

# JUSTICES' CODE

- CHAPTER 2. GENERAL POWERS OF JUSTICES OF PEACE, §§ 9006-9015a.**  
3. PROCEDURE IN CIVIL ACTIONS, §§ 9019-9117.  
6. APPEALS, §§ 9163-9174.  
8. BOARDS OF CONCILIATION, §§ 9187-9192a15.

## CHAPTER 2.

### GENERAL POWERS OF JUSTICES OF THE PEACE.

**§ 9006.** Comp. Laws, 1913.

Justices of the peace have concurrent jurisdiction with district court in all civil actions either tort or contract, when amount involved, exclusive of costs, does not exceed \$200. *Jorgenson v. Farmers & M. Bank*, 44 N. D. 98, 170 N. W. 894.

In action on notes secured by chattel mortgage, justice held to have jurisdiction to award judgment on notes, although portion thereof relating to enforcement of chattel mortgage is invalid. *Palmer v. Donovan*, 44 N. D. 348, 175 N. W. 866.

**§ 9009.** Comp. Laws, 1913.

*Scandinavian American Bank v. Hall*, 37 N. D. 293, 164 N. W. 22; *Demars v. Gardner*, 27 N. D. 60, 145 N. W. 129.

**§ 9014. Docket to be deposited with the clerk of the district court.** Every county justice of the peace upon the expiration of his term of office must deposit with the clerk of the district court his official dockets and all papers filed in his office, his own as well as those of his predecessors, if any, or any other which may be in his custody, to be kept as public records. [Laws 1921, ch. 82, § 1.]

*Justices of the Peace*, 35 C. J. p. 709, § 370.  
Requisites of docket. 16 R. C. L. 380.

**§ 9015. Docket; where deposited when vacancy occurs.** If the office of a county justice of the peace becomes vacant by his death, removal or otherwise before his successor is elected and qualified, the dockets and papers in possession of such justice must be deposited in the office of the clerk of the district court to be by him delivered to the successor of such justice. [Laws 1921, ch. 82, § 2.]

*Justices of the Peace*, 35 C. J. p. 709, § 370.  
Removal of justice of peace. 16 R. C. L. 337.

**§ 9015a. Penalties.** Any county justice of the peace, or any person, violating any of the provisions of this act shall be liable to a fine of not less than ten dollars nor more than one hundred dollars, to be recovered in a civil action by the county. [Laws 1921, ch. 82, § 3.]

*Justices of the Peace*, 35 C. J. p. 484, § 54.

## CHAPTER 3.

### PROCEDURE IN CIVIL ACTIONS.

- ARTICLE 1. COMMENCEMENT OF AN ACTION, § 9019.**  
**2. APPEARANCE AND POSTPONEMENT AND CHANGE OF VENUE, §§ 9029-9038.**  
**3. PLEADINGS AND ISSUES, §§ 9039-9056.**

- ARTICLE 4. PROVISIONAL REMEDIES, § 9058.  
 5. GARNISHMENT AND MODE OF PROCEDURE, §§ 9063, 9068.  
 6. FORCIBLE DETAINER, §§ 9069, 9070.  
 8. JUDGMENT AND COSTS, §§ 9097, 9106.  
 9. STAY OF EXECUTION, §§ 9110, 9114.  
 10. EXECUTION, § 9117.

ARTICLE 1.—COMMENCEMENT OF AN ACTION.

- § 9019. Comp. Laws, 1913.  
 Stacy Fruit Co. v. McClellan, 25 N. D. 449, 142 N. W. 44.

ARTICLE 2.—APPEARANCE AND POSTPONEMENT AND CHANGE OF VENUE.

- § 9029. Comp. Laws, 1913.  
 Jessen v. Schiller, 46 N. D. 41, 179 N. W. 372.
- § 9036. Comp. Laws, 1913.  
 Affidavit for change of venue from a justice court, cannot be made by the attorney for the party. Braeder v. Armitage, 39 N. D. 555, 168 N. W. 171.

§ 9037. **Place of trial; one change.** The place of trial cannot be changed on motion of the same party more than once. When the court orders the place of trial to be changed the action must be transferred for trial to a justice's court the parties may agree upon, and if they do not so agree, then to the next nearest justice's court in the same county, the location of which has not been changed during the thirty days immediately preceding. [Laws 1923, ch. 238, § 1.]

