held after the adoption of this Constitution, and every two years thereafter, there shall be elected in each organized county in the state, a register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge and a clerk of the district court, who shall be electors in the county in which they are elected, and who shall hold their office until their successors are elected and qualified; provided in counties having six thousand population or less the county judge shall also be the clerk of the district court. The legislative assembly shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

Explanatory note. This is the present form of this section and is Article 41 of Amendments of the Constitution, which was approved and ratified in 1924. The original form of the section was as follows:

At the first general election held after the adoption of this constitution, and every two years thereafter, there shall be elected in each organized county in the state, a county judge, clerk of court, register of deeds, county auditor, treasurer, sheriff and state's attorney, who shall be electors of the county in which they are elected, and who shall hold their office until their successors are elected and qualified. The legislative assembly shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

Did not repeal pre-existing statute, and board of county commissioners may fix compensation of state attorneys until passage of statute fixing compensation. *Doherty v. Ransom County*, 5 N. D. 1, 63 N. W. 148.

Section 764, Rev. Codes 1905 (section 1121, herein), which prescribes that at each general election there shall be elected in each county superintendent of schools, whose term shall be two years "and until his successor is elected and qualified," is constitutional. *Jenness v. Clark*, 21 N. D. 150, 129 N. W. 357, Ann. Cas. 1913B, 675.

Attorney general has right to appear before grand jury in matters relating to enforcement of prohibition law. *State ex rel. Miller v. District Ct.* 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

Assistant State's Attorney has no right to visit grand jury room. *Ex parte Corliss*, 16 N. D. 470, 114 N. W. 962.

To be eligible for state's attorney, one must be licensed as attorney in state. *Enge v. Cass*, 28 N. D. 219, 148 N. W. 607.

See also *State v. Harris*, 1 N. D. 190, 45 N. W. 1101; *Diehl v. Totten*, 32 N. D.

CONSTITUTION OF NORTH DAKOTA.

131, 155 N. W. 74; *State ex rel. Nedrelow v. Kennard*, 38 N. D. 612, 166 N. W. 514; *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104; *Goughnour v. Brant*, 47 N. D. 368, 182 N. W. 309; *State ex rel. Farmers State Bank v. Wallace*, 48 N. D. 803, 187 N. W. 728; *McLane v. Seofield*, — N. D. —, 191 N. W. 842.

See Counties, 15 C. J. pp. 481-530 §§ 139-215; Records, 34 Cyc. 577; Sheriffs and Constables, 35 Cyc. 1489-1506, 1527-1612; Prosecuting and District Attorneys, 32 Cyc. 690-707, 710-717; Judges, 33 C. J. pp. 929-933, §§ 9-14, pp. 936-974, §§ 20-106; Clerks of Court, 11 C. J. pp. 850-891, §§ 2-85; Officers, 29 Cyc. 1368-1450; Registers of Deeds, 34 Cyc. 1016.

County officers. 22 R. C. L. 387.

Township officers. 22 R. C. L. 389 and Supps.

Power of legislature to fix compensation of officers. 22 R. C. L. 531 and Supps.

Compensation of sheriffs. 24 R. C. L. 1001 and Supps.

Appointment and qualification. 5 R. C. L. 621 and Supps.

Compensation of clerks of courts. 5 R. C. L. 623 et seq., and Supps.

Duties of clerks of courts. 5 R. C. L. 625 et seq., and Supps.

Eligibility, qualification and election of sheriffs. 24 R. C. L. 913.

Legislative control over power and duties of sheriffs. 24 R. C. L. 916 and Supps.

Compensation of prosecuting attorneys. 22 R. C. L. 99 and Supps.

Duties of prosecuting attorneys. 22 R. C. L. 102.

Election of prosecuting attorneys. 22 R. C. L. 88 and Supps.

ARTICLE 11.—REVENUE AND TAXATION.

See *State ex rel. Linde v. Packard*, 35 N. D. 298, L.R.A.1917B, 710, 160 N. W. 150.

§ 174. The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year, not to exceed in any one year four mills on the dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes, and also a sufficient sum to pay the interest on the state debt.

Legislature has power to require counties to pay expenses of local inmates of institution for feeble-minded, such payments not being a tax. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

State auditor is not authorized to draw warrant on treasurer for sum earned as reward for convictions under prohibition law, as terms of statute providing for reward is inadequate as appropriation. *State ex rel. McDonald v. Holmes*, 19 N. D. 286, 123 N. W. 844.

Section is limitation on power of legislature to provide state revenues by ad valorem tax on property; has no application to revenues derived from other sources. *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835.

Section intended to limit raising of revenue for all state purposes, except for paying interest on public debt. *State ex rel. Lenhart v. Hanna*, 28 N. D. 583, 149 N. W. 573.

Prohibits expenditure of more than 4 mills on dollar of assessed valuation of property within state. *State v. Nelson*, 29 N. D. 155, 150 N. W. 267.

See also *State v. Gillespie*, 39 N. D. 512, 168 N. W. 38; *State ex rel. Langer v. Packard*, 40 N. D. 182, 168 N. W. 673; *Grand Forks County v. Cream of Wheat Co.* 41 N. D. 330, 170 N. W. 863; *Capital Trust & Sav. Bank v. Wallace*, 45 N. D. 182, 177 N. W. 440; *Sheets v. Paine*, 10 N. D. 103, 86 N. W. 117.

See Taxation, 37 Cyc. 706-766.

Power of taxation as legislative. 26 R. C. L. 27 and Supps.

Power of taxation inherent in sovereignty. 26 R. C. L. 36 and Supps.

Delegation of power of taxation. 26 R. C. L. 30, 31 and Supps.

§ 175. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

A peddling occupation tax law which does not state the object or purpose of tax, or how revenue is to be applied, is void. *State v. Kleetzen*, 8 N. D. 286, 78 N. W. 984, 11 Am. Crim. Rep. 324.

Amendment to act relating to fees of county courts, violates this section. *Malin v. Lamoure County*, 27 N. D. 140, 50 L.R.A.(N.S.) 997, 145 N. W. 582.

CONSTITUTION OF NORTH DAKOTA.

Chapter 255, Session Laws of 1915, in contravention of this section. *State ex rel. Linde v. Packard*, 32 N. D. 301, 155 N. W. 666.

Law establishing state bonding fund for purpose of furnishing official bonds for municipal officers, not in contravention of this section. *State ex rel. Linde v. Taylor*, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561.

Transfer of funds from purposes for which they had been levied, to another, not prohibited by this section. *Stinson v. Thorson*, 34 N. D. 372, 158 N. W. 351.

Does not require exact enumeration of expenditure of revenues of state. *State ex rel. Haig v. Hauge*, 37 N. D. 583, L.R.A.1918A, 522, 164 N. W. 289.

Law providing that county treasurer set aside from county tuition fund certain sum, and transmit same to state treasurer for teachers' insurance and retirement fund, not violative of this section. *State ex rel. Haig v. Hauge*, 37 N. D. 583, L.R.A.1918A, 522, 164 N. W. 289.

See also *In Re Lipschitz*, 14 N. D. 622, 95 N. W. 157; *State ex rel. Lenhart v. Hanna*, 28 N. D. 583, 149 N. W. 573; *State ex rel. Langer v. Packard*, 40 N. D. 182, 168 N. W. 673; *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; *Grand Forks County v. Cream of Wheat Co.* 41 N. D. 330, 170 N. W. 863; *Capital Trust & Sav. Bank v. Wallace*, 45 N. D. 182, 177 N. W. 440; *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270.

See *Taxation*, 37 Cyc. 727-729.

Taxation and revenue laws. 25 R. C. L. 1092 and Supps.

Necessity of law authorizing tax. 26 R. C. L. 340 and Supps.

Tax laws. 25 R. C. L. 771.

Sufficiency of title of tax laws. 25 R. C. L. 860.

§ 176. Taxes shall be uniform upon the same class of property including franchises, within the territorial limits of the authority levying the tax. The legislature may by law exempt any or all classes of personal property from taxation, and within the meaning of this section, fixtures, buildings and improvements of every character whatsoever, upon land, shall be deemed personal property. The property of the United States and of the state, county and municipal corporations, and property used exclusively for school, religious, cemetery, charitable or other public purposes, shall be exempt from taxation. Except as restricted by this article, the legislature may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided, that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

Explanatory note. This is the present form of this section and is Article 29 of Amendments of the Constitution, which was approved and ratified in 1918. An earlier amendment, approved and ratified in 1914, and constituting the first part of Article 20 of the Amendments, was as follows:

Taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only, but the property of the United States, and of the state, county and municipal corporations shall be exempt from taxation; and the legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery, charitable or other public purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; provided that all taxes and exemptions in force when this amendment is adopted shall remain in force, in the same manner and to the same extent, until otherwise provided by statute.

The original form of the section was as follows:

Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county and municipal corporations, both real and personal, shall be exempt from taxation; and the legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; but the legislative assembly may, by law, provide for the payment of a per centum of gross earnings of railroad companies to be paid in lieu of all state, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies as common carriers, but no real estate of said cor-

CONSTITUTION OF NORTH DAKOTA.

porations shall be exempted from taxation in the same manner, and on the same basis as other real estate is taxed, except roadbed, right-of-way, shops and buildings used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 179 of this article relating to assessment of railroad property shall cease to be in force.

To this the following was added by an amendment, approved and ratified in 1904, and constituting Article 7 of the Amendments:

The legislative assembly may further provide that grain grown within the state and held therein in elevators, warehouses and granaries may be taxed at a fixed rate.

Relates exclusively to general taxation, and not to local assessments. *Rolph v. Fargo*, 7 N. D. 640, 42 L.R.A. 646, 76 N. W. 242.

Act not void which only exempts from taxation property of institutions which dispense public charity, and is narrower than constitutional provision. *Engstad v. Grand Forks County*, 10 N. D. 54, 84 N. W. 577.

A general law assessing and taxing grain in elevators, to the possessor, and providing for a lien as security for reimbursement, if not the owner, is valid. *Minneapolis & N. Elevator Co. v. Traill County*, 9 N. D. 213, 50 L.R.A. 266, 82 N. W. 727.

A law creating a tax upon crops and land for seed grain and making it a lien superior to prior liens invalid. *Yeatman v. King*, 2 N. D. 421, 33 Am. St. Rep. 797, 51 N. W. 721.

Statute compelling owners of certain classes of property to contribute to cost of maintaining certain governmental functions does not violate provision exempting certain property from taxation. *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835.

Taxation of all property on ad valorem basis, not required, and law providing for payment of license fee in lieu of general taxes, valid. *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835.

Act amending law relating to fees of county court, violates first phrase of this section. *Malin v. Lamoure County*, 27 N. D. 140, 50 L.R.A.(N.S.) 997, 145 N. W. 582.

Act establishing state boarding fund for purpose of furnishing official bonds for municipal officers, not in contravention of section. *State ex rel. Linde v. Taylor*, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561.

Phrase exempting from taxation property used for school, religious, cemetery, or charitable purposes, addressed to legislature and not courts. *State ex rel. Linde v. Packard*, 35 N. D. 298, L.R.A.1917B, 710, 160 N. W. 150.

Tax on moneys and credits does not apply to foreign corporations not doing business in the state. *Capital Trust & Savings Bank v. Wallace*, 45 N. D. 182, 177 N. W. 440.

Chap. 62, Session laws 1919, exempts all stocks and bonds from taxation other than that provided in act. *State ex rel. Farmers' State Bank v. Wallace*, 48 N. D. 803, 187 N. W. 728.

See also *Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72; *In re Lipschitz*, 14 N. D. 622, 95 N. W. 157; *Re First National Bank of Hillsboro*, 25 N. D. 635, L.R.A.1915C, 386, 146 N. W. 1064; *Bartels Northern Oil Co. v. Jackman*, 29 N. D. 236, 150 N. W. 576; *Gamble-Robinson Fruit Co. v. Thoresen*, — N. D. —, — A.L.R. —, 294 N. W. 861; *Green v. Frazier*, 44 N. D. 395, 176 N. W. 11; *State v. District Court*, 49 N. D. —, 186 N. W. 381; *Grand Forks County v. Cream of Wheat Co.* 41 N. D. 330, 170 N. W. 863; *State ex rel. Twitchell v. Hall*, 44 N. D. 459, 171 N. W. 213; *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392; *State v. Moorhouse*, 5 N. D. 406, 67 N. W. 140; *Shuttuck v. Smith*, 6 N. D. 56, 69 N. W. 5; *State v. Kleetzen*, 8 N. D. 286, 78 N. W. 984; *State ex rel. Linde v. Packard*, 32 N. D. 301, 155 N. W. 666; *Northern P. R. Co. v. Morton County*, 32 N. D. 627, L.R.A.1916E, 404, 156 N. W. 226; *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281; *Moody v. Hagen*, 36 N. D. 471, L.R.A.1918F, 947, 162 N. W. 704; *Strauss v. State*, 36 N. D. 594, L.R.A.1917E, 909, 162 N. W. 908; *State ex rel. Haig v.*

CONSTITUTION OF NORTH DAKOTA.

Hauge, 37 N. D. 583, L.R.A. 1918A, 522, 164 N. W. 289.

See Taxation, 37 Cyc. 729-766, 865-947.

Acquisition of property by the public as affecting tax proceedings previously instituted, or previously existent tax lien. 48 L.R.A.(N.S.) 707.

Property leased by public as subject of taxation. 35 L.R.A.(N.S.) 167.

Property granted or sold with reservation of title or lien in favor of public, as subject of taxation. 35 L.R.A.(N.S.) 669.

