

Costs abolished

SECTION 1. That from and after this date, no costs other than actual charges and disbursements shall be allowed or taxed in any bill of costs in any civil action or special proceeding, or in the foreclosure of mortgages by advertisement, and all sums heretofore allowed in such cases by way of indemnity, are hereby abolished; *Provided*, That the provision of this act shall not affect any costs that have already accrued.

Charges sanctioned by the Statutes allowed

SEC. 2. Charges or disbursements in civil actions, special proceedings, and in the foreclosure of mortgages, shall be allowed hereafter, whenever the same would have been allowed by the Statutes heretofore in force, and nothing in this Act shall in any manner affect the allowance of such charges or disbursements.

Revised Statutes repealed

SEC. 3. So much of Sections eighty-nine (89) and ninety (90) of Chapter sixty (60) on page five hundred and forty-four (544) of the Compiled Statutes, as authorizes Courts to impose terms or costs, is hereby repealed; nor shall any costs hereafter be allowed in any Court on motions.

SEC. 4. Section seven (7) and so much of Sections eleven (11) and twelve and (12) of Chapter seventy-two (72) of the Revised Statutes as is inconsistent with this Act, and all acts or parts of acts inconsistent with this Act are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

AMOS COGGSWELL,

Speaker of the House of Representatives.

IGNATIUS DONNELLY,

President of the Senate.

Approved, March eighth, one thousand eight hundred and sixty.

ALEX. RAMSEY.

SECRETARY'S OFFICE, MINNESOTA, }

March 8th, 1860.

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

J. H. BAKER, Secretary of State.

CHAPTER LXX.

An Act to authorize and regulate Garnishee Proceedings.

SECTION 1. When summons shall be issued.

- SECTION 2. When Justice shall issue summons—copy to be served on defendant.
3. Proceedings when action is in District Court.
 4. Service of summons to attach all property in hands of garnishee belonging to defendant.
 5. Money or effects in hands of executor may be attached.
 6. Corporations may be summoned—how to appear.
 7. When person or corporation adjudged not garnishees.
 8. Money &c. may be attached before due.
 9. What property deemed "effects."
 10. Examination of garnishee—examination not to take place unless defendant appear.
 11. Person claiming prior interest may appear and defend claim.
 12. Fraudulent conveyance may be charged upon garnishee—proceedings in case of.
 13. Neglect of garnishee to appear judgment rendered against him.
 14. Judgment when rendered against garnishee—discharge of garnishee.
 15. Judgment to be rendered by order of Judge of Court.
 16. Court Commissioners authorized to take disclosure of garnishee.
 17. Fees of referee or commissioner.
 18. Property held by garnishee shall be delivered and sold.
 19. Court may determine value of property and make order relative to keeping and sale of same.
 20. Effects mortgaged to garnishee plaintiff may pay mortgage and property delivered to officer.
 21. Refusal of garnishee to deliver property, punished for contempt of court.
 22. Garnishee may sell property to satisfy mortgage held by him.
 23. When garnishee not liable for destruction of property.
 24. Judgment against garnishee how rendered.
 25. Garnishee may with consent of plaintiff make disclosure before return day.
 26. Proceeding if plaintiff will not consent to such disclosure.
 27. Garnishee to be allowed costs of travel &c.
 28. If adjudged chargeable as garnishee his costs shall be deducted out of effects in his hands.
 29. Shall not deliver property till his costs are allowed.
 30. Plaintiff shall not recover a greater sum for costs than damages recovered.
 31. Judgment shall not be rendered against garnishee for more than amount of property in his hands.
 32. Judgment against garnishee shall acquit him from all claims.
 33. Discharge of garnishee no bar to claims of defendant for same demand.
 34. Parties aggrieved may appeal.
 35. Repeal of Public Statute.
 36. Act to take effect March 10th, 1860.

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

SECTION 1. In any action in any Court of record or Justi-

Plaintiff filing affidavit summons to be served

ces' Court, founded upon contract express or implied, if the plaintiff, his agent or attorney, shall, at the time of the filing of the complaint, or of the issuing of the summons therein, or at any time during the pending of the action, or after judgment therein against the defendant, make and file with the Clerk of the Court, or if the case be in a Justices' Court, with the Justice of the Peace, an affidavit stating that he has good reason to believe and does believe that any person (naming him) has property, money or effects in his hands or under his control belonging to the defendant in such action, or that such person is indebted to such defendant, and that the value of such property or effects or the amount of such money or indebtedness, if the action be in a District Court, exceeds the sum of twenty-five (25) dollars, or if the action be in a Justices' Court, ten (10) dollars, a summons may be issued against such person, as hereinafter provided; in which summons and all subsequent proceedings the plaintiff in the action shall be known and designated as plaintiff, the defendant in such action as defendant, and the person against whom the summons is issued, as garnishee.

If action be in Justices' Court, Justice shall issue summons—to be served personally

SEC. 2. If the action be pending in a Justices' Court, the summons shall be issued by the Justice of the Peace, and shall require the garnishee to appear before said Justice at a time and place mentioned in such summons, not less than six nor more than twelve days from the date thereof, and answer under oath such questions as may be put to him touching his indebtedness to the defendant and touching any property, money or effects of the defendant in his possession or under his control; which summons shall be served and returned in the same manner as a summons issued against a defendant in other causes in such Court, except that no other than personal service shall be sufficient. A copy of such summons together with a notice to the defendant stating the time, place and manner of service upon the garnishee and signed by the Justice of the Peace or officer who served the same, and requiring such defendant to appear and take part in the examination, shall be served upon the defendant at least three days before the time specified in the summons for the appearance of the garnishee.

Summons in District Court by whom issued—what to require—copy to be served on defendant

SEC. 3. In actions in a District Court such summons may be issued by the plaintiff or his attorney in the action, and must be served and returned in the same manner as a summons issued against a defendant in other cases in said Court, except that the service shall in all cases be personal. It must require the garnishee to appear before the Court in which the action is pending, or the judge thereof, or the Court Commissioner of the county in which the action is pending, at a time and place mentioned therein, not less than twenty days from the service thereof, and answer touching his indebtedness to the defendant, and any property, money or

effects of the defendant in his possession or under his control. A copy of the summons together with a notice to the defendant stating the time, place and manner of service thereof upon the garnishee and signed by the plaintiff or his attorney, or the person or officer who served the summons upon the garnishee and requiring such defendant to appear and take part in the examination, shall be served upon the defendant at least ten days before the time specified in the same for the appearance of the garnishee. The garnishee shall be entitled in all cases, whether the action be in a District Court or before a Justice of the Peace, to the same fees as if he were subpoenaed as a witness in such action, and may be compelled to testify and disclose respecting any matters contained in the affidavit in the same manner as if he was a witness duly subpoenaed for that purpose.

Sec. 4. The service of the summons upon the garnishee shall attach and bind all the property, money or effects in his hands, or under his control belonging to the defendant, and any and all indebtedness owing by him to the defendant at the date of such service, to respond to final judgment in the action, provided the same exceeds in value, if in a Justices' Court, the sum of ten (10) dollars, or, if in a District Court, the sum of twenty-five (25) dollars.

Sec. 5. Any debt or legacy due from an executor or administrator, and any other property, money or effects in the hands of an executor or administrator may be attached by this process.

Sec. 6. All corporations may be summoned as garnishees and may appear by their cashier, treasurer, secretary or such other officer as they may appoint, and the disclosure of such person or officer shall be considered the disclosure of the corporation: *Provided*, That if it appear to the Court that some other member or officer of the corporation is better acquainted with the subject matter than the one making disclosure, the Court may cite in such person to make answer in the premises; and in case such person should neglect or refuse to attend, judgment may be entered as hereinafter provided upon default; and service of the summons upon the agent of any corporation not located in this State, but doing business therein through such agent, shall be a valid service upon said corporation.

Sec. 7. No person or corporation shall be adjudged a garnishee in either of the following cases, viz :

First—By reason of any money, or any other thing due to the defendant, unless at the time of the service of the summons, the same is due absolutely and without depending on any contingency.

Second—By reason of any debt due from said garnishee on a judgment so long as he is liable to an execution thereon.

Third—By reason of any liability incurred, as maker or otherwise, upon any draft, bill of exchange or promissory note.

Money &c may
be attached be-
fore due

SEC. 8. Any money or other thing due or belonging to the defendant may be attached by this process, before it has become payable, provided it be due or belonging absolutely and without depending on any contingency as aforesaid; but the garnishee shall not be compelled to pay or deliver the same before the time appointed therefor by the contract.

What deemed
"effects"

SEC. 9. Bills of exchange and promissory notes, whether under or over due, drafts, bonds, certificates of deposit, bank notes, money, contracts for the payment of money, and other written evidence of indebtedness, in the hands of the garnishee at