

APPROVED—March twentieth, one thousand eight hundred and fifty-eight.

CHAS. L. CHASE, Acting Governor.

SECRETARY'S OFFICE, Minnesota, }  
March 20, 1858. }

I hereby certify the foregoing to be a true copy of the original on file in this office.

CHAS. L. CHASE, Secretary.

## CHAPTER XVII,

### *An Act to prevent trespass on School, University, Swamp and Internal Improvement Lands.*

- SECTION 1. Trespass upon School, Swamp, or Internal Improvement Lands, to be prosecuted on viewor information.
2. Penalty for cutting timber or grass.
  3. Penalty how to be recovered.
  4. Penalty against township officers, for failure to prosecute violations of this act.
  5. Suits to be brought within one year after cause of action.
  6. Justices of the Peace to exercise jurisdiction in all cases where damages do not exceed one hundred dollars.
  7. Suits to be commenced before Justice in county where trespass is committed.
  8. Form of complaint under this act.
  9. Form of warrant under this act.
  10. Special constables may be appointed to serve warrant.
  11. Date and manner of service to be endorsed on warrant.
  12. Justice may transfer hearing of case to next nearest Justice, on oath of defendant for cause.
  13. Form of Subpoena for witnesses.
  14. Service of Subpoena.
  15. Six jurors to be summoned—right of challenge—additional jurors.
  16. Jury may be waived by defendant.
  17. Form of service for jurors.
  18. Hearing of testimony and arguments.
  19. Verdict of the jury, form of.
  20. Record of verdict upon docket.
  21. Justice to hear and decide the case, where jury is dispensed with.
  22. Execution to be issued on rendition of verdict.
  23. Execution not satisfied, defendant not committed to jail—to be allowed two dollars for each days' imprisonment, to be applied to payment of damages.
  24. Execution, form of.
  25. Appeals, how made.
  26. Constable, duty of on receiving execution.
  27. Constable, duty of on collecting the debt.
  28. Witnesses, time to procure—defendant may be held in custody.
  29. Attachments, how issued, on failure of juror or witness to attend. Fee bill.
  30. Act takes effect on passage.

*Be it enacted by the Legislature of the State of Minnesota:*

SECTION 1. That it is hereby made the duty of the County

Commissioners, and Sheriffs in their respective counties, and of Justices of the Peace, and Constables in their respective precincts, in the name of the State of Minnesota, to prosecute upon view or information, all persons who shall, after the passage of this Act, commit any trespass on lands granted to this State by any act or resolution of Congress, for the use or support of Schools or Universities, or for internal improvements.

Prosecutions for trespass

SEC. 2. If any person shall, under preterce of any lease or otherwise, cut fell, box, bore, destroy, or carry away any tree or sapling, standing or growing, or any fallen or dead timber upon any lands within this State, reserved, appropriated or intended by any act or resolution of Congress, either for the use and support of Schools, or for the use and support of any University or College, or for any public buildings, or for internal improvements, or shall cut and carry away any grass or hay, such person shall for each and every such trespass, forfeit and pay the sum of fifty dollars. *Provided always*, that nothing in this Act shall be so construed as to prevent any actual settler from the enjoyment of his or her improvements.

cutting timber

Cutting hay

Penalty

SEC. 3. The penalties provided in the above preceding sections shall, and may be recovered with all costs of suit under this Act, in any action of debt, in the name of the State of Minnesota, before any Justice of the Peace, when the amount does not exceed one hundred dollars damages, and the costs, taxed as hereinafter provided in this Act.

Recovery of penalty

SEC. 4. If any county or precinct officer, or any township officer, either in the civil or school towns or townships hereafter created, shall fail to prosecute for ten days after notice in writing given to them, with the names of witnesses, sufficient to prove a trespass, shall forfeit and pay the sum of twenty-five dollars to the county school fund of each county in which a trespass was committed, to be recovered by action of debt before any Justice of the Peace; it shall be lawful for any person to enter complaints for any breach of this Act.