Property held by municipal corporation in trust as subject of taxation. 34 L.R.A.(N.S.) 143.

Exemption of municipal light plant from taxation. 16 L.R.A.(N.S.) 867.

Taxation of waterworks owned by municipality. 60 L.R.A. 851.

Taxation of water company belonging to municipality. 1 L.R.A.(N.S.) 766.

What exempt from taxation, as charitable institutions. 38 Am. Rep. 300.

Right of charitable, educational, or religious institution to exemption from taxation as affected by the geographical field of operation. 17 L.R.A.(N.S.) 733.

Exemption of parish house from taxation. 27 L.R.A.(N.S.) 910.

Exemption of parsonage from taxation. 39 L.R.A.(N.S.) 437.

Exemption of property used for private school. 21 L.R.A.(N.S.) 164.

Is school which is also used for residential purposes by proprietor and family or other persons connected with the school "exclusively" used for school purposes, within statutory exemption. 21 L.R.A.(N.S.) 171.

Fraternal benefit society as a benevolent or charitable association within exemption statutes. 7 L.R.A.(N.S.) 380.

Benefit association as insurance company under statutes exempting benevolent societies. 38 L.R.A. 49.

Exemption of library from taxation when not expressly included in the exemption statute. 24 L.R.A.(N.S.) 1205.

Effect of fact that property otherwise exempt from taxation is devoted to purposes of a particular society. 16 L.R.A.(N.S.) 829; 26 L.R.A.(N.S.) 696.

Applicability of general tax exemptions to inheritance or succession tax. 48 L.R.A.(N.S.) 373.

Exemption of charitable organization. 34 A.L.R. 636.

What is a religious or charitable purpose within meaning of exemption. 17 A.L.R. 1027.

Exemption of Sunday School Association. 17 A.L.R. 1046.

Prospective use for religious or charitable purpose as rendering property exempt. 2 A.L.R. 545.

Exemption of parsonage or residence of minister or priest. 13 A.L.R. 1196.

Exemption of property leased by church. 17 A.L.R. 1039.

Exemption of property which religious or charitable body has no right to hold. 27 A.L.R. 1047.

Exemption of property of labor organization. 23 A.L.R. 813.

Construction of exemption of religious body or society. 17 A.L.R. 1027; 28 A.L.R. 861.

Who is manufacturer within meaning of tax exemption provisions. 10 A.L.R. 1273.

Exemption of fraternal or relief association. 22 A.L.R. 907.

Constitutionality of exemption of particular educational, religious or charitable institutions. 2 A.L.R. 471.

Scope and import of term "owner" in statutes creating exemptions. 2 A.L.R. 792.

Bond or warrant of governmental subdivision as subject of exemption. 26 A.L.R. 547.

Constitutional enumeration of subjects of tax exemptions as affecting power of legislature to free government securities or property from taxation. 9 A.L.R. 436.

Leasehold estate in exempt property as subject of tax. 23 A.L.R. 248.

Requirement of equality and uniformity in assessments for public improvements by front foot rule. L.R.A.1917D, 375.

Extension of exemption to addition to or enlargement of manufacturing plant. L.R.A.1916D, 112.

CONSTITUTION OF NORTH DAKOTA.

Lease of its property as affecting liability of foreign corporation to franchise tax. L.R.A.1917D, 1073.

Structure or improvement in highway used in connection with special franchise as taxable element. L.R.A.1916B, 1228.

Franchise tax upon corporation in hands of receiver. L.R.A.1915E, 220; 18 A.L.R. 700; 26 A.L.R. 426.

Exemption of property from which an income is derived. L.R.A.1915A, 1118.

Property leased by public as subject of taxation. 52 L.R.A.(N.S.) 991.

Effect of using property of religious, charitable, or educational institution in secular business or for revenue upon right to exemption. 50 L.R.A.(N.S.) 1197.

Exemption of college fraternity house. 52 L.R.A.(N.S.) 995; 35 A.L.R. 1045.

Use of lodge or club building for entertainment or social purposes as affecting right of exemption. L.R.A.1915C, 694.

Requiring payment from inmates as affecting right of charitable institution to exemption. L.R.A.1917B, 782.

Exemption of property used for private school. L.R.A.1917E, 1097.

Exemption of property of Y. M. C. A. or Y. W. C. A. L.R.A.1916D, 275; 34 A.L.R. 1067.

Constitutional limitation of power to exempt property from taxation as affecting public obligations or property. L.R.A.1917B, 308.

Liability to local assessments of property exempt from general taxation. L.R.A. 1916F, 864.

Acquisition of exempt character after tax day. L.R.A.1915C, 125.

Deduction of exempt property in taxation of capital stock of corporation. L.R.A.1915C, 385.

Right to charitable, educational or religious institutions to exemption from taxation as affected by geographical field of operation. 51 L.R.A.(N.S.) 817.

Exemption from liability to succession tax. 50 L.R.A.(N.S.) 992.

Validity of special or local tax acts. 25 R. C. L. 825.

Classifications as to taxation. 6 R. C. L. 426 and Supps.

Contracts exempting from taxation. 6 R. C. L. 353 and Supps.

Exemption of Federal agencies from state taxation. 6 R. C. L. 139 and Supps.

Exemption of charitable organizations from taxation. 5 R. C. L. 374.

Exemption of hospitals from taxation. 13 R. C. L. 943 and Supps.

Equality and uniformity of taxation. 26 R. C. L. 241 et seq., and Supps.

Property exempt from taxation. 26 R. C. L. 316 et seq., and Supps.

Situs of property for taxation. 26 R. C. L. 267 et seq., and Supps.

Taxation for relief of victims of public calamity. 26 R. C. L. 53 and Supps.

Taxation of instrumentalities of United States. 26 R. C. L. 95 and Supps.

§ 177. The legislature may by law provide for the levy and collection of an acreage tax on lands within the state in addition to the limitation specified in section 174 in article 11 of the Constitution. The proceeds of such tax shall be used to indemnify the owners of growing crops against damages by hail, provided that lands used exclusively for public roads, rights of way of common carriers, mining, manufacturing or pasturage, may be exempt from such tax.

Explanatory note. This is the present form of this section and is Article 30 of Amendments of the Constitution, which was approved and ratified in 1918. The original form of the section is as follows:

All improvements on land shall be assessed in accordance with section 179, but plowing shall not be considered as an improvement or add to the value of land for the purpose of assessment.

Statute authorizing negotiation of loan to state hail insurance fund, held to imply power to execute its purpose. State ex rel. Bauer v. Nestos, 48 N. D. 894, 187 N. W. 233.

Indemnity hail tax provided chap. 77, Laws 1921, not a tax within purview of constitution, and does not create lien paramount to antecedent real estate mortgage. Davis v. McLean County, — N. D. —, 204 N. W. 459.

See Taxation, 37 Cyc. 719-724, 1588; Hail Insurance, 29 C. J. p. 205, §§ 1-4, p. 208, § 10.

Construction of hail insurance policy. 35 A.L.R. 267.

CONSTITUTION OF NORTH DAKOTA.

§ 178. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any county or other municipal corporation shall be a party.

See Taxation, 37 Cyc. 726-728.

Relinquishment of power of taxation. 26 R. C. L. 364.

§ 179. All taxable property except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The property, including franchises of all railroads operated in this state, and of all express companies, freight line companies, dining car companies, sleeping car companies, car equipment companies, or private car line companies, telegraph or telephone companies or corporations operating in this state and used directly or indirectly in the carrying of persons, property or messages, shall be assessed by the state board of equalization in a manner prescribed by such state board or commission as may be provided by law. But should any railroad allow any portion of its railway to be used for any purposes other than the operation of a railroad thereon, such portion of its railway, while so used shall be assessed in a manner provided for the assessment of other real property.

Explanatory note. This is the form of this section, and is the latter part of Article 20 of the Amendments of the Constitution, which was approved and ratified in 1914. An earlier amendment, which is Article 4 of the Amendments was as follows:

All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbeds, rails and rolling stock of all railroads, and the franchise and all other property of all express companies, freight line companies, car equipment companies, sleeping car companies, dining car companies, telegraph or telephone companies, or corporations operated in this state and used directly or indirectly in the carrying of persons or messages, shall be assessed by the state board of equalization at their actual value, and such assessed value shall be apportioned to the counties, cities, towns, villages, townships, and districts in which such railroad companies, express companies, sleeping car companies, dining car companies, telegraph and telephone companies are located, or through which they are operated, as a basis for the taxation of such property, in proportion to the number of miles of such property, within such counties, cities, towns, villages, townships and districts, or over which any part of such property is used or operated within such counties, towns, villages, townships and districts. But should any railroad allow any portion of its roadway to be used for any purpose other than the operation of a railroad thereon, such portion of its roadway, while so used, shall be assessed in the manner provided for the assessment of other real property.

The original form of the section is as follows:

All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this state shall be assessed by the state board of equalization at their actual value and such assessed valuation shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, as a basis for taxation of such property in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts.

"Roadway" includes necessary land for main line, sidetracks, turnouts, connecting tracks, station houses, freight houses, and other reasonably necessary accommodations. *Chicago, M. & St. P. R. Co. v. Cass County*, 8 N. D. 18, 76 N. W. 239.

"Roadway" does not include telegraph line used partly for commercial profit. *Minneapolis, St. P. & S. Ste. M. R. Co. v. Oppgaard*, 18 N. D. 1, 118 N. W. 830.

Franchise, roadway, roadbed, rails, rolling stock of railroads in state taxable as personal property. *Minneapolis, St. P. & S. Ste. M. R. Co. v. Dickey County*, 11 N. D. 107, 90 N. W. 260.

Failure to make record of filing of returns of proceedings had concerning assessment of drainage benefits, does not make assessment void. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

CONSTITUTION OF NORTH DAKOTA.

Amendment of 1901, to section, recognizes dual taxable right of user of right of way, i. e., tax on assessment by state board of equalization, general taxation of land appropriated for private use. *Northern P. R. Co. v. Morton County*, 32 N. D. 627, L.R.A.1916E, 404, 156 N. W. 226.

Act establishing state bonding fund for purpose of furnishing official bonds for municipal officers not in contravention of section. *State ex rel. Linde v. Taylor*, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561.

Vessel plying upon interstate navigable stream may belong for taxation purposes, in a taxing district, other than where it is registered or licensed. *Marten v. Burleigh County*, 38 N. D. 373, 165 N. W. 520.

Taxation of all property on ad valorem basis, not required and law providing for payment of license fee in lieu of general taxes, valid. *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835.

See also *Minneapolis & N. E. Co. v. Traill County*, 9 N. D. 213, 50 L.R.A. 266, 82 N. W. 727; *Sheets v. Paine*, 10 N. D. 103, 86 N. W. 117; *Hertzler v. Freeman*, 12 N. D. 187, 96 N. W. 294; *Douglas v. Fargo*, 13 N. D. 467, 101 N. W. 919; *State ex rel. Miller v. Leech*, 33 N. D. 513, 157 N. W. 492; *Grand Forks County v. Cream of Wheat Co.* 41 N. D. 330, 170 N. W. 863; *Wallace v. Hughes Electric Co.* 41 N. D. 418, 171 N. W. 840; *Capital Trust & Sav. Bank v. Wallace*, 45 N. D. 182, 177 N. W. 440.

See *Taxation*, 37 Cyc. 946-964, 812-864, 1020-1045, 1073, 1076-1078.

Situs of railroad rolling-stock for purpose of taxation. 69 L.R.A. 445.

Situs of property for taxation. 26 R. C. L. 267 et seq., and Supps.

Tax on franchises. 26 R. C. L. 159 et seq., and Supps.

§ 180. The legislative assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and fifty cents on every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed.

See *State v. Gillespie*, 39 N. D. 512, 168 N. W. 38.

See *Taxation*, 37 Cyc. 674, 811; *Elections*, 20 C. J. p. 76, § 37.

Legislative power to compel employer to pay employee's poll tax. 9 L.R.A. (N.S.) 306.

Constitutionality of poll tax as affected by exemptions therefrom. 13 L.R.A. (N.S.) 901.

Definition of poll taxes. 26 R. C. L. 34 and Supps.

§ 181. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

See *State ex rel. Langer v. Hall*, 44 N. D. 536, 173 N. W. 763.

See *Taxation*, 37 Cyc. 724-725, 727.

ARTICLE 12.—PUBLIC DEBT AND PUBLIC WORKS.

§ 182. The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgage upon real estate in amounts not to exceed one-half of its value; or upon real and personal property of state owned utilities, enterprises or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon property of state owned utilities, enterprises or industries in excess of ten million dollars.

No further indebtedness shall be incurred by the state unless evidenced by a bond-issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semi-annually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose

CONSTITUTION OF NORTH DAKOTA.

of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities.

Explanatory note. This is the present form of this section and is Article 42 of Amendments of the Constitution, which was approved and ratified in 1924.

An earlier amendment, approved and ratified in 1918, and constituting Article 31 of the Amendments was as follows:

The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgages upon real estate, in amounts not to exceed one-half of its value; or upon real or personal property of state owned utilities, enterprises or industries in amounts, not exceeding its value, and provided, further, that the state shall not issue or guarantee bonds upon property of state owned utilities, enterprises or industries in excess of ten million dollars.

No future indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax or make other provisions, sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law and shall specially appropriate the proceeds of such tax, or of such other provisions, to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purposes of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities.