- Stacy Fruit Co. v. McClellan, 25 N. D. 449, 142 N. W. 44.  
 Justices of the Peace, 35 C. J. pp. 557-565, §§ 136-142.  
 Number of changes of venue permissible. 27 R. C. L. 818 and Supps.
- § 9038. Comp. Laws, 1913.  
 Grundhauser Threshing Mach. Co. v. Thress, 36 N. D. 294, 162 N. W. 558.

ARTICLE 3.—PLEADINGS AND ISSUES.

- § 9039. Comp. Laws, 1913.  
 Complaint in justice court, in action for recovery of money due on account, may be either oral or written. Peterson v. Bertilson, 34 N. D. 159, 157 N. W. 984.  
 Demurrer to oral complaint on grounds that, summons contained complete statement of facts relied on, and that justice's docket, referred to oral complaint, and to summons and contents, held properly overruled. Chamberlain-Wallace Co. v. Akers, 26 N. D. 395, 144 N. W. 715.
- § 9054. Comp. Laws, 1913.  
 Requirement that pleadings be in writing in action to recover for injury to real property, intended to prevent raising of sham or frivolous issue as to boundaries or title to real property in justice court. Requirements of this section are not jurisdictional. Whitney v. Ritz, 24 N. D. 576, 140 N. W. 676.
- § 9055. Comp. Laws, 1913.  
 District court has jurisdiction to try and determine appeal from judgment rendered by justice of peace in action of forcible detainer, without certification from justice. E. J. Cander & Co. v. Deemy, 46 N. D. 273, 176 N. W. 922.
- § 9056. Comp. Laws, 1913.  
 E. J. Lander & Co. v. Deemy, 46 N. D. 273, 176 N. W. 922.

ARTICLE 4.—PROVISIONAL REMEDIES.

§ 9058. **Attachment, writ of, when issued.** In a case mentioned in section 7537 of the code of civil procedure, a writ to attach the personal property of the defendant may be issued by the justice at the time of or after issuing the

summons and before answer on receiving an affidavit by or on behalf of the plaintiff, stating the same facts as are required to be stated by the affidavit specified in section 7541 of the code of civil procedure. [R. C. 1905, § 8396; R. C. 1895, § 6672; Jus. C. 1877, § 28.]

#### ARTICLE 5.—GARNISHMENT AND MODE OF PROCEDURE.

##### § 9063. Comp. Laws, 1913.

Jensen v. Schiller, 46 N. D. 41, 179 N. W. 372.

##### § 9068. Comp. Laws, 1913.

As to time for filing claim of exemptions in justice's court in garnishment. Jensen v. Schiller, 46 N. D. 41, 179 N. W. 372.

Claim for exemptions in garnishment proceedings in justice court, must, to serve as a defense, and to protect such exemptions, have been preceded by filing with justice, schedule of debtors' personal property. Burcell v. Goldstein, 23 N. D. 257, 136 N. W. 243.

Requires defendant, desiring to interpose defense in behalf of garnishee in justice court, to do so at time fixed for appearance of garnishee in court; failure to exercise privilege at that time operates as waiver. Schroeder v. Davenport, 29 N. D. 400, 150 N. W. 926.

#### ARTICLE 6.—FORECLOSURE DETAINER.

##### § 9069. Comp. Laws, 1913.

Action based on complaint and summons in justice court, held to be one in forcible entry and detainer brought under Subdivs. 2 and 3, and that notice to vacate was unnecessary before commencement of action. Savold v. Baldwin, 27 N. D. 342, 146 N. W. 544.

See also Mower v. Rasmusson, 34 N. D. 233, 158 N. W. 261; Gagnon v. Veum, 40 N. D. 563, 169 N. W. 174; E. J. Lander & Co. v. Deemy, 46 N. D. 273, 176 N. W. 922; Davis v. Long, 45 N. D. 581, 14 A.L.R. 796, 178 N. W. 936.

##### § 9070. Comp. Laws, 1913.

Notice to quit premises not necessarily before commencement of action for forcible entry and detainer, brought under, Subdivisions 2 and 3 of § 9069. Savold v. Baldwin, 27 N. D. 342, 146 N. W. 544.