Failure to prosecute—penalty how recovered

SEC. 5. All suits under this Act shall be brought within one year after the cause of action occurred, and not after.

Limit of time of commencing suit

SEC. 6. That Justices of the Peace shall have jurisdiction in all cases arising under the provisions of this Act, in any sum not exceeding one hundred dollars damages, and costs of suit.

Jurisdiction of justices of the peace

SEC. 7. All suits under this Act shall be commenced before a Justice of the Peace in the county in which the trespass is alleged to have been committed.

Suits to be prosecuted in county where offence is committed

SEC. 8. All complaints shall be under oath and filed with the Justice in the following form as near as may be, to-wit:

STATE OF MINNESOTA, }  
County. }

states under oath, that a trespass has been committed on or about the day of , A. D. 18 , of

Complaint—form

(here describe by the proper numbers, the lot of land on which the trespass was committed,) in the county of \_\_\_\_\_ and State aforesaid, one did (here describe what was done that constitutes the trespass under this Act,) and alleging one act, shall give the right to prove all or any trespass under act, upon any lands referred to in Section two, of "An Act to prevent trespass on school, university, or internal improvement lands," approved \_\_\_\_\_, A. D. 18 \_\_\_\_\_, and that the deponent verily believes \_\_\_\_\_ is guilty of the same, contrary to the form of the statute in such [case] provided. \_\_\_\_\_, complainant, sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_ J. P.

SEC. 9. Upon the filing of any such complaint before any Justice of the Peace of the proper county, together with the names of plaintiff's witnesses, it shall be his duty to issue a warrant in the following form as near as may be :

STATE OF MINNESOTA, }  
County. }

The State of Minnesota to any Constable [ of said county ] greeting.

Warrant—form of  
You are hereby commanded to take the body of \_\_\_\_\_, if to be found in your county, and forthwith bring him before me at my office, then and there to answer the State of Minnesota in an action of debt, under Section two of "An Act to prevent trespass on school, university, and internal improvement lands," approved \_\_\_\_\_, A. D. 18 \_\_\_\_\_, J. P.

Service of warrant  
SEC. 10. If no Constable is present, the Justice can and is hereby authorized to deputize a special Constable to serve, in that case only, by endorsing such appointment on the back of the warrant under his hand.

Manner of service  
SEC. 11. Upon the return of such warrant, it shall be the duty of the Constable serving the same, to endorse thereon the date and manner of the service, with his fees, as hereafter specified.

Change of venue on oath of defendant  
SEC. 12. Previous to the commencement of any trial before a Justice of the Peace, the defendant may make oath, that it is the belief of such deponent that he cannot have an impartial trial before such Justice : whereupon it shall be the duty of the Justice immediately to transmit a copy of his docket, together with all papers and documents belonging to the suit, to the nearest Justice of the Peace of his county, who shall proceed as if the said suit had been originally instituted before him. And it shall be the duty of all jurors, witnesses and parties, to go forthwith before such Justice to whom the papers are sent.

Duty of Jurors witnesses &c

SEC. 13. When either party shall require the attendance of a witness, in any suit pending before a Justice, it shall be his duty to issue a subpoena in the following form, as near as the case will admit, to-wit :

STATE OF MINNESOTA, }  
County. }

The State of Minnesota, to

: You are hereby

commanded to appear before me, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A. D., 18 \_\_\_\_\_, at \_\_\_\_\_ o'clock, then and there to testify to the truth in a matter in suit, wherein the State of Minnesota is plaintiff, and \_\_\_\_\_ is defendant, and this you are not to omit under the penalty of the law. Subpoena

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D., 18 \_\_\_\_\_, \_\_\_\_\_ J. P.