The original form of the section was as follows:

The state may, to meet casual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of two hundred thousand dollars, exclusive of what may be the debt of North Dakota at the time of the adoption of this constitution. Every such debt shall be authorized by law for certain purposes to be definitely mentioned therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax discontinued until such debt, both principal and interest, shall have been fully paid. No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for public defense in case of threatened hostilities; but the issuing of new bonds to refund existing indebtedness, shall not be construed to be any part or portion of said two hundred thousand dollars.

Act authorizing issuance of normal school building bonds and appropriating permanent school fund to pay same invalid where limit of indebtedness is reached. *State ex rel. University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310.

Section 1 as amended, authorized issue of bonds, unsecured except by faith and credit of state, in addition to existing indebtedness. *State ex rel. Langer v. Hall*, 44 N. D. 536, 173 N. W. 763.

Authorizes issue of bonded indebtedness, unsecured except by faith and credit of state, in addition to existing indebtedness. *State v. Hall*, 44 N. D. 536, 173 N. W. 763.

See also *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; *Green v. Frazier*, 44 N. D. 395, 176 N. W. 11; *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270.

See *States*, 36 Cyc. 897-900, 882-885; *Statutes*, 36 Cyc. 1069.

Incurring of debt by state. 25 R. C. L. 395 et seq., and Supps.

Issuance of bonds by state. 25 R. C. L. 403 et seq., and Supps.

§ 183. The debt of any county, township, city, town, school district or any other political subdivision shall never exceed five per centum upon the assessed value of the taxable property therein; provided that any incorporated city may, by a two-thirds vote, increase such indebtedness three per centum on such assessed value beyond said five per centum limit, and a school district, by a majority vote may increase such indebtedness five per centum on such assessed value beyond said five per centum limit; provided also that any county or city by a majority vote may issue bonds upon any revenue pro-

CONSTITUTION OF NORTH DAKOTA.

ducing utility owned by such county or city, or for the purchasing or acquiring the same or building or establishment thereof, in amounts not exceeding the physical value of such utility, industry or enterprise.

In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount, exclusive of the bonds upon said revenue producing utilities, whether contracted prior or subsequent to the adoption of this Constitution, shall be included; provided further, that any incorporated city may become indebted in any amount not exceeding four per centum of such assessed value without regard to the existing indebtedness of such city for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers and for no other purposes whatever. All bonds and obligations in excess of the amount of indebtedness permitted by this Constitution, given by any city, county, township, town, school district, or any other political subdivision shall be void.

Explanatory note. This is the present form of this section and is Article 35 of the Amendments of the Constitution, which was approved and ratified in 1920. The original form of the section was as follows:

The debt of any county, township, city, town, school district or any other political subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein; provided, that any incorporated city may, by a two-thirds vote, increase such indebtedness three per centum on such assessed value beyond said five per centum limit. In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount of existing indebtedness, whether contracted prior or subsequent to the adoption of this constitution shall be included; provided, further, that any incorporated city may become indebted in any amount not exceeding four per centum on such assessed value without regard to the existing indebtedness of such city, for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purpose whatever. All bonds or obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district, or any other political subdivision shall be void.

Allegation in complaint in action to test validity of city bonds sufficiently showing that city was not indebted beyond constitutional limit. *State ex rel. Fargo v. Mitchell*, 24 N. D. 196, 139 N. W. 572.

Indebtedness of a city cannot be increased beyond the limit, even temporarily, by issue of refunding bonds. *Birkholz v. Dinnie*, 6 N. D. 511, 72 N. W. 931.

Warrant issued for current county expenses in anticipation of proceeds of lawful levy valid, although beyond limit of indebtedness. *Darling v. Taylor*, 7 N. D. 538, 75 N. W. 766.

Section is self-executing as a limitation upon the power to incur debts, and provision that incorporated cities may become further indebted to furnish water, supply, and sewers, does not render municipalities immune from additional restrictions. *Great Northern R. Co. v. Duncan*, 42 N. D. 346, 176 N. W. 992.

Debt contracted in excess of constitutional debt limit, ultra vires, and where debt is ultra vires, and exceeds limit, equity will not aid in recovery of it. *Bartelson v. International School District No. 5*, 43 N. D. 253, 174 N. W. 78.

Debts of city contracted for paving and sewer purposes not computed in ascertaining whether debt limit has been exceeded. *Vallelly & Brookhoff v. Park Comr's*, 16 N. D. 25, 15 L.R.A.(N.S.) 61, 111 N. W. 615.

See also *State ex rel. Langer v. Packard*, 40 N. D. 182, 168 N. W. 673; *State ex rel. Langer v. Hall*, 44 N. D. 536, 173 N. W. 763; *Logan v. City of Bismarek*, — N. D. —, 194 N. W. 908; *Kerlin v. Devils Lake*, 25 N. D. 235, 141 N. W. 756.

See *Counties*, 15 C. J. pp. 573-632, §§ 270-346; *Towns*, 38 Cyc. 642-652; *Municipal Corporations*, 28 Cyc. 1533-1561, 1575-1606, 1640-1643, 1668-1674; *Schools and School Districts*, 35 Cyc. 972-977.

As to what time is the assessed valuation to be taken for purposes of determining the debt limit of a state or municipality. 28 L.R.A.(N.S.) 149.

Creation of indebtedness within meaning of debt limit provision. 23 L.R.A. 404; 37 L.R.A.(N.S.) 1058.

Municipal liability for tort as an "indebtedness." 37 L.R.A.(N.S.) 1097.

CONSTITUTION OF NORTH DAKOTA.

Mortgage debt upon property purchased by municipality without assuming payment as part of municipal indebtedness. 3 L.R.A.(N.S.) 684.

Obligation for local improvements as within municipal debt limit. 33 A.L.R. 1415.

What is emergency within exception to limitation of municipal indebtedness. 17 A.L.R. 586.

Statute creating municipal liability for mob or riot as violating constituted debt limitation. 13 A.L.R. 757.

Creation of indebtedness of debt-limit provision. L.R.A.1917E, 438.

What are public utilities within statute allowing municipality to exceed debt limit for purchase or repair of public utilities. 31 L.R.A.(N.S.) 556.

Right of municipal corporation to secure public utilities by piecemeal to avoid constitutional debt limit. 12 L.R.A.(N.S.) 433.

Rule for determining the indebtedness, within the meaning of debt limit provisions, where boundaries of different political units are wholly or partly coincident. L.R.A. 1917E, 468.

Limitation of county indebtedness. 7 R. C. L. 953 and Supps.

Borrowing of money by towns. 26 R. C. L. 811.

Limitation on indebtedness of municipal corporations. 19 R. C. L. 977 et seq., and Supps.

Limitation and increase of indebtedness of school districts. 24 R. C. L. 609 et seq., and Supps.

§ 184. Any city, county, township, town, school district, or any other political subdivision incurring indebtedness shall at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

See *Great Northern R. Co. v. Duncan*, 42 N. D. 346, 176 N. W. 992; *Vallenty & Brookhoff v. Park Comrs*, 16 N. D. 25, 15 L.R.A.(N.S.) 61, 111 N. W. 615.

See *Municipal Corporations*, 28 Cyc. 1640-1643, 1672-1674; *Counties*, 15 C. J. p. 581, § 282, p. 614, § 325; *Towns*, 38 Cyc. 652-653; *Schools and School Districts*, 35 Cyc. 998-1044.

Refunding existing indebtedness of municipality. 19 R. C. L. 986 and Supps.

Sinking fund for payment of bonds. 25 R. C. L. 406.

§ 185. The state, any county or city, may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article 20 of the Constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

Explanatory note. This is the present form of this section and is Article 32 of Amendments of the Constitution, which was approved and ratified in 1918.

An earlier amendment, approved and ratified in 1914, and constituting Article 18 of the Amendments, was as follows:

Neither the state nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the state engage in any work of internal improvement unless authorized by a two-thirds vote of the people. Provided, that the state may appropriate money in the treasury or to be thereafter raised by taxation for the construction or improvement of public highways.

The original form of the section was as follows:

Neither the state nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the state engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

CONSTITUTION OF NORTH DAKOTA.

A statute validating contract for transcribing county records is not invalid as constituting a donation. *Steel County v. Erskine*, 98 Fed. 215, 39 C. C. A. 173.

County drainage bonds not loan of credit where reimbursement to be made out of sinking fund created by special assessment extending through life of bonds. *Redmon v. Chacey*, 7 N. D. 231, 73 N. W. 1081.

Drainage warrants payable out of drainage fund are not county obligations, and do not constitute loan of credit of county. *Redmon v. Chacey*, 7 N. D. 231, 73 N. W. 1081.

Issuance of drainage bonds, reimbursement to be made by sinking fund created by special assessment during life of bonds, invalid. *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

Act authorizing counties to issue bonds to procure seed-grain for needy farmers, resident therein, valid, as measure for "necessary support of poor." *State v. Nelson County*, 1 N. D. 88, 8 L.R.A. 283, 45 N. W. 33.

Tax levied for pensioning public school teachers valid. *State ex rel. Haig v. Hauge*, 37 N. D. 583, L.R.A.1918A, 522, 164 N. W. 289.

See also *State ex rel. Gaulke v. Turner*, 37 N. D. 635, 164 N. W. 924; *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; *Green v. Frazier*, 44 N. D. 395, 176 N. W. 11; *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270.

See *States*, 36 Cyc. 844, 882-885, 894, 897; *Counties*, 15 C. J. p. 419, § 51, pp. 590-597, §§ 296-306; *Municipal Corporations*, 28 Cyc. 257-281, 1533, 1535, 1553-1560, 1575-1576, 1579; *Corporations*, 14 C. J. p. 510, §§ 759-760.

Validity of statute or ordinance providing for pensions for municipal employees. 37 A.L.R. 1162.

Constitutionality of old age pensions or assistance acts. 37 A.L.R. 1524.

Appropriation of public money for patriotic celebrations. 30 A.L.R. 1039.

Constitutionality of retroactive statute providing compensation for death in service of state. 28 A.L.R. 1100.

Use of public funds to promote patriotism. 30 A.L.R. 1035.

Appropriation or raising of public funds for distribution by chamber of commerce. 31 A.L.R. 485.

Public aid to sectarian school. 5 A.L.R. 879.

Constitutionality of welfare acts for veterans of World War. 22 A.L.R. 1542.

Constitutionality of statutes providing for free text-books and other school supplies for individual use of pupils. 17 A.L.R. 299.

Constitutionality of retroactive statute providing compensation to one injured in service of state. 22 A.L.R. 1445.

Contract to pay for services or reimburse expenditures as within constitutional inhibition of aid to sectarian institutions. 22 A.L.R. 1319.

Constitutionality of statute or ordinance authorizing use of public funds for restoration of public utility privately owned. 13 A.L.R. 313.

Power to impose license fee or penalty for benefit of private individual or corporation. 13 A.L.R. 828.

Right to use public funds to carry insurance for public officers or employees. 16 A.L.R. 1089; 27 A.L.R. 1267.

Power of legislature to grant extra compensation for past services of individual public officers or employee. 23 A.L.R. 612.

Validity of statute providing for governmental assistance of individual members of certain classes of unfortunate or afflicted persons. 7 L.R.A.(N.S.) 1196.

Right to use public funds to relieve persons not entirely without means of their own. 27 L.R.A.(N.S.) 1079.

Use of public funds to maintain or improve private ways or ways dedicated to public but never accepted. 35 L.R.A.(N.S.) 524.

Power of legislature to authorize counties or other political divisions to build, purchase or operate railroad as affected by restrictions on power to aid private enterprises. 28 L.R.A.(N.S.) 412.

Expenses incurred by public officials or employees in attending conventions, etc., or proper charge on public funds. L.R.A.1917E, 332.

Use of public funds to pay expense incurred by officer or citizen in litigation. L.R.A.1916D, 92.

Power of municipality to assume burden of adapting street or bridges for use of railroads. 50 L.R.A.(N.S.) 143.

CONSTITUTION OF NORTH DAKOTA.

Constitutionality of statute providing for transportation of pupils at public expense. 50 L.R.A.(N.S.) 428.

Validity of pension or bounty for soldiers. 44 L.R.A.(N.S.) 83; 45 L.R.A.(N.S.) 692; 7 A.L.R. 1636; 13 A.L.R. 587; 15 A.L.R. 1359.

Public aid to business corporations or enterprises. 14 L.R.A. 473.

Construction of improvement by public body with option to private concern to purchase as violation of constitutional provision against lending credit. L.R.A. 1915B, 306.

Constitutionality of statute authorizing loan of public funds or credit. 14 A.L.R. 1165.

Expenditure of municipal funds for purposes not public. 19 R. C. L. 708 et seq., and Supps.

Loan of credit of town. 26 R. C. L. 811.

Issue of bonds by towns in aid of corporations. 26 R. C. L. 813.

Appropriation of public funds. 25 R. C. L. 395 et seq., and Supps.

Loan of credit of state. 25 R. C. L. 394 and Supps.

State or county as stockholder. 7 R. C. L. 297.

§ 186. No money shall be paid out of the state treasury except upon appropriation by law and on warrant drawn by the proper officer, and no bills, claims, accounts or demands against the state, or any county or other political subdivision, shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the officer or officers, whose duty it may be to audit the same.

State auditor is not authorized to draw warrant on treasurer for sum loaned as reward for convictions under prohibition law, as terms of statute providing for reward is inadequate as appropriation. *State ex rel. McDonald v. Holmes*, 19 N. D. 286, 123 N. W. 884.

Act requiring payment of expense of maintenance of inmates of institution for feeble-minded not invalid because not audited. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

State auditor has no authority to issue warrants in payment of award by workmen's compensation bureau. *State ex rel. Stearns v. Olson*, 43 N. D. 619, 175 N. W. 714.