See also E. J. Lander & Co. v. Deemy, 46 N. D. 273, 176 N. W. 922.

#### ARTICLE 8.—JUDGMENT AND COSTS.

##### § 9097. Comp. Laws, 1913.

Defendant is entitled to judgment for costs, upon dismissal of case from justice's court, upon motion made or demurrer interposed by defendant. Scandinavian American Bank v. Hall, 37 N. D. 293, 164 N. W. 22.

##### § 9106. Comp. Laws, 1913.

Scandinavian American Bank v. Hall, 37 N. D. 293, 164 N. W. 22.

#### ARTICLE 9.—STAY OF EXECUTION.

##### § 9110. Comp. Laws, 1913.

Where justice of peace orders limited stay of execution in forcible entry and detainer action, pursuant to a stipulation, defendant, who obtains benefit thereof, is estopped to pursue his remedy by appeal, even though justice has no authority to make such order. Ray Improv. Co. v. Hurich, — N. D. —, 190 N. W. 310.

##### § 9114. Comp. Laws, 1913.

Ray Improv. Co. v. Hurich, — N. D. —, 190 N. W. 310.

#### ARTICLE 10.—EXECUTION.

##### § 9117. Comp. Laws, 1913.

Hodge v. Anderson, 35 N. D. 20, 159 N. W. 79.  
N. D. C. L.—88. 1393

## CHAPTER 6.

## APPEALS.

- ARTICLE 1. APPEALS IN CIVIL ACTIONS, §§ 9163-9173.  
 2. APPEALS IN CRIMINAL ACTIONS, § 9174.

## ARTICLE 1.—APPEALS IN CIVIL ACTIONS.

## § 9163. Comp. Laws, 1913.

Any party dissatisfied with judgment in civil action may appeal therefrom to district court. *Wilmott v. Koller*, 34 N. D. 306, 158 N. W. 257.

See also *Brissman v. Thistlethwaite*, — N. D. —, 192 N. W. 85; *Minneapolis Paper Co. v. Monsen*, 34 N. D. 201, 157 N. W. 1031; *Blumardt v. McDonald*, 36 N. D. 518, 162 N. W. 409; *Hope Nat. Bank v. Smith*, 38 N. D. 425, 165 N. W. 550; *Stonehouse v. Smith*, — N. D. —, 190 N. W. 314.

## § 9164. Comp. Laws, 1913.

District court, may, upon appeal from justice court, reverse judgment and direct case to be reopened, and placed upon its calendar for trial, on issues of fact. *Benson v. Gressel*, 40 N. D. 216, 168 N. W. 649.

See also *Farmer v. Dakin*, 28 N. D. 452, 149 N. W. 354.

## § 9165. Comp. Laws, 1913.

On appeal from justice court, district court has jurisdiction to permit clerical errors or defects of form in undertaking on appeal, to be corrected by amendment or by giving new undertaking. *Great Northern Exp. Co. v. Gulbro*, 38 N. D. 352, 165 N. W. 513.

See also *Minneapolis Paper Co. v. Monsen*, 34 N. D. 201, 157 N. W. 1031; *Stonehouse v. Smith*, — N. D. —, 190 N. W. 314.

## § 9166. Comp. Laws, 1913.

*Minneapolis Paper Co. v. Monsen*, 34 N. D. 201, 157 N. W. 1031.

## § 9167. Comp. Laws, 1913.

*Minneapolis Paper Co. v. Monsen*, 34 N. D. 201, 157 N. W. 1031; *Ray Improv. Co. v. Hurich*, — N. D. —, 190 N. W. 310.

## § 9168. Comp. Laws, 1913.

*Minneapolis Paper Co. v. Monsen*, 34 N. D. 201, 157 N. W. 1031; *Hope Nat. Bank v. Smith*, 38 N. D. 425, 165 N. W. 550.

## § 9169. Comp. Laws, 1913.

*Minneapolis Paper Co. v. Monsen*, 34 N. D. 201, 157 N. W. 1031; *Stonehouse v. Smith*, — N. D. —, 190 N. W. 314.

