

# THE LAWS

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## ACTIONS

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### CHAPTER 1.

[S. B. No. 278—Purcell]

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#### PRELIMINARY EXAMINATION.

AN ACT to Amend Section 9758 of the Revised Codes of the State of North Dakota, Relating to Preliminary Examinations.

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

§ 1. AMENDMENT.] Section 9758 of the revised codes of the state of North Dakota is amended so as to read as follows:

§ 9758. MAGISTRATE'S DUTY. TESTIMONY MAY BE TAKEN.] When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and also his right to waive an examination before any further proceedings are had; and in any case, when the accused waives such examination, the prosecuting attorney may cause the testimony of any witness or witnesses to be taken in writing, as provided by law with the same force and effect as if such examination had not been waived and such testimony shall be returned by such magistrate to the district court of his county as in other cases.

§ 2. EMERGENCY.] Whereas, there is now no provision of law for the taking of the testimony of any witness when a preliminary examination is waived by one accused of crime and the taking of such testimony and its perpetuation may be important to the administration of justice, an emergency exists and this act shall take effect from and after its passage and approval.

Approved March 15, 1909.

CHAPTER 2.

[H. B. No. 30—Chatfield]

PUBLISHING SUMMONS IN JUSTICE COURT.

AN ACT Amending Section 8366 of the Revised Codes of North Dakota for 1905, Relating to Service by Publication of Summons in Justice Courts.

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

§ 1. AMENDMENT.] Section 8366 of the revised codes of North Dakota for 1905, is amended to read as follows:

§ 8366. SERVICE BY PUBLICATION.] In an action to foreclose or enforce a lien upon chattels or trespassing animals, or an action in which an attachment has been levied upon personal property of the defendant within the county, or an action in which a garnishment summons has been issued and served within the county and the garnishee therein has disclosed property or money in his possession or under his control due or belonging to defendant, if the summons is returned not served, the plaintiff may at the time therein specified for answering apply for and receive a second summons directing the defendant to appear and answer at a specified time not less than twenty-five nor more than thirty days from the date thereof. Such application must be made upon a verified complaint alleging the lien or levy or garnishment proceedings relied on and demanding that the property be applied to the satisfaction of his claim, and must be supported by the affidavit, stating that to the best knowledge, information and belief of the person making it, personal service of the summons cannot be made upon the defendant within the state and stating his postoffice address or the fact that the same is not known. The summons must be substantially in the following form, filling blanks according to the facts:

State of North Dakota, } In Justice Court,
County of ..... } ss. Before .....
Justice of the Peace

C. D., Plaintiff

vs.

E. F., Defendant

The State of North Dakota to said Defendant:

By this second summons herein you are directed to appear before me at my office in ..... (designating the place)

at ..... o'clock .....M. of the .....day of .....19.... there to answer the complaint of C. D. against you, alleging (here give a sufficient statement of the cause of action to apprise the defendant of the nature of the plaintiff's claim and the particular property in question), and demanding (here state the demand); and you are notified that unless you so appear and answer the plaintiff will take judgment against you accordingly.

Given this .....day of .....19.....

(Official signature of the justice.)

The justice shall indorse on the summons a direction to the effect that it may be served by publication in some newspaper of the county, naming it, or in some newspaper elsewhere in the state if none is published in the county. Service of the summons may be made by publication of the same in one issue of said newspaper each week for three successive weeks, the last publication being at least three days before the time at which the defendant is directed to appear, and by forthwith mailing a copy of the summons postage paid and directed to the defendant at his postoffice address, unless it is stated in the affidavit that his address is unknown. But personal service of the summons on the defendant at any place in or out of the state, if made at least ten days before the time at which he is directed to answer, is equivalent to service by publication and mailing. The proof of service must be made by affidavit of some person having knowledge of the facts.

Approved February 20, 1909.

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### CHAPTER 3.

[S. B. No. 227—Pierce]

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#### REPLY IN CIVIL ACTIONS.

AN ACT to Amend Section 7527 of the Code of 1905, Relating to Actions to Determine Conflicting Claims to Real Property.