SEC. 14. Which subpoena may be served by a constable, or any other person, by reading the same to the witness, but no mileage shall be paid except to the constable. Service thereof

SEC. 15. When a warrant shall be executed, by bringing the defendant before a Justice, it shall be his duty to issue his writ, directed to any constable, commanding him to summon six jurors, who are legal voters, any two of whom defendant may object to without cause, whereupon the Justice shall order the constable to summon two others from the bystanders, or others, and if defendant object, and show cause, the Justice may, in his discretion, strike from the list and add thereto until six good and lawful jurors shall appear on the list, who shall be sworn to try the cause according to evidence. Summoning jurors  
Challenge  
Additional jurors

SEC. 16. The Justice shall not cause a jury to be summoned unless the defendant shall demand a jury. No jury unless demanded by defendant

SEC. 17. In all cases when a jury is demanded, the party demanding shall advance the fees, the Justice shall issue his venire as follows, to wit: Form of venire

STATE OF MINNESOTA, }  
County. }

State of Minnesota, to any constable in said county, greeting:

You are hereby commanded to summon six good and lawful men of your county, legal voters, and who are not of kin to nor prejudicial against \_\_\_\_\_, defendant, to appear before the subscriber, a Justice of the Peace, at his dwelling house, (or office as the case may be,) in said County, on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_, at \_\_\_\_\_ o'clock, to make a jury for the trial of an action of debt.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_, \_\_\_\_\_ J. P.

SEC. 18. After the jury shall have been empaneled and sword as aforesaid, and the parties are ready for trial, the Justice shall proceed to examine all the testimony and arguments of counsel against, as well as for the defendant, and after hearing the same, the jury shall retire to consider of their verdict in charge of a constable, who shall, as soon as they agree, return them into Court, and it shall be the duty of the Justice to receive their verdict. Hearing  
Making up verdict

SEC. 19. The verdict of the jury shall state guilty or not guilty, and if guilty, particularly the extent of the same, and what acts of defendant are proved to be a trespass under Section two of this Act. Form of verdict

Record thereof

SEC. 20. And the Justice shall receive and record the verdict of the jury in his docket, and enter a judgment according to the finding thereof, under the provisions of this Act.

No jury the Justice to hear and decide

SEC. 21. In all cases where the defendant shall dispense with a jury, it shall be the duty of the Justice, after the parties are ready for trial, to proceed to hear all the proof and allegations of the parties, together with all the arguments against and for the defendant, and to assess the damages, and to render a judgment in dollars and cents, according to the evidence under this Act, and record the same in his docket book.

Execution—when returnable

SEC. 22. Upon the rendition of judgment as aforesaid against the defendant, the Justice shall issue an execution forthwith, directed to any constable of the county, and made returnable within thirty days from its date.

Levy—if no personal property defendant to be committed to jail

SEC. 23. Such execution shall be levied on personal property, but if no personal property be found, then in that case the constable shall take the body of the defendant, and convey him to the common jail of the County, there to remain until the execution shall be paid and satisfied. *Provided*, That defendant shall be allowed two dollars for [every] twenty-four hours until such debt and all costs shall be paid at that rate, which shall fully discharge defendant from all liability for debt and costs, and in case of such discharge therefrom by the jailer, it shall be the duty of the County Commissioner's Court to pay all costs in such case to the Justices, constables and witness out of any moneys in the county treasury not otherwise appropriated, as they may by law be entitled to.

Provision for release—costs to be paid by counties

SEC. 24. The execution shall be in the following form as near as may be, to wit:

STATE OF MINNESOTA, }  
County. } ss.

The State of Minnesota, to any constable of said County, greeting:

Execution—form of

You are hereby commanded that of the goods and chattels of \_\_\_\_\_ in your county, you make the sum of \_\_\_\_\_ debt, and \_\_\_\_\_ costs, which the State of Minnesota lately recovered before me in a certain plea, against the said \_\_\_\_\_ and hereof make a return to me within thirty days from this date, and if no goods or chattels can be found, or not sufficient to satisfy this execution, you are further commanded to take the body of the said \_\_\_\_\_ if he can be found within the State of Minnesota, and convey him to the common jail of the said county, there to remain until this execution shall [be] satisfied and paid.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_  
J. P.