Law establishing state bonding fund, to furnish official bonds for municipal officers, not in violation of this section. *State ex rel. Linde v. Taylor*, 33 N. D. 76, L.R.A.1918B, 156, 156 N. W. 561.

Act providing for payment of expenses of judges of supreme court, without itemized statement not in violation of this section. *State ex rel. Langer v. Kositzky*, 38 N. D. 616, L.R.A.1918D, 237, 166 N. W. 534.

See also *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; *Wirtz v. Nestos*, — N. D. —, 200 N. W. 524; *Board of U. & School Lands v. M'Millan*, 12 N. D. 280, 96 N. W. 310.

See *States*, 36 Cyc. 895-896, 900-906; *Counties*, 15 C. J. p. 586, § 288, p. 604, § 312, pp. 651-652, §§ 361-374; *Municipal Corporations*, 28 Cyc. 1748-1754; *Schools and School Districts*, 35 Cyc. 1052; *Towns*, 38 Cyc. 658-661.

Presentation and auditing of claims against state. 25 R. C. L. 395 and Supps.

Drawing of money from state treasury. 25 R. C. L. 395 and Supps.

Presentation and audit of claims against counties. 7 R. C. L. 958 and Supps.

Form and payment of claims against towns. 26 R. C. L. 816, 817.

Claims against municipalities. 19 R. C. L. 1040 et seq., and Supps.

§ 187. No bond or evidence of indebtedness of the state shall be valid unless the same shall have indorsed thereon a certificate, signed by the auditor and secretary of state, showing that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or other political subdivision shall be valid unless the same have indorsed thereon a certificate signed by the county auditor, or other officer authorized by law to sign such certificate, stating that said bond, or evidence of debt, is issued pursuant to law and is within the debt limit.

Warrant issued for current county expenses in anticipation of proceeds of lawful

CONSTITUTION OF NORTH DAKOTA.

levy, valid, although beyond limit of indebtedness. *Darling v. Taylor*, 7 N. D. 538, 75 N. W. 766.

State bonds must be certified to by the auditor and secretary of state to be within the debt limit in order to be valid. *State ex rel. University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310.

See also *State v. Getchell*, 3 N. D. 243, 55 N. W. 585; *State ex rel. Langer v. Hall*, 44 N. D. 536, 173 N. W. 763.

See *States*, 36 Cyc. 895-898, 865; *Counties*, 15 C. J. pp. 598-601, §§ 308-309, p. 623, § 335; *Towns*, 38 Cyc. 647; *Municipal Corporations*, 28 Cyc. 1598, 1635; *Schools and School Districts*, 35 Cyc. 993-995.

Issuance of bonds by state. 25 R. C. L. 403 et seq., and Supps.

Limitation of indebtedness of state. 25 R. C. L. 397 and Supps.

Limitation of county indebtedness. 7 R. C. L. 953 and Supps.

Recital in town bonds of compliance with law. 26 R. C. L. 815.

Necessity of strict compliance with legislative authority on issue of municipal bonds. 19 R. C. L. 994 and Supps.

Recitals in municipal bonds by officers of compliance with law. 19 R. C. L. 1004 et seq., and Supps.

Recitals in municipal bonds by officers that debt limit not exceeded. 19 R. C. L. 1019 and Supps.

Certificate of officer to regularity of issuance of school bonds. 24 R. C. L. 607.

ARTICLE 13.—MILITIA.

State ex rel. Poole v. Peake, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

§ 188. The militia of this state shall consist of all able-bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this state. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

See *Militia*, 27 Cyc. 491.

Right conferred by statutory exemption of fireman from militia duty. 8 L.R.A.(N.S.) 498.

Constitutional provisions as to militia. 18 R. C. L. 1014 and Supps.

Liability of aliens to military service. 1 R. C. L. 802 and Supps.

Exemption of justices of peace from military service. 16 R. C. L. 338.

Exemption from military duty. 18 R. C. L. 1049.

§ 189. The militia shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by law, not incompatible with the constitution or laws of the United States.

See *State v. Peake*, 18 N. D. 101, 120 N. W. 47.

See *Militia*, 27 Cyc. 490-501.

Organization of militia. 18 R. C. L. 1055 and Supps.

§ 190. The legislative assembly shall provide by law for the establishment of volunteer organizations of the several arms of the service, which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this state except the army of the United States, without the proclamation of the governor of the state.

Term "active militia" does not mean "militia when in active service." *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

See also *State ex rel. Miller v. Taylor*, 22 N. D. 362, 133 N. W. 1046.

See *Militia*, 27 Cyc. 492; *Army and Navy*, 5 C. J. p. 289; *Constitutional Law*, 12 C. J. p. 1125, § 848.

Power of state as to militia. 18 R. C. L. 1054 and Supps.

Control of independent military bodies. 18 R. C. L. 1056.

§ 191. All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide.

See *State v. Peake*, 18 N. D. 101, 120 N. W. 47.

CONSTITUTION OF NORTH DAKOTA.

See Militia, 27 Cyc. 492.

Appointment of militia officers. 18 R. C. L. 1054 and Supps.

§ 192. The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office except by sentence of court martial, pursuant to law.

See State v. Peake, 18 N. D. 101, 120 N. W. 47; State ex rel. Poole v. Peake, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

See Militia, 27 Cyc. 492, 494-495, 496-501.

Removal from office of commissioned officers of militia. 18 R. C. L. 1059.

Jurisdiction of courts-martial over members of militia. 18 R. C. L. 1069.

§ 193. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from the same.

See State ex rel. Poole v. Peake, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

See Arrest, 5 C. J. pp. 387-388, §§ 6-7.

Exemption of militia from civil process. 21 R. C. L. 1305 and Supps.

ARTICLE 14.—IMPEACHMENT AND REMOVAL FROM OFFICE.

§ 194. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment.

See State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.

See States, 36 Cyc. 861; Officers, 29 Cyc. 1413.

Impeachment proceedings. 25 R. C. L. 382.

Legislative regulation of removal of officers. 22 R. C. L. 561 and Supps.

Impeachment. 22 R. C. L. 565 and Supps.

§ 195. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial, the presiding judge of the supreme court shall preside.

See States, 36 Cyc. 861; Officers, 29 Cyc. 1413.

Privilege as to proceedings for impeachment. 25 L.R.A.(N.S.) 455.

Impeachment. 22 R. C. L. 565 and Supps.

§ 196. The governor and other state and judicial officers, except county judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

See State v. Miller, 3 N. D. 433, 57 N. W. 193; State v. Richardson and Carroll, 16 N. D. 1, 109 N. W. 1026; Diehl v. Totten, 32 N. D. 131, 155 N. W. 74; Goughnour v. Brant, 47 N. D. 368, 182 N. W. 309; State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545; State ex rel. Kositzky v. Prater, 48 N. D. 1240, 189 N. W. 334.

See States, 36 Cyc. 861, 869, 1449-1450; Criminal Law, 16 C. J. p. 283, § 484; Officers, 29 Cyc. 1403, 1449-1450.

Acts during prior term as ground for impeachment. 50 L.R.A.(N.S.) 553.

Physical or mental disability as ground for impeachment. 28 A.L.R. 777.

Impeachment. 22 R. C. L. 565 and Supps.

§ 197. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual

CONSTITUTION OF NORTH DAKOTA.

drunkenness or gross incompetency in such manner as may be provided by law.

The superintendent of the hospital for insane may be removed at pleasure of board of trustees. State ex rel. Moore v. Archibald, 5 N. D. 359, 66 N. W. 234.

Accusation for removal from office for malfeasance must be presented by a grand jury. State v. Richardson, 16 N. D. 1, 109 N. W. 1026.

Publication by candidate for election to county judge, of offer to refund salary in part, disqualifies him from holding office. Diehl v. Totten, 32 N. D. 131, 155 N. W. 74.

Removal of commissioner of workmen's compensation bureau, from office, by governor, without hearing, invalid. State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.

See also State ex rel. Shaw v. Frazier, 39 N. D. 430, 167 N. W. 510; Goughnour v. Brant, 47 N. D. 368, 182 N. W. 309; State ex rel. Kositzky v. Prater, 48 N. D. 1240, 189 N. W. 334; State v. Miller, 3 N. D. 433, 57 N. W. 193; Wishek v. Becker, 10 N. D. 63, 84 N. W. 590.

See States, 36 Cyc. 861; Officers, 29 Cyc. 1406-1409.

Removal of public officers. 22 R. C. L. 561 et seq., and Supps.

Grounds for removal of public officers. 22 R. C. L. 566 et seq.

§ 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

See States, 36 Cyc. 861; Officers, 29 Cyc. 1405.

Power of officer as affected by pendency of impeachment proceeding. 30 A.L.R. 1149.

Vacancies created by impeachment. 22 R. C. L. 439 and Supps.

Suspension of public officers. 22 R. C. L. 564 and Supps.

§ 199. On trial of impeachment against the governor, the lieutenant governor shall not act as a member of the court.

See States, 36 Cyc. 861; Officers, 29 Cyc. 1413.

§ 200. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

See States, 36 Cyc. 861; Officers, 29 Cyc. 1413.

Right of public officer to notice before removal from office. 22 R. C. L. 574 and Supps.

§ 201. No person shall be liable to impeachment twice for the same offense.

See States, 36 Cyc. 681; Criminal Law, 16 C. J. p. 235, § 362; Officers, 29 Cyc. 1413.

Constitutional provisions as to former jeopardy. 8 R. C. L. 135 and Supps.

ARTICLE 15.—FUTURE AMENDMENTS.

§ 202. Any amendment or amendments to the Constitution of the state may be proposed in either house of the legislature, and if the same shall be agreed to upon roll call by a majority of the members elected to each house it shall be submitted to the electors and if a majority of the votes cast thereon are affirmative, such amendment shall be a part of this Constitution.

Amendments to the Constitution of the state may also be proposed by initiative petition of the electors; such petition shall be signed by twenty thousand of the electors at large and shall be filed with the secretary of state at least one hundred twenty days prior to the election at which they are to be voted upon, and any amendment or amendments so proposed shall be submitted to the electors and shall become a part of the Constitution, if a majority of the votes cast thereon are affirmative. All provisions of the Constitution relating to the submission and adoption of measures by initiative petition and on referendum petition, shall apply to the submission and adoption of amendments to the Constitution of the state.

Explanatory note. This is the present form of this section, and is Article 28 of

CONSTITUTION OF NORTH DAKOTA.

Amendments of the Constitution, which was approved and ratified in 1916. An earlier amendment approved and ratified in 1914 and constituting Article 16 of the Amendments, was as follows:

This Constitution may be amended as follows:

First: Any amendment or amendments to this Constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendments shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such times as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this state. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Second: Any amendment or amendments to this Constitution may also be proposed by the people by the filing with the secretary of state, at least six months previous to a general election, of an initiative petition containing the signatures of at least twenty-five per cent of the legal voters in each of not less than one-half of the counties of the state. When such petition has been properly filed the proposed amendment or amendments shall be published as the legislature may provide, for three months previous to the general election, and shall be placed upon the ballot to be voted upon by the people at the next general election. Should any such amendment or amendments proposed by initiative petition and submitted to the people receive a majority of all the legal votes cast at such general election, such amendment or amendments shall be referred to the next legislative assembly, and should such proposed amendment or amendments be agreed upon by a majority of all the members elected to each house, such amendment or amendments shall become a part of the Constitution of this state. Should any amendment or amendments proposed by initiative petition and receiving a majority of all the votes cast at the general election as herein provided, but failing to receive approval by the following legislative assembly to which it has been referred, such amendment or amendments shall again be submitted to the people at the next general election for their approval or rejection as at the previous general election. Should such amendment or amendments receive a majority of all the legal votes cast at such succeeding general election such amendment or amendments at once become a part of the Constitution of this state. Any amendment or amendments proposed by initiative petition and failing of adoption as herein provided, shall not be again considered until the expiration of six years.

The original form of the section was as follows:

Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Provides only method for amendment; word "revision" in proviso of fifth subdivision of section 216 synonymous with "amendment" in section 202. State ex rel. Miller v. Taylor, 22 N. D. 362, 133 N. W. 1046.

CONSTITUTION OF NORTH DAKOTA.

Expression of will of legislature that a particular question be submitted to people to be voted on, may be in form of joint resolution. *State v. Dahl*, 6 N. D. 81, 34 L.R.A. 97, 68 N. W. 418.

Section is not self-executing, but is a mandate to succeeding legislatures to provide laws whereunder, constitution may be amended by initiative petition. *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281.

Entry on journal of proposed amendment, sufficient if it refer to amendment, by identifying reference, such as title, and number of bill containing resolution, with entry of yea, and nay vote. *State ex rel. Twichell v. Hall*, 44 N. D. 459, 171 N. W. 213.

Sufficiency of petition required for constitutional amendment by people. *State ex rel. Twichell v. Hall*, 44 N. D. 459, 171 N. W. 213.

Initiative amendment of constitution by people, is exercise of a political power, legislative in character, and state board of canvassers in determining and certifying vote of people, exercises a political function legislative in character. *State ex rel. Byerley v. State Board of Canvassers*, 44 N. D. 126, 172 N. W. 80.

See also *State v. Blaisdell*, 18 N. D. 31, 119 N. W. 360; *State ex rel. Fargo v. Wetz*, 40 N. D. 299, 5 A.L.R. 731, 168 N. W. 835; *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104; *Goughnour v. Brant*, 47 N. D. 368, 182 N. W. 309; *Dyer v. Hall*, — N. D. —, 199 N. W. 754.