## § 9170. Comp. Laws, 1913.

Upon appeal from judgment in favor of plaintiff, rendered by justice of peace, plaintiff is entitled to have certified record of justice of peace, in district court before he can be required to proceed to trial. *Hope Nat. Bank v. Smith*, 38 N. D. 425, 165 N. W. 550.

See also *Brainard v. Wetzstein*, — N. D. —, 178 N. W. 114.

## § 9172. Comp. Laws, 1913.

*State ex rel. Shaw v. Frazier*, 39 N. D. 430, 167 N. W. 510; *E. J. Lander & Co. v. Deemy*, 46 N. D. 273, 176 N. W. 922; *Wilmott v. Koller*, 34 N. D. 306, 158 N. W. 257.

## § 9173. Comp. Laws, 1913.

*Wilmott v. Koller*, 34 N. D. 306, 158 N. W. 257.

## ARTICLE 2.—APPEALS IN CRIMINAL ACTIONS.

## § 9174. Comp. Laws, 1913.

*Wilmott v. Koller*, 34 N. D. 306, 158 N. W. 257.

## CHAPTER 8.

## BOARDS OF CONCILIATION.

§§ 9187-9192. Repealed by § 9192a15. See §§ 9192a1-9192a14, post.  
Klein v. Hutton, — N. D. —, 191 N. W. 485.

§ 9192a1. **Conciliation boards created.** It shall be the duty of district court judges to establish a conciliation board in each county of their respective districts within ninety days from the taking effect of this act. Each such conciliation board shall consist of such number of conciliators as the district court judge of such county shall determine, and he shall have power to increase the number thereof and to remove conciliators at his pleasure, but at no time shall there be less than six members nor more than twelve members on any such boards. These members shall not include the county court judge, who shall be an *ex officio* member of the conciliation board for his county. [Laws 1921, ch. 38, § 1.]

§ 9192a2. **Eligibility and compensation.** Every person having the qualifications of a voter shall be eligible for appointment as conciliator for the county in which he resides. Any member of the bar who acts as conciliator shall not thereafter appear, in any subsequent proceeding, on behalf of either party to any controversy submitted to him as conciliator. The moving party to any controversy shall pay to the conciliator a summons fee of twenty-five cents in all cases involving a sum of ten dollars or less, and fifty cents in cases involving a sum of over ten dollars. In every case where conciliation is effected the acting conciliator shall be entitled to receive for his services the sum of one dollar where the amount of controversy is ten dollars or less, and two dollars where the amount is over ten dollars and less than one hundred dollars, and two per centum of the amount involved where the amount is over one hundred dollars; said amounts to be assessed against either party, or part against each, at the discretion of the conciliator. Provided; that when two or more conciliators participate in a hearing a like fee shall be paid to each of them. [Laws 1921, ch. 38, § 2.]

§ 9192a3. **Appointment and oath.** Conciliators shall be appointed and removed by order of the district court judges for the counties in which they reside, entered upon the docket of the district for each county. Within ten days from the date of their appointment, and before entering upon the discharge of their duties, they shall take an oath of office prescribed by the judge appointing them. [Laws 1921, ch. 38, § 3.]

Oath of office. 22 R. C. L. 448.

§ 9192a4. **Organization.** The district court judge shall be chairman *ex officio* of the conciliation board in each county of his district. He shall call such meetings of conciliators as he shall deem proper, preside over such meetings and instruct conciliators in respect to their duties. Upon his request any such conciliator shall make report to him in writing of his official acts. [Laws 1921, ch. 38, § 4.]

§ 9192a5. **Conciliation proceedings prerequisite to process.** After the expiration of said 90 days no process shall be issued in commencement of a civil suit by any justice of the peace or by any other trial court unless the moving party shall file in court a certificate of a conciliator showing that an attempt has been made to effect a settlement of the claim and that such attempt has failed; but the foregoing shall not apply to actions known as provisional or remedial remedies, actions involving title to or possession of real estate and suits involving over \$200. Provided, however, that any district court judge in chambers may in a particular instance, on a proper showing, direct the

issuance of any such process in any trial court without recourse to conciliation proceedings. [Laws 1921, ch. 38, § 5.]