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

§ 1. AMENDMENT.] Section 7527 of the revised codes of the state of North Dakota for 1905 be, and the same is hereby amended and re-enacted so as to read as follows:

§ 7527. REPLY, WHAT IT MAY CONTAIN. RELIEF.] No reply shall be necessary on the part of the plaintiff, except when the defendant in his answer claims a lien or encumbrance upon the property which, prior to the commencement of the action, was barred by the statutes of limitation, or which shall have been discharged in bankruptcy, or which constitutes only a cloud, the plaintiff may reply setting up such defenses and avail himself of the benefit there-

of: and in all cases when the plaintiff has made permanent improvements on the property in good faith, while in possession under color of title, he may recover a reasonable value thereof as against the defendant recovering the property, when the reply shall allege the facts, stating particularly the value of the improvements, the value of the property, and demand appropriate relief. The reply shall be served on such defendant and filed with the clerk within twenty days after the service of his answer.

§ 2. REPEAL.] All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 15, 1909.

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#### CHAPTER 4.

[S. B. No. 173—Irwin]

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#### CONTINUANCE OF ACTIONS.

AN ACT to Amend Section 7329 of the Revised Codes of 1905, Relating to Cases When Continued.

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

§ 1. AMENDMENT.] Section 7329 of the revised codes of 1905 is amended to read as follows:

§ 7329. CASES, WHEN CONTINUED.] In all actions, civil or criminal, pending in any court of this state at any time when the legislature is in session, it shall be a sufficient cause for a continuance of said suit to a succeeding term of said court fixed by law if it shall appear to the court by affidavit of the attorney that any party applying for such continuance, or any attorney, solicitor, or counsel of such party is a member of either house of the legislature and in actual attendance on the session of the same at the beginning of the term or at the time said suit is called for trial and that the attendance of such party, attorney, solicitor, or counsel in court is necessary to the fair and proper trial of such suit, and on the filing of such affidavit the court must continue such suit to the next succeeding term of said court fixed by law. Such affidavit shall be sufficient if made at any time during the session of the legislature and before the suit is called for trial showing that at the time of making said affidavit such party, attorney, solicitor or counsel is in actual attendance upon such session of the legislature and said cause shall not be tried over the objection of the party obtaining such continuance at any term of court called, held or convened within sixty days after the adjournment of the legislature.

§ 2. EMERGENCY.] Whereas, an emergency exists, therefore this act shall be in force and effect from and after its passage.

Approved March 5, 1909.

## CHAPTER 5.

[H. B. No. 95—Skulason]

## COSTS ON APPEAL.

AN ACT to Amend Section 7182 of the Revised Codes of 1905, Relating to Costs on Appeal From Justice Court.

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

§ 1. AMENDMENT.] Section 7182 of the revised codes of 1905 is hereby amended to read as follows:

§ 7182. ON APPEAL FROM JUSTICE.] Costs must be allowed to the prevailing party in judgments rendered on appeal from justice court in all cases, including his taxable costs in the court below.

Approved March 15, 1909.

## APPORTIONMENT

## CHAPTER 6.

[H. B. No. 143—Senour]

## SENATORIAL AND REPRESENTATIVE DISTRICTS.

AN ACT to Redistrict the State of North Dakota Into Senatorial Districts and Apportion the Senators and Representatives Therein.

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

§ 1. NUMBER OF DISTRICTS.] Until otherwise provided by law under the terms of the constitution, the legislative assembly of the state of North Dakota shall consist of forty-nine senators and one hundred three representatives, and the senatorial and representative districts of the state shall be formed, and the senators and representatives 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 all towns, villages and cities therein, and be entitled to one senator and two representatives.

The second district shall consist of the townships of St. Thomas, city of St. Thomas, Crystal, city of Crystal, Hamilton, town of Hamilton, Cavalier, city of Cavalier, village of Hensel, Advance, LaMoure, Akra, Beaulieu, Thingvalla, Gardar, Park, Elora, and Lodema, in the county of Pembina, and be entitled to one senator and one representative.