See *Constitutional Law*, 12 C. J. pp. 682-696, §§ 18-34.

Effect of noncompliance with prescribed method of amending constitution. 10 L.R.A.(N.S.) 149.

Validation of unconstitutional statute by constitutional amendment. 60 L.R.A. 564; 38 L.R.A.(N.S.) 77.

Repeal of constitutional provision or amendment. 36 A.L.R. 1456.

Construction of requirement that proposed constitution amendment be entered in journals. 6 A.L.R. 1227.

Amendments proposed by initiative or subject to referendum. 50 L.R.A.(N.S.) 205; L.R.A.1917B, 23.

Amendments to constitution. 6 R. C. L. 24 et seq., and Suppa.

ARTICLE 16.—COMPACT WITH THE UNITED STATES.

§ 203. The following article shall be irrevocable without the consent of the United States and the people of this state:

1. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

2. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by this state on lands or property therein belonging to, or which may hereafter be purchased by the United States, or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be provided in the act of congress granting the same.

3. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the territory of Dakota may be justly and equitably pro-

CONSTITUTION OF NORTH DAKOTA.

vided for and made, and in pursuance of the requirements of an act of congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," the states of North Dakota and South Dakota, by proceedings of a joint commission, duly appointed under said act, the sessions whereof were held at Bismarck in said state of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the territory of Dakota which shall be assumed and paid by each of the states of North Dakota and South Dakota, respectively, to wit:

This agreement shall take effect and be in force from and after the admission into the union, as one of the United States of America, of either the state of North Dakota or the state of South Dakota.

The words "state of North Dakota," wherever used in this agreement, shall be taken to mean the territory of North Dakota in case the state of South Dakota shall be admitted into the union prior to the admission into the union of the state of North Dakota; and the words "state of South Dakota," wherever used in this agreement, shall be taken to mean the territory of South Dakota in case the state of North Dakota shall be admitted into the union prior to the admission into the union of the state of South Dakota.

The said state of North Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the territory of Dakota, approved March 8, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

The state of South Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota, that is to say, the state of North Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for insane at Jamestown, North Dakota, the face aggregate of which is \$266,000; also, bonds issued on account of the North Dakota university at Grand Forks, North Dakota, the face aggregate of which is \$96,700; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is \$93,600; also, refunding capitol building warrants dated April 1, 1889, \$83,507.46.

And the state of South Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for the insane at Yankton, South Dakota, the face aggregate of which is \$210,000; also, bonds issued on account of the school for deaf mutes, at Sioux Falls, South Dakota, the face aggregate of which is \$51,000; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is \$75,000; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is \$94,300; also, bonds issued on account of the agricultural college at Brookings, South Dakota, the face aggregate of which is \$97,500; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is \$49,400; also, bonds issued on account of the school of mines at Rapid City, South Dakota, the face aggregate of which is \$33,000; also, bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is \$30,000; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate

CONSTITUTION OF NORTH DAKOTA.

gate of which is \$25,000; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is \$45,000.

The states of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred, on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

The state of South Dakota shall pay to the state of North Dakota \$46,500, on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands, and the payment of said amount shall discharge and exempt the state of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institutions, grounds or buildings of the territory situated or located within the boundaries of the other state.

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 9, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed state of North Dakota, shall be credited to the state of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed state of South Dakota shall be credited to the state of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations, since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the act of the legislative assembly of the territory of Dakota, approved March 7, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this territory," being chapter 107 of the session laws of 1889 (that is, the part of such sums going to the territory), shall be equally divided between the states of North Dakota and South Dakota, and all taxes heretofore or hereafter paid into said treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed state of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed state of South Dakota; each state shall be credited also with all balances of appropriations made by the seventeenth legislative assembly of the territory of Dakota for the account of the public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore

CONSTITUTION OF NORTH DAKOTA.

mentioned, each state shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such state in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said state, as provided in this article; and if there should be a surplus at the time of such final adjustment, each state shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged it. And the state of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said state of North Dakota as its own debt or liability.

Initiative amendment of constitution by people, under this section, is political power, legislative in character, and state board of canvassers, in determining and certifying to vote of people on a proposed amendment, exercises political power, legislative in character. *State ex rel. Byerley v. State Board of Canvassers*, 44 N. D. 126, 172 N. W. 80.

See also *State v. Denoyer*, 6 N. D. 586, 72 N. W. 1014; *State ex rel. Baker v. Mountrail County*, 28 N. D. 389, 149 N. W. 120.

See Constitutional Law, 12 C. J. pp. 441-445, §§ 450-457, p. 1151, § 881; *States*, 36 Cyc. 832; *Public Lands*, 32 Cyc. 776; *Indians*, 31 C. J. pp. 497-525, §§ 43-100, pp. 544-545, §§ 149-150; *Taxation*, 37 Cyc. 717, 719, 729, 741.

Right to religious freedom. 6 R. C. L. 251 and Supps.

Title of Indians to public lands. 22 R. C. L. 237 and Supps.

Interference by state with power of Congress to dispose of public lands. 22 R. C. L. 247 and Supps.

Nature of Indian's title to land. 14 R. C. L. 123 and Supps.

Discrimination in taxation against citizens of other states. 26 R. C. L. 92 and Supps.

Prohibition of tax discrimination against citizens of other states. 6 R. C. L. 284 and Supps.

Federal agencies not taxable by states. 6 R. C. L. 139 and Supps.

Taxation of instrumentalities of United States. 26 R. C. L. 95 et seq., and Supps.

Taxation by state of property of Indians. 26 R. C. L. 99 and Supps.

State taxation of Indian lands. 14 R. C. L. 127 and Supps.

Admission of states into Union and effect thereof. 25 R. C. L. 370 and Supps.

Compacts between states. 25 R. C. L. 372.

§ 204. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the president of the United States; provided, legal process, civil and criminal, of this state, shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

Fort Totten military reservation held no longer within exclusive control of United States. *LaDuke v. Melin*, 45 N. D. 349, 177 N. W. 673.

See *Courts*, 15 C. J. pp. 1153-1160, §§ 633-634; *Criminal Law*, 16 C. J. p. 172, § 222; *United States*, 39 Cyc. 730.

Jurisdiction over military reservations. 8 R. C. L. 103 and Supps.

Acquisition by Federal government of jurisdiction within territorial limits of state. 26 R. C. L. 1442.

§ 205. The state of North Dakota hereby accepts the several grants of land granted by the United States to the state of North Dakota by an act of congress, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on equal footing with the original states, and to make donations of public lands to such states," under the conditions and limitations therein

CONSTITUTION OF NORTH DAKOTA.

mentioned; reserving the right, however, to apply to congress for modification of said conditions and limitations in case of necessity.

The proceeds of the sale of all school and institution lands must be kept as a perpetual fund, the interest and income of which can only be used for the maintenance of schools and educational institutions. State ex rel. University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

See Public Lands, 32 Cyc. 776, 864.

Grants to states. 22 R. C. L. 332 and Supps.

ARTICLE 17.—MISCELLANEOUS.

§ 206. The name of this state shall be "North Dakota." The state of North Dakota shall consist of all the territory included within the following boundary, to wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the state of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

See States, 36 Cyc. 839-844.

Boundaries. 25 R. C. L. 373 et seq., and Supps.

§ 207. The following described seal is hereby declared to be and hereby constituted the Great Seal of the state of North Dakota, to wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto "Liberty and Union, Now and Forever, One and Inseparable;" the words "Great Seal" at the top, the words "State of North Dakota" at the bottom; "October 1st" on the left and "1889" on the right. The seal to be two and one-half inches in diameter.

See Seals, 35 Cyc. 1167.

Judicial notice of state seals. 15 R. C. L. 1108 and Supps.

State seals. 24 R. C. L. 688.

§ 208. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws, exempting from forced sale to all heads of families a homestead, the value of which shall be limited and defined by law, and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens against the homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law.

Does not, in absence of legislation thereunder, repeal pre-existing exemption laws. Roesler v. Taylor, 3 N. D. 546, 58 N. W. 342.

Homestead laws are remedial and should be liberally construed with view of carrying out their obvious purpose. Dieter v. Fraine, 20 N. D. 488, 128 N. W. 684.

Husband, as head of the family, is entitled to claim as exempt a homestead, the fee to which is in the wife. Bremseth v. Olson, 16 N. D. 242, 13 L.R.A.(N.S.) 170, 112 N. W. 1056, 14 Ann. Cas. 1155.

Wife may claim exemptions as head of the family only where husband has been constructively deposed. Ness v. Jones, 10 N. D. 587, 88 Am. St. Rep. 755, 88 N. W. 706.

Sec. 3605, Rev. Code 1899, not a definition of term "homestead," but is definition and limitation of homestead exemption. Calner v. Calner, 15 N. D. 120, 106 N. W. 684.

Exemption to homestead claimants designed to protect, those who subject them-

CONSTITUTION OF NORTH DAKOTA.

selves to laws of this state, and not uncertain future residents. *Tromsdahl v. Nass*, 27 N. D. 441, 52 L.R.A.(N.S.) 746, 146 N. W. 719.

Act providing for distribution of avails of life insurance policy or any benefit payable by mutual aid or benevolent society, to heirs, or heirs at law of decedent, and exempting same from payment of debts, not in conflict with this section. *Farmers State Bank v. Smith*, 36 N. D. 225, 162 N. W. 302.

Husband and wife may be joined as defendants in action to determine adverse claims to homestead, where legal title is in husband's name. *Sexton v. Sutherland*, 37 N. D. 500, 164 N. W. 278.

Exemption of money or benefit provided by fraternal beneficiary society, from attachment or garnishment, valid. *Brown v. Steckler*, 40 N. D. 113, 1 A.L.R. 753, 168 N. W. 670.

Under §§ 7729, 7730, Comp. Laws 1913, homestead is subject to execution or forced sale, in satisfaction of judgments obtained on mechanics' or materialmen's liens, on debts secured by valid mortgage, and on debts secured for purchase thereof, and for taxes. *Cullen v. Sullivan*, — N. D. —, 199 N. W. 760.

See also *Re Carl A. Kaeppler*, 7 N. D. 435, 75 N. W. 789; *Cleveland v. McCanna*, 7 N. D. 455, 41 L.R.A. 852, 75 N. W. 908; *Garr, Scott & Co. v. Collin*, 15 N. D. 622, 110 N. W. 81; *Holcomb v. Holcomb*, 18 N. D. 561, 120 N. D. 547; *Severtson v. Peoples*, 28 N. D. 372, 148 N. W. 1054; *Stringer v. Elsaas*, 37 N. D. 20, 163 N. W. 558; *Krumenacker v. Andis*, 38 N. D. 500, 165 N. W. 524; *Jessen v. Schiller*, 46 N. D. 41, 179 N. W. 372; *Kittel v. Straus*, 47 N. D. 88, 181 N. W. 628; *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270; *First Nat. Bank v. Hallquist*, 48 N. D. 263, 184 N. W. 269; *Radke v. Padgett*, — N. D. —, 192 N. W. 97.

See Homesteads, 29 C. J. p. 770; Exemptions, 25 C. J. p. 1; Constitutional Law, 12 C. J. p. 967, §§ 526-527.

Self-executing effect of constitutional exemption. 16 L.R.A. 284.

Exemption of homestead from liability for torts. 24 L.R.A. 789; 16 L.R.A.(N.S.) 947.

Exemption of proceeds on sale of homestead. 19 L.R.A. 36.

Crops grown on homestead, or proceeds thereof, as exempt. 32 L.R.A.(N.S.) 577.

Right to claim homestead in property used as a hotel or boarding house. 41 L.R.A.(N.S.) 303.

A debtor's right of action against his creditor for collecting debt in another jurisdiction is evasion of exemption laws of their domicile. 47 L.R.A.(N.S.) 689.

What constitutes family. L.R.A.1917C, 361.

Wife as head of family within homestead statute. 51 L.R.A.(N.S.) 1121.

Liability of homestead in hands of devisee for debts of devisor. L.R.A.1918D, 1002.

Right to mechanic's lien as affected by acquisition of homestead right after making of contract or commencement of work. L.R.A.1918B, 818.

Homestead as subject of mechanic's lien. L.R.A.1918D, 1055.

Liability of homestead to assessment or lien for local improvement. L.R.A.1915E, 662.

Scope and effect of homestead exemption laws. 13 R. C. L. 599.

Operation and effect of exemption of homestead from forced sale. 13 R. C. L. 600.

Time as to which homestead exemption rights determined. 13 R. C. L. 601.

Particular debts or claims against which homestead exempted. 13 R. C. L. 602 et seq., and Supps.

Exemption of claims for labor or materials used in improvement of homestead. 13 R. C. L. 608 and Supps.

Personal property exempt from execution. 11 R. C. L. 508 et seq., and Supps.

Classification of exemption laws. 6 R. C. L. 391.

Waiver of exemption laws as against public policy. 6 R. C. L. 274 and Supps.

Effect of exemption laws on obligation of contracts. 6 R. C. L. 364 and Supps.

§ 209. The labor of children under twelve years of age shall be prohibited in mines, factories and workshops in this state.

See Constitutional Law, 12 C. J. p. 1283, § 1091; *Infants*, 31 C. J. p. 996, § 17; *Master and Servant*, 26 Cye. 978.

What places are included within term "business establishment," "mercantile institution," etc., as used in statutes relating to the employment of minors. 44 L.R.A.(N.S.) 1185.

CONSTITUTION OF NORTH DAKOTA.