Appeals

SEC. 25. Appeals from judgments of Justices of the Peace to the District Court, shall be granted in all cases,

except on judgments confessed: *Provided*, The complainant on the part of the State, or the defendant shall in all cases give notice of their intention to take such appeal, at the time of the rendition of such judgment, and within ten days thereafter enter into bonds, in accordance with the statute in such case made and provided.

SEC. 26. It shall be the duty of any constable into whose hands any execution shall come forthwith to proceed to levy the same, endorsing on the back of the execution the date of such levy, and making an exact inventory of the property on which the same shall have been levied; and shall appoint a day and hour for the sale of such property, giving ten days' previous notice of the place and hour between the hours of nine o'clock A. M., and four o'clock P. M., by advertisement in writing, to be posted up in at least three of the most public places in the neighborhood, and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to satisfy the execution, to the highest bidder for cash, and make return according to law.

Constable's duty on receiving execution

SEC. 27. The Constable shall pay over the debt to the county treasurer, and take duplicate receipts therefor, and file one with the auditor of the county funds, and the other return with the execution to the Justice who issued it, with all costs, and the Justice upon the receipt of such fees, shall, when called upon, pay the same to the person entitled thereto.

Constable's duty on satisfaction of execution

SEC. 28. Justices shall have discretion to hold defendant in custody a reasonable length of time to procure witnesses, not to exceed three days. But no continuance can be granted unless a recognizance is entered into with good security.

Procurement of witnesses

SEC. 29. When any juror or witness shall, after being duly served with process, fail or refuse to attend according to law, it shall be the duty of the Justice to issue an attachment at the request of the party requiring the attendance of such witness or juror before the first or second Justice of the Peace, as provided in this Act, directed to any constable of said county, commanding him forthwith to bring before such Justice the body of such juror or witness, to show cause why he should not be fined for such contempt, and on the appearance of such juror or witness, on such attachment, it shall be lawful for the Justice of the Peace to fine him in any sum not less than one dollar, nor more than ten dollars, or wholly discharge him if satisfactory excuse be made.

Failure of jurors or witnesses to appear

Attachment

The following fees shall be allowed to the officers, jurors, and witnesses, under this Act, to wit:

JUSTICES' FEES.

For each complaint under oath,.....	25 cents.	
For warrant,.....	25	" Fees under this act
For subpoena for one witness, .....	15	"

For each additional one,.....	5 Cents.
For each venire,.....	25 "
For administering an oath,.....	5 "
For docketing each suit and filing all papers,.....	50 "
For entering each verdict of a jury,.....	25 "
For entering each judgment,.....	25 "
For each continuance,.....	10 "
For recognizance,.....	50 "
For order for appeal,.....	25 "
For appeal bond,.....	25 "
For each transcript certificate with all papers sent to a Justice or Clerk,.....	\$1.00.

## CONSTABLES' FEES.

For serving each warrant,.....	25 "
For serving subpoœna on each witness,.....	10 "
For serving venire,.....	50 "
For serving and returning execution,.....	50 "
For each mile of necessary travel from Justice's office to the residence of defendant or any wit- ness, one way only,.....	10 "
For attending jury trial,.....	50 "
For advertising property on sales,.....	25 "

For selling property, ten per cent. on all sales of fifty dollars and under, and five per cent. on all sums above that amount.

For taking defendant to jail, both going and coming from the Justice's office to the prison or jail, ten cents per mile.

For serving attachment on juror and witness, each, twenty-five cents.

## JURORS' FEES.

To each juror per day,..... 75 cents.

## WITNESS' FEES.

For each witness per day,..... 75 cents.

All the foregoing fees shall be taxed against the defendant, if found guilty.

Sec. 30. This Act shall take effect, from and after its passage.

GEORGE BRADLEY,

Speaker of the House of Representatives.

RICHARD G. MURPHY,

President *pro tem.* of the Senate.

APPROVED—March twentieth, eighteen hundred and fifty-eight.

CHAS. L. CHASE, Acting Governor.

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