**§ 9192a6. Application for conciliation.** Any person presuming to have any civil claim not specified as an exception in section 5, before commencing suit, shall request one of the conciliators for the county in which he resides, or in which the person complaining resides, to act [as] conciliator. Thereupon such conciliator if qualified and able to act, shall summon by letter or telephone or personally the party complained of to appear before him at a certain time. Upon the hours set for such conciliation hearing, if the parties are present, it shall be the duty of the conciliator to hear the parties and their witnesses and to endeavor to effect an amicable settlement of the controversy agreeable to law and equity. Conciliators may in their discretion, administer oaths and require statements under oath. They shall make no record of the evidence adduced, and no parts of the proceedings shall be admitted as evidence, or considered at the trial of the case, and no conciliator shall be competent as a witness in respect thereto in any subsequent proceeding. [Laws 1921, ch. 38, § 6.]

**§ 9192a7. Change of venue.** At the time of the first hearing and before proof has been submitted by any party, the parties may by mutual agreement elect to submit their controversy to another conciliator than the one first selected; and in such case the first conciliator shall dismiss the proceedings and make no record of report thereof. [Laws 1921, ch. 38, § 7.]

**§ 9192a8. Continuances.** Conciliators shall have power to continue their hearings from time to time to meet the convenience of the parties. [Laws 1921, ch. 38, § 8.]

Constitutionality upheld in. *Klein v. Hutton*, — N. D. —, 191 N. W. 485.

**§ 9192a9. Conciliators may sit together.** Conciliators shall have power to request the assistance of other conciliators of their county in any conciliation proceeding, and in case two or more conciliators officiate in respect to any controversy any one of them may certify the proceedings on behalf of all. [Laws 1921, ch. 38, § 9.]

**§ 9192a10. Conciliators not obliged to serve.** No conciliator is obliged to act in any given controversy, and shall not act if he has any interest in the controversy or is a member of the immediate family of either of the parties, unless consent is given. In case no conciliator convenient to the moving party is obtainable then the county judge of that county shall act as conciliator. [Laws 1921, ch. 38, § 10.]

**§ 9192a11. Conciliator's report.** In every case in which a conciliator shall serve he shall forthwith certify to the district court for his county the terms of the agreement, if any be effected. The report shall describe the claimant's demand and embody the terms of settlement, bearing the signatures of the parties. It shall be entered upon the docket of the district court and thenceforth shall have the full force and effect of a judgment of the said court, but shall be subject to any terms concerning its satisfaction which the parties shall have agreed upon, and subject to the lawful orders of the judge for such district court. [Laws 1921, ch. 38, § 11.]

**§ 9192a12. Failure to agree.** In case the party complained of shall fail to appear at the conciliation hearing or for any other reason there shall be no settlement of the controversy by agreement of the parties, then the conciliator shall give to either or both parties, upon request, his certificate to the effect that an attempt has been made in good faith by the moving party to effect a settlement of a controversy, which shall be concisely described, and that the attempt has failed. [Laws 1921, ch. 38, § 12.]

§ 9192a13. **Personal appearance.** The parties to all conciliation proceedings shall appear in person, except that, for good cause shown, the conciliator may permit a party to be represented by another person, not a member of the bar. In order to be so represented the party unable to appear shall authorize his representative to appear and act for him in effecting a settlement of the controversy by agreement, or by arbitration, if the representative shall so elect, and shall be bound by the acts of his representative the same as if he were present in person. [Laws 1921, ch. 38, § 13.]

§ 9192a14. **Arbitration by conciliator.** Whenever both parties shall agree in writing to submit their controversy to a conciliator for his determination as arbitrator, the conciliator shall receive the evidence and within five days make his award, which award shall be filed in the district court for that county and be entered upon the docket as a judgment by award and shall have the full force and effect of a judgment of such court. [Laws 1921, ch. 38, § 14.]

Submission of controversy to arbitration. 2 R. C. L. 354 et seq. and Supps.

Reception of evidence by arbitrator. 2 R. C. L. 381 and Supps.

Making of award. 2 R. C. L. 382 and Supps.

Conclusiveness of award. 2 R. C. L. 386 and Supps.

§ 9192a15. **Repeal.** Sections 9187, 9188, 9189, 9190, 9191 and 9192 of the Compiled Laws of North Dakota 1913, are hereby repealed. [Laws 1921, ch. 38, § 15.]