Employment of child in violation of statute as negligence which will sustain an action by the child for personal injuries. 7 L.R.A.(N.S.) 335; 48 L.R.A.(N.S.) 656.

May one employing child under age rely on contributory negligence or assumption of risk, to defeat liability for personal injuries. 12 L.R.A.(N.S.) 461; 20 L.R.A.(N.S.) 876.

Liability of master for injury to minor who procures employment by misrepresenting his age. 15 L.R.A.(N.S.) 443; 20 L.R.A.(N.S.) 500; 25 L.R.A.(N.S.) 708.

Private action for violation of child labor laws. 9 L.R.A.(N.S.) 381.

Constitutionality of child labor laws. L.R.A.1915F, 829; 12 A.L.R. 1216; 21 A.L.R. 1437.

Constitutionality of statutes limiting hours of labor of children, or prohibiting labor at certain times. 12 A.L.R. 1224.

Private action for violation of child labor law. L.R.A.1915F, 554.

Children as separate class. 6 R. C. L. 394 and Supps.

Classification of occupations. 6 R. C. L. 398 and Supps.

Regulating employment of children. 14 R. C. L. 276 and Supps.

Statutes forbidding employment of children. 18 R. C. L. 552 and Supps.

§ 210. All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

Course of non-navigable stream may be diverted when substantial integrity of the stream will not be impaired. *Bigelow v. Draper*, 6 N. D. 152, 69 N. W. 570.

"Navigability in fact" is test as to whether inland lake is public water. *Roberts v. Taylor*, 47 N. D. 146, 181 N. W. 622.

Railway company which builds bridge across unnavigable stream, has continuing duty, not to obstruct passage of water. *State ex rel. Trimble v. Minneapolis St. P. & S. Ste. M. R. Co.* 28 N. D. 621, 150 N. W. 463.

See *Waters*, 40 Cyc. 542; *Navigable Waters*, 29 Cyc. 285.

Ownership of waters. 27 R. C. L. 1356 et seq., and Supps.

§ 211. Members of the legislative assembly and judicial department, except such inferior officers as may be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of North Dakota; and that I will faithfully discharge the duties of the office of according to the best of my ability, so help me God" (if an oath), (under pains and penalties of perjury), if an affirmation, and no other oath, declaration, or test shall be required as a qualification for any office or public trust.

Act requiring legislative candidate to file sworn petition stating that he is a candidate and requesting printing of name on party ballot and agreeing to vote for successful primary candidate for senator, valid. *State ex rel. McCue v. Blaisdell*, 18 N. D. 55, 24 L.R.A.(N.S.) 465, 138 Am. St. Rep. 741, 118 N. W. 141.

Where a statute is conflicting with constitution, court must enforce constitution. *State v. First Bank*, — N. D. —, 202 N. W. 391.

See also *Re Freerks*, 11 N. D. 120, 90 N. W. 265; *State ex rel. Miller v. Blaisdell*, 34 N. D. 321, 159 N. W. 401.

See *Oaths and Affirmations*, 29 Cyc. 1303; *Officers*, 29 Cyc. 1386; *States*, 36 Cyc. 848, 858; *Judges*, 33 C. J. p. 939, § 31.

Form and sufficiency of oath or affirmation. 20 R. C. L. 507 and Supps.

Oath of office. 22 R. C. L. 448 et seq.

Oath as incident of office. 22 R. C. L. 373 and Supps.

Taking of oath by judges. 15 R. C. L. 513 and Supps.

§ 212. The exchange of "black lists" between corporations shall be prohibited.

See *Constitutional Law*, 12 C. J. p. 1284, § 1097; *Conspiracy*, 12 C. J. p. 609, § 174.

Blacklisting employees. 63 L.R.A. 289.

Injunction against blacklisting. 20 L.R.A. 342; 4 L.R.A.(N.S.) 1121.

Action on the case for blacklisting. 4 L.R.A.(N.S.) 1120.

CONSTITUTION OF NORTH DAKOTA.

Blacklisting employees. L.R.A.1916C, 222.

Prohibition of blacklisting by Sherman Anti-Trust Act. 19 R. C. L. 57 and Supps.

Blacklisting employees. 15 R. C. L. 88; 16 R. C. L. 466, 467, 468 and Supps.

§ 213. The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property and shall not be liable for the debts of her husband.

An act making the wife liable for family necessities is not invalid. *Banner Mercantile Co. v. Hendricks*, 24 N. D. 16, 138 N. W. 993.

See *Husband and Wife*, 30 C. J. pp. 800-945, §§ 424-663½.

Right of husband's creditors to reach fruits of his management of or services in connection with wife's separate estate or business. 23 L.R.A.(N.S.) 1124.

Liability of wife's separate property for husband's debts. 13 R. C. L. 1146 and Supps.

Rights of creditors of husband in wife's separate estate. 13 R. C. L. 1159 et seq., and Supps.

Equitable separate estate of wife. 13 R. C. L. 1134 et seq.

Statutory separate estate of wife. 13 R. C. L. 1147 et seq.

ARTICLE 18.—CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

§ 214. Until otherwise provided by law, the member of the house of representatives of the United States apportioned to this state, shall be elected at large.

Until otherwise provided by law, the senatorial and representative districts shall be formed, and the senators and the representatives shall be apportioned as follows:

The first district shall consist of the townships of Walhalla, St. Joseph, Neche, Pembina, Bathgate, Carlisle, Joliet, Midland, Lincoln and Drayton, in the county of Pembina, and be entitled to one senator and two representatives.

The second district shall consist of the townships of St. Thomas, Hamilton, Cavalier, Akra, Beaulien, Thingvalla, Gardar, Park, Crystal, Elora and Lodema, in the county of Pembina, and be entitled to one senator and two representatives.

The third district shall consist of the townships of Perth, Latona, Adams, Silvesta, Cleveland, Morton, Vesta, Tiber, Medford, Vernon, Golden, Lampton, Eden, Rushford, Kensington, Dundee, Ops, Prairie Center, Fertile, Park River and Glenwood, in the county of Walsh, and be entitled to one senator and two representatives.

The fourth district shall consist of the townships of Forest River, Walsh Center, Grafton, Farmington, Ardock, village of Ardock, Harrison, city of Grafton, Oakwood, Martin, Walshville, Pulaski, Acton, Minto and St. Andrews, in the county of Walsh, and be entitled to one senator and three representatives.

The fifth district shall consist of the townships of Gilby, Johnstown, Strabane, Wheatfield, Hegton, Arvilla, Avon, Northwood, Lind, Grace, Larimore, and the city of Larimore, Elm Grove, Agnes, Inkster, Elkmount, Oakwood, Niagara, Moraine, Logan and Loretta, in the county of Grand Forks, and be entitled to one senator and two representatives.

The sixth district shall consist of the third, fourth, fifth and sixth wards of the city of Grand Forks, as now constituted, and the townships of Falconer, Harvey, Turtle River, Ferry, Rye, Blooming, Meckinock, Lakeville and Levant, in the county of Grand Forks, and be entitled to one senator and two representatives.

The seventh district shall consist of the first and second wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Oakville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentru, Americus, Michigan, Union and Washington, in the county of Grand Forks, and be entitled to one senator and two representatives.

CONSTITUTION OF NORTH DAKOTA.

The eighth district shall consist of the county of Traill and be entitled to one senator and four representatives.

The ninth district shall consist of the township of Fargo and the city of Fargo, in the county of Cass, and the fractional township number 139 in range 48, and be entitled to one senator and two representatives.

The tenth district shall consist of the townships of Noble, Wiser, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, Warren, Norman, Elm River, Harmony, Durbin, Addison, Davenport, Casselton and the city of Casselton, in the county of Cass, and be entitled to one senator and three representatives.

The eleventh district shall consist of the townships of Webster, Rush River, Hunter, Arthur, Amenia, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walberg, Watson, Page, Rich, Ayr, Buffalo, Howes, Eldrid, Highland, Rochester, Lake, Cornell, Tower, Hill, Clifton and Pontiac, in the county of Cass, and be entitled to one senator and three representatives.

The twelfth district shall consist of the county of Richland and be entitled to one senator and three representatives.

The thirteenth district shall consist of the county of Sargent and be entitled to one senator and two representatives.

The fourteenth district shall consist of the county of Ransom and be entitled to one senator and two representatives.

The fifteenth district shall consist of the county of Barnes and be entitled to one senator and two representatives.

The sixteenth district shall consist of the counties of Steele and Griggs and be entitled to one senator and two representatives.

The seventeenth district shall consist of the county of Nelson and be entitled to one senator and one representative.

The eighteenth district shall consist of the county of Cavalier and be entitled to one senator and two representatives.

The nineteenth district shall consist of the counties of Towner and Rolette, and be entitled to one senator and one representative.

The twentieth district shall consist of the counties of Benson and Pierce, and be entitled to one senator and two representatives.

The twenty-first district shall consist of the county of Ramsey, and be entitled to one senator and two representatives.

The twenty-second district shall consist of the counties of Eddy, Foster and Wells, and be entitled to one senator and two representatives.

The twenty-third district shall consist of the county of Stutsman, and be entitled to one senator and two representatives.

The twenty-fourth district shall consist of the county of LaMoure, and be entitled to one senator and one representative.

The twenty-fifth district shall consist of the county of Dickey, and be entitled to one senator and two representatives.

The twenty-sixth district shall consist of the counties of Emmons, McIntosh, Logan and Kidder, and be entitled to one senator and two representatives.

The twenty-seventh district shall consist of the county of Burleigh, and be entitled to one senator and two representatives.

The twenty-eighth district shall consist of the counties of Bottineau and McHenry, and be entitled to one senator and one representative.

The twenty-ninth district shall consist of the counties of Ward, McLean, and all the unorganized counties lying north of the Missouri river, and be entitled to one senator and one representative.

The thirtieth district shall consist of the counties of Morton and Oliver, and be entitled to one senator and two representatives.

The thirty-first district shall consist of the counties of Mercer, Stark and Billings, and all the unorganized counties lying south of the Missouri river, and be entitled to one senator and one representative.

CONSTITUTION OF NORTH DAKOTA.

Senate must be composed at all times of two classes of senators as nearly equal in number as practicable. State ex rel. Williams v. Meyer, 20 N. D. 631, 127 N. W. 834.

See States, 36 Cyc. 845-848.

Legislative apportionment. 9 R. C. L. 1002 et seq., and Supps.

ARTICLE 19.—PUBLIC INSTITUTIONS.

§ 215. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States in the act of Congress approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe subject to the limitations provided in the article on school and public lands contained in this Constitution.

First: The seat of government at the city of Bismarck in the county of Burleigh.

Second: The State University and the School of Mines at the city of Grand Forks, in the county of Grand Forks.

Third: The Agricultural College at the city of Fargo, in the county of Cass.

Fourth: A state normal school at the city of Valley City, in the county of Barnes, and the legislative assembly, in apportioning the grant of eighty thousand acres of land for normal schools made in the act of Congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

Fifth: The school for the deaf and dumb of North Dakota at the city of Devils Lake, in the county of Ramsey.

Sixth: A state training school at the city of Mandan, in the county of Morton.

Seventh: A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by Congress in the act aforesaid for state normal schools shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

Eighth: A state hospital for the insane at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of Congress aforesaid for other educational and charitable institutions to the benefit and for the endowment of said institution, and there shall be located at or near the city of Grafton, in the county of Walsh, an institution for the feeble minded, on the grounds purchased by the secretary of the interior for a penitentiary building.

Explanatory note. This is the present form of this section, and is Article 38 of Amendments of the Constitution, which was approved and ratified in 1920. The only change made by this amendment was to substitute the term "training school" for "reform school" in subdivision 6. Subdivision 8 had been changed to its present form by Article 6 of Amendments, approved and ratified in 1904, and subdivision 5 had been changed to its present form by Article 5 of Amendments, approved and ratified in 1904.

The original form of the section was as follows:

The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the act of Congress, approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe, subject to the limitations provided in the article on school and public lands contained in this constitution:

First. The seat of government at the city of Bismarck, in the county of Burleigh.

Second. The State University and the School of Mines at the city of Grand Forks, in the county of Grand Forks.

CONSTITUTION OF NORTH DAKOTA.

Third. The Agricultural College at the city of Fargo, in the county of Cass.

Fourth. A State Normal school at the city of Valley City, in the county of Barnes; and the legislative assembly in apportioning the grant of eighty thousand acres of land for normal schools made in the act of Congress referred to shall grant to the said normal school at Valley City as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

Fifth. The Deaf and Dumb Asylum at the city of Devils Lake, in the county of Ramsey.

Sixth. A State Reform School at the city of Mandan, in the county of Morton.

Seventh. A State Normal School at the city of Mayville, in the county of Traill; and the legislative assembly in apportioning the grant of lands made by Congress, in the act aforesaid for state normal schools, shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

Eighth. A State Hospital for the Insane and Institution for the Feeble Minded in connection therewith, at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of Congress aforesaid for "other educational and charitable institutions" to the benefit and for the endowment of said institution.

Establishment of additional normal schools by legislature prohibited. *State ex rel. Miller v. Taylor*, 22 N. D. 362, 133 N. W. 1046.

See also *State ex rel. Linder v. Hall*, 35 N. D. 34, 159 N. W. 281.

See *States*, 36 Cyc. 869; *Public Lands*, 32 Cyc. 867-901; *Colleges and Universities*, 11 C. J. p. 982, § 7, p. 987, § 13; *Schools and School Districts*, 35 Cyc. 817-821; *Asylums*, 5 C. J. p. 1416.

Lands granted to state for a particular purpose. 25 R. C. L. 389 and Supps.

Federal land grants to states. 22 R. C. L. 332 et seq., and Supps.

Federal land grants to universities and colleges. 27 R. C. L. 147.

Federal school land grants. 24 R. C. L. 586.

§ 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand (170,000) acres of land made by the United States for "other educational and charitable institutions" as is allotted by law, namely:

First: A soldiers' home, when located or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand (40,000) acres of land.

Second: A blind asylum, or such other institution as the legislative assembly may determine, at such place in the county of Pembina as the qualified electors of said county may determine at an election to be held as prescribed by the legislative assembly with a grant of thirty thousand (30,000) acres.

Third: An industrial school and school for manual training or such other educational or charitable institution as the legislative assembly may provide, at the town of Ellendale, in the county of Dickey, with a grant of forty thousand (40,000) acres.

Fourth: A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

Fifth: A scientific school or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand (40,000) acres.

Sixth: A state normal school at the city of Minot, in the county of Ward.

Seventh: (a) A state normal school at the city of Dickinson, in the county of Stark.

Seventh: (b) A state hospital for the insane at such place within this state as shall be selected by the legislative assembly.

CONSTITUTION OF NORTH DAKOTA

Provided, That no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this Constitution.

Explanatory note. This is the present form of this section. The original form of the section consisted of the first five subdivisions. Subdivision sixth was added by Article 17 of Amendments to the Constitution, which was approved and ratified in 1914; subdivision seventh (a) by Article 21 of Amendments, which was approved and ratified in 1916; and subdivision seventh (b) by Article 22 of Amendments, which was also approved and ratified in 1916.

Word "revision" in proviso of fifth subdivision synonymous with "amendment" in section 202; prohibits establishment of additional schools. *State ex rel. Miller v. Taylor*, 22 N. D. 362, 133 N. W. 1046.

See also *State ex rel. Skeffington v. Seigfried*, 40 N. D. 57, 168 N. W. 62.

See *States*, 36 Cyc. 869; *Public Lands*, 32 Cyc. 867-901; *Colleges and Universities*, 11 C. J. p. 982, § 7, p. 987, § 13; *Schools and School Districts*, 35 Cyc. 817-821; *Asylums*, 5 C. J. p. 416.

ARTICLE 20.—PROHIBITION.

§ 217. No person, association or corporation shall within this state, manufacture for sale or gift, any intoxicating liquors, and no person, association or corporation shall import any of the same for sale or gift, or keep or sell or offer the same for sale, or gift, barter or trade as a beverage. The legislative assembly shall by law prescribe regulations for the enforcement of the provisions of this article and shall thereby provide suitable penalties for the violation thereof.

State v. Swan, 1 N. D. 5, 44 N. W. 492.

Legislature has no power to create new offices in contravention of whole scheme of government, as indicated by other provisions. *Ex parte Corliss*, 16 N. D. 470, 114 N. W. 962.

Prohibition article legally adopted. *State v. Barnes*, 3 N. D. 319, 55 N. W. 883.

States have power to control regulation and prohibit within their borders, traffic in liquor. *State ex rel. Germain v. Ross*, 39 N. D. 630, 170 N. W. 121.

See also *State ex rel. Byerley v. State Board of Canvassers*, 44 N. D. 126, 172 N. W. 80; *Green v. Frazier*, 44 N. D. 395, 176 N. W. 11; *Sargent County v. State*, 47 N. D. 561, 182 N. W. 270; *State v. Pauley*, — N. D. —, 192 N. W. 91; *State ex rel. Linde v. Hall*, 35 N. D. 34, 159 N. W. 281; *State v. Webb*, 36 N. D. 235, 162 N. W. 358; *Blumardt v. McDonald*, 36 N. D. 518, 162 N. W. 409; *Scott v. State*, 37 N. D. 90, L.R.A.1917E, 1107, 163 N. W. 813.

See *Intoxicating Liquors*, 33 C. J. pp. 503-510, §§ 30-39, pp. 575-618, §§ 192-252, pp. 706-802, §§ 418-562.

Right to prohibit manufacture of liquors. 3 A.L.R. 285.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state legislation. 10 A.L.R. 1587; 11 A.L.R. 1320; 26 A.L.R. 661.

Prohibition of manufacture, sale or gift of intoxicating liquors. 15 R. C. L. 263 et seq., and Supps.

Constitutionality of prohibition legislation. 15 R. C. L. 258 and Supps.

Power of state to prohibit importation of intoxicating liquors. 6 R. C. L. 143.

Prohibition of manufacture and sale of intoxicating liquors as exercise of police power. 6 R. C. L. 223 and Supps.

SCHEDULE.

See *Constitutional Law*, 12 C. J. p. 680, § 13, pp. 682-696, §§ 14-34; *States*, 36 Cyc. 833.

Schedules and continuity of constitutions. 6 R. C. L. 36 and Supps.

Admission of states into Union and effect thereof. 25 R. C. L. 371 and Supps.

§ 1. That no inconvenience may arise from a change of territorial government to state government, it is declared that all writs, actions, prosecutions, claims and rights of individuals and bodies corporate shall continue as if no change of government had taken place, and all processes which may, before

SCHEDULE.

the organization of the judicial department under this constitution, be issued under the authority of the territory of Dakota shall be as valid as if issued in the name of the state.

District court of state, successor to district court of territory, and has jurisdiction to render judgments in actions pending at time of admission of state to Union. *Braithwaite v. Power*, 1 N. D. 455, 48 N. W. 354.

See also *State ex rel. Linde v. Robinson*, 35 N. D. 417, 160 N. W. 514.

§ 2. All laws now in force in the territory of Dakota, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations or be altered or repealed.

Territorial enactments, carried forward by constitution, and became law of state. *State ex rel. Linde v. Robinson*, 35 N. D. 417, 160 N. W. 514.

Constitutional provision exempting from forced sale, a homestead, does not in absence of legislation thereunder repeal pre-existing exemption laws. *Roesler & White v. Taylor*, 3 N. D. 546, 58 N. W. 342.

Constitutional provision requiring legislature to prescribe duties and compensation of county, township and district officers, does not, in absence of legislation thereunder, repeal pre-existing law giving boards of county commissioners power to fix salary of state's attorneys. *Doherty v. Ransom County*, 5 N. D. 1, 63 N. W. 148.

See also *State ex rel. Twichell v. Hall*, 44 N. D. 459, 171 N. W. 213; *State ex rel. Langer v. Olson*, 44 N. D. 614, 176 N. W. 528; *North Dakota ex rel. Ohlquist v. Swan*, as Sheriff, 1 N. D. 5, 44 N. W. 492; *O'Laughlin v. Carlson*, 30 N. D. 213, 152 N. W. 675.

§ 3. All fines, penalties, forfeitures and escheats accruing to the territory of Dakota shall accrue to the use of the states of North Dakota and South Dakota and may be sued for and recovered by either of said states as necessity may require.

§ 4. All recognizances, bonds, obligations or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state; all bonds, obligations or other undertakings executed to this territory, or to any officer in his official capacity, shall pass over to the proper state authority, and to their successors in office, for the use therein respectively expressed, and may be sued for and recovered accordingly; all criminal prosecutions and penal actions which have arisen, or may arise before the organization of the judicial department, under this constitution, or which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

§ 5. All property, real and personal, and credits, claims and choses in action belonging to the territory of Dakota at the time of the adoption of this constitution, shall be vested in and become the property of the states of North Dakota and South Dakota.

§ 6. Whenever any two of the judges of the supreme court of the state, elected under the provisions of this constitution shall have qualified in their offices, the causes then pending in the supreme court of the territory on appeal or writ of error from the district courts of any county or subdivision within the limits of this state, and the papers, records and proceedings of said court shall pass into the jurisdiction and possession of the supreme court of the state, except as otherwise provided in the enabling act of congress, and until so superseded the supreme court of the territory and the judges thereof shall continue, with like powers and jurisdiction as if this constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this constitution shall have qualified in his office, the several causes then pending in the district court of the territory within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into

SCHEDULE.

the jurisdiction and possession of the district court of the state for such county, except as provided in the enabling act of congress, and until the district courts of this territory shall be superseded in the manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the territory.

Upon admission of state to Union, state district court, successor to territorial district court, and state court has power to issue execution on judgments rendered in territorial court, and judges have power to institute proceedings on such judgments. *Merchants Nat. Bank of Bismarek v. Braithwaite*, 7 N. D. 358, 75 N. W. 244.

State district court not successor to territorial district court for purpose of inquiring into merits of judgment rendered by territorial court, such action ceased to be pending. *Campbell v. Coulston*, 19 N. D. 645, 124 N. W. 689.

§ 7. Until otherwise provided by law, the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts respectively of the state.

§ 8. Whenever this constitution shall go into effect, the books, records and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the county court of the same county, and the said county court shall proceed to final decree or judgment, order or other determination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. And until the election and qualification of the judges of the county courts provided for in this constitution, the probate judges shall act as the judges of the county courts within their respective counties, and the seal of the probate court in each county shall be the seal of the county court therein, until the said court shall have procured a proper seal.

§ 9. The terms "probate court" or "probate judge," whenever occurring in the statutes of the territory, shall, after this constitution goes into effect, be held to apply to the county court or county judge.

§ 10. All territorial, county and precinct officers, who may be in office at the time this constitution takes effect, whether holding their offices under the authority of the United States or of the territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this constitution, until their successors shall be elected and qualified in accordance with the provisions of this constitution, and official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted; and such officers for their term of service, under this constitution, shall receive the same salaries and compensation as is by this constitution or by the laws of the territory, provided for like officers; provided, that the county and precinct officers shall hold their offices for the term for which they were elected. There shall be elected in each organized county in this state, at the election to be held for the ratification of this constitution, a clerk of the district court, who shall hold his office under said election until his successor is duly elected and qualified. The judges of the district court shall have power to appoint state's attorneys in any organized counties where no such attorneys have been elected, which appointment shall continue until the general election to be held in 1890, and until his successor is elected and qualified.

Does not prohibit legislature from abolishing office of county assessor, before expiration of term when constitution took effect. *State ex rel. Faussett v. Harris*, 1 N. D. 190, 45 N. W. 1101.

§ 11. This constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

SCHEDULE.

§ 12. Immediately upon the adjournment of this convention the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of the constitutional convention shall issue a proclamation, which shall be published and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people on the first Tuesday in October, 1889, of all the state and district officers created and made elective by this constitution. This constitution shall be submitted for adoption or rejection at said election to a vote of the electors qualified by the laws of this territory to vote at all elections. At the election provided for herein the qualified voters shall vote directly for or against this constitution and for or against the article separately submitted.

§ 13. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given for the period of twenty days in the manner provided by law. Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns for all state and district officers, and members of the legislative assembly, shall be made to the canvassing board hereinafter provided for.

§ 14. The governor, secretary and chief justice, or a majority of them, shall constitute a board of canvassers to canvass the vote of such election for all state and district officers and members of the legislative assembly. The said board shall assemble at the seat of government of the territory on the fifteenth day after the day of such election (or on the following day if such day falls on Sunday), and proceed to canvass the votes on the adoption of this constitution and for all state and district officers and members of the legislative assembly in the manner provided by the laws of the territory for canvassing the vote for delegate to congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the secretary of the territory an abstract certified by them, of the number of votes cast for or against the adoption of the constitution, and for each person for each of said offices, and of the total number of votes cast in each county.

§ 15. All officers elected at such election shall, within sixty days after the date of the executive proclamation admitting the state of North Dakota into the union, take the oath required by this constitution, and give the same bond required by the law of the territory to be given in case of like officers of the territory and districts, and shall thereupon enter upon the duties of their respective offices; but the legislative assembly may require by law all such officers to give other or further bonds as a condition of their continuance in office.

See State ex rel. Linde v. Robinson, 35 N. D. 417, 160 N. W. 514.

§ 16. The judges of the district court who shall be elected at the election herein provided for shall hold their offices until the first Monday in January, 1893, and until their successors are elected and qualified. All other state officers, except judges of the supreme court, who shall be elected at the election herein provided for, shall hold their offices until the first Monday in January, 1891, and until their successors are elected and qualified. Until otherwise provided by law the judges of the supreme court shall receive for their services the salary of four thousand dollars per annum, payable quarterly; and the district judges shall receive for their services the salary of three thousand dollars per annum, payable quarterly.

See State ex rel. Linde v. Robinson, 35 N. D. 417, 160 N. W. 514.

SCHEDULE.

§ 17. The governor-elect of the state immediately upon his qualifying and entering upon the duties of his office shall issue his proclamation convening the legislative assembly of the state at the seat of government, on a day to be named in said proclamation, and which shall not be less than fifteen nor more than forty days after the date of such proclamation. And said legislative assembly after organizing shall proceed to elect two senators of the United States for the state of North Dakota; and at said election the two persons who shall receive a majority of all the votes cast by the said senators and representatives shall be elected such United States senators. And the presiding officers of the senate and house of representatives shall each certify the election to the governor and secretary of the state of North Dakota; and the governor and secretary of state shall certify the election of such senators as provided by law.

First legislature, convened to elect senators, had authority to pass laws. State ex rel. Larabee v. Barnes, 3 N. D. 319, 55 N. W. 883.

See also State ex rel. Langer v. Olson, 44 N. D. 614, 176 N. W. 528.

§ 18. At the election herein provided for there shall be elected a representative to the fifty-first congress of the United States by the electors of the state at large.

§ 19. It is hereby made the duty of the legislative assembly at its first session to provide for the payment of all debts and indebtedness authorized to be incurred by the constitutional convention of North Dakota, which shall remain unpaid after the appropriation made by congress for the same shall have been exhausted.

§ 20. There shall be submitted at the same election at which this constitution is submitted for rejection or adoption, article 20, entitled "Prohibition," and persons who desire to vote for said article shall have written or printed on their ballots "For Prohibition," and all persons desiring to vote against said article shall have written or printed on their ballots "Against Prohibition." If it shall appear according to the returns herein provided for that a majority of all the votes cast at said election for and against prohibition are for prohibition, then said article 20 shall be and form a part of this constitution and be in full force and effect as such from the date of the admission of this state into the union. But if a majority of said votes shall appear according to said returns to be against prohibition, then said article 20 shall be null and void and shall not be a part of this constitution.

See State ex rel. Byerley v. State Board Canvassers, 44 N. D. 126, 172 N. W. 80.

§ 21. The agreement made by the joint commission of the constitutional conventions of North Dakota and South Dakota concerning the records, books and archives of the territory of Dakota, is hereby ratified and confirmed; which agreement is in the words following, that is to say:

The following books, records and archives of the territory of Dakota shall be the property of North Dakota, to wit: All records, books and archives in the offices of the governor and secretary of the territory (except records of article of incorporation of domestic corporations, returns of election of delegates to the constitutional convention of 1889 for South Dakota, returns of elections held under the so-called local option law, in counties within the limits of South Dakota, bonds of notaries public appointed for counties within the limits of South Dakota, papers relating to the organization of counties situate within the limits of South Dakota, all which records and archives are a part of the records and archives of said secretary's office; excepting also, census returns from counties situate within the limits of South Dakota and papers relating to requisitions issued upon the application of officers of counties situate within the limits of South Dakota, all of which are a part of the records and archives of said governor's office). And the following

SCHEDULE.

records, books and archives shall also be the property of the state of North Dakota, to wit:

Vouchers in the office or custody of the auditor of this territory relating to expenditures on account of public institutions, grounds or buildings situate within the limits of North Dakota. One warrant register in the office of the treasurer of this territory, being a record of warrants issued under and by virtue of chapter 24 of the laws enacted by the eighteenth legislative assembly of Dakota territory. All letters, receipts and vouchers in the same office now filed by counties and pertaining to counties within the limits of North Dakota. Paid and canceled coupons in the same office representing interest on bonds which said state of North Dakota is to assume and pay. Reports of gross earnings of the year 1888 in the same office, made by corporations operating lines of railroad situated wholly or mainly within the limits of North Dakota. Records and papers of the office of the public examiner of the second district of the territory. Records and papers of the office of the district board of agriculture. Records and papers in the office of the board of pharmacy of the district of North Dakota.

All records, books and archives of the territory of Dakota which it is not herein agreed shall be the property of North Dakota, shall be the property of South Dakota.

The following books shall be copied and the copies shall be the property of North Dakota and the costs of such copies shall be borne equally by said states of North Dakota and South Dakota, that is to say:

Appropriation Ledger for years ending November 1889-90 — one volume.

The Auditor's Current Warrant Register — one volume.

Insurance Record for 1889 — one volume.

Treasurer's Cash Book — "D."

Assessment Ledger — "B."

Dakota Territory Bond Register — one volume.

Treasurer's Current Ledger — one volume.

The originals of the foregoing volumes which are to be copied shall at any time after such copying shall have been completed be delivered on demand to the proper authorities of the state of South Dakota.

All other records, books and archives which it is hereby agreed shall be the property of South Dakota, shall remain at the capitol of North Dakota until demanded by the legislature of the state of South Dakota, and until the state of North Dakota shall have had a reasonable time after such demand is made to provide copies or abstracts of such portions thereof as the said state of North Dakota may desire to have copies or abstracts of.

The state of South Dakota may also provide copies or abstracts of such records, books and archives, which it is agreed shall be the property of North Dakota, as said state of South Dakota shall desire to have copies or abstracts of.

The expenses of all copies or abstracts of records, books and archives which it is herein agreed may be made, shall be borne equally by said two states.

§ 22. Should the counties containing lands which form a part of the grant of lands made by congress to the Northern Pacific Railroad company be compelled by law to refund moneys paid for such lands or any of them by purchasers thereof of tax sales thereof, based upon taxes illegally levied upon said lands, then and in that case the state of North Dakota shall appropriate the sum of twenty-five thousand dollars (\$25,000) or so much thereof as may be necessary to reimburse said counties for the amount so received from said illegal tax sales and paid by said counties into the treasury of Dakota territory.

§ 23. This constitution shall, after its enrollment, be signed by the president of this convention and the chief clerk thereof, and such delegates as

SCHEDULE.

desire to sign the same, whereupon it shall be deposited in the office of the secretary of the territory, where it may be signed at any time by any delegate who shall be prevented from signing the same for any reason at the time of the adjournment of this convention.

§ 24. In case the territorial officers of the territory of Dakota, or any of them who are now required by law to report to the governor of the territory, annually or biennially, shall prepare and publish such reports covering the transactions of their offices up to the time of the admission of the state of North Dakota into the union; the legislative assembly shall make sufficient appropriations to pay one half of the cost of such publication.

§ 25. The governor and secretary of the territory are hereby authorized to make arrangements for the meeting of the first legislative assembly, and the inauguration of the state government.

§ 26. The legislative assembly shall provide for the editing, and for the publication, in an independent volume, of this constitution, as soon as it shall take effect, and whenever it shall be altered or amended, and shall cause to be published in the same volume the Declaration of Independence, the Constitution of the United States and the Enabling Act.

Done at Bismarck, Dakota, in open convention, this 17th day of August, A. D. 1889.

F. B. FANCHER, PRESIDENT.

JOHN G. HAMILTON, Chief Clerk.

AMENDMENTS

OF THE

Constitution of North Dakota

ARTICLE 1.

The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets.

See State ex rel. Haig v. Hauge, 37 N. D. 583, L.R.A.1918A, 522, 164 N. W. 289.

See Lotteries, 38 C. J. p. 285.

Prohibition of lotteries. 17 R. C. L. 1212 and Supps.

ARTICLE 2.

The first part of this article is § 121 of the Constitution ante, since amended. See note following such section. The second part of the article is § 127, ante.

ARTICLE 3.

Section 76 of the Constitution, ante, constitutes this article.

ARTICLE 4.

Section 179, ante, since amended, constitutes this article. See note following such section.

ARTICLE 5.

Subdivision fifth of § 215, ante, constitutes this article.

ARTICLE 6.

Subdivision eighth of § 215, ante, constitutes this article.

ARTICLE 7.

A clause at the end of § 176, ante, was added by this article. See note following § 176, ante.

ARTICLE 8.

Section 162, ante, constitutes this article.

ARTICLE 9.

Section 158, ante, since amended constitutes this article. See note following such section.

AMENDMENTS OF THE CONSTITUTION OF NORTH DAKOTA.

ARTICLE 10.

Section 89, ante, since amended, constitutes this article.

ARTICLE 11.

Section 158, ante, since amended constitutes this article. See note following such section.

ARTICLE 12.

Subdivision sixth was added to § 216, ante, by this article.

ARTICLE 13.

Section 158, ante, constitutes this article.

ARTICLE 14.

The legislative assembly is hereby authorized and empowered to provide by law for the erection, purchasing or leasing and operation of one or more terminal grain elevators in the states of Minnesota or Wisconsin, or both, to be maintained and operated in such manner as the legislative assembly shall prescribe, and provide for inspection, weighing and grading of all grain received in such elevator or elevators. [Approved and ratified 1912.]

See Warehousemen, 40 Cyc. 396; States, 36 Cyc. 844.

ARTICLE 15.

Section 25, ante, since amended, constitutes this article. See note following such section.

ARTICLE 16.

Section 202, ante, since amended, constitutes this article. See note following such section.

ARTICLE 17.

Subdivision sixth was added to § 216, ante, by this section.

ARTICLE 18.

Section 185, ante, since amended, constitutes this article. See note following such section.

ARTICLE 19.

The legislative assembly is hereby authorized and empowered to provide by law for the erection, purchasing or leasing and operation of one or more terminal grain elevators in the state of North Dakota, to be maintained and operated in such manner as the legislative assembly shall prescribe, and provide for inspection, weighing and grading of all grain received in such elevator or elevators.

State regulation of grain elevators. 27 R. C. L. 959 and Supps.

Control of businesses affected with a public interest. 6 R. C. L. 226.

ARTICLE 20.

The first part of this article is § 176 of the Constitution, ante, since amended. See note following such section. The second part of the article is § 179, ante.

ARTICLE 21.

Subdivision seventh (a) was added to § 216, ante, by this article.

AMENDMENTS OF THE CONSTITUTION OF NORTH DAKOTA.

ARTICLE 22.

Subdivision seventh (b) was added to § 216, ante, by this article.

ARTICLE 23.

Section 135, ante, constitutes this article.

ARTICLE 24.

The legislative assembly may by law provide for the levy of a tax upon such lands as may be provided by law of the state for the purpose of creating a fund to insure the owners of growing crops against losses by hail; provided, that such tax shall not affect the tax of four mills levied by the Constitution. The legislative assembly may classify such lands of the state as may be provided by law, and divide the state into districts on such basis as shall seem just and necessary and may vary the tax rate in such districts in accordance with the risk, in order to secure an equitable distribution of the burden of such tax among the owners of such land as may be provided by law.

Indemnity hail tax provided by chap. 77, Laws 1921, not a tax within purview of constitution, and does not create lien paramount to antecedent real estate mortgage. *Davis v. McLean County*, — N. D. —, 204 N. W. 459.

See also *State ex rel. Bauer v. Nestos*, 48 N. D. 894, 187 N. W. 233.

Construction of hail insurance policy. 4 A.L.R. 1298; 7 A.L.R. 373; 35 A.L.R. 267.

Relief of victims of public calamity. 19 R. C. L. 722.

ARTICLE 25.

Section 89, ante, constitutes this article.

ARTICLE 26.

Section 25, ante, constitutes this article.

ARTICLE 27.

Section 67, ante, constitutes this article.

ARTICLE 28.

Section 202, ante, constitutes this article.

ARTICLE 29.

Section 176, ante, constitutes this article.

ARTICLE 30.

Section 177, ante, constitutes this article.

ARTICLE 31.

Section 182, ante, since amended constitutes this article. See note following such section.

ARTICLE 32.

Section 185, ante, constitutes this article.

ARTICLE 33.

The qualified electors of the state or of any county, or of any congressional, judicial or legislative district may petition for the recall any elective congress-

AMENDMENTS OF THE CONSTITUTION OF NORTH DAKOTA.

sional, state, county, judicial or legislative officer by filing a petition with the officer with whom the petition for nomination to such office in the primary election is filed, demanding the recall of such officer. Such petition shall be signed by at least thirty per cent of the qualified electors who voted at the preceding election for the office of governor in the state, county or district from which such officer is to be recalled. The officer with whom such petition is filed shall call a special election to be held not less than forty or more than forty-five days from the filing of such petition.

The officer against whom such petition has been filed shall continue to perform the duties of his office until the result of such special election shall have been officially declared. Other candidates for such office may be nominated in the manner as is provided by law in primary elections. The candidate who shall receive the highest number of votes shall be deemed elected for the remainder of the term. The name of the candidate against whom the recall petition is filed shall go on the ticket unless he resigns within ten days after the filing of the petition. After one such petition and special election, no further recall petition shall be filed against the same officer during the term for which he was elected. This article shall be self executing and all of its provisions shall be treated as mandatory. Laws may be enacted to facilitate its operation, but no law shall be enacted to hamper, restrict or impair the right of recall.

Does not apply to county commissioners. *Goughnour v. Brant*, 47 N. D. 368, 182 N. W. 309.

Secretary of state exercises duty and discretion concerning sufficiency of recall petitions, and presumption is that he has exercised his duty and discretion as to recall election. *State v. Hall*, — N. D. —, 186 N. W. 284.

Recall of officers. 22 R. C. L. 577 et seq.

ARTICLE 34.

Section 161, ante, constitutes this article.

ARTICLE 35.

Section 183, ante, constitutes this article.

ARTICLE 36.

Amendment. Every qualified elector who shall have resided in the state one year, and in the county ninety days, and in the precinct thirty days next preceding any election, shall be entitled to vote at such election; provided, that where a qualified elector moves from one precinct to another within the same county, he shall be entitled to vote in the precinct from which he moved, until he establishes his residence in the precinct to which he moved.

Explanatory note. The above article was again amended in 1922, and appears as Article 40, post.

Residence in voting district. 9 R. C. L. 1031 and Supps.

ARTICLE 37.

Section 121, ante, constitutes this article.

ARTICLE 38.

Section 215, ante, constitutes this article.

ARTICLE 39.

Section 162, ante, constitutes this article.

ARTICLE 40.

Every qualified elector, who shall have resided in the state one year, in the

AMENDMENTS OF THE CONSTITUTION OF NORTH DAKOTA.

county 90 days and in the precinct 30 days next preceding any election, shall be entitled to vote at such election. Provided that where a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moves until he establishes his residence in the precinct to which he moves.

Effect of residential requirements of state law on constitutionality of absentee voters' law. 14 A.L.R. 1260; 19 A.L.R. 308; 35 A.L.R. 819.

Residence in voting district. 9 B. C. L. 1031 and Supps. .

ARTICLE 41.

Section 173, ante, constitutes this article.

ARTICLE 42.

Section 182, ante, constitutes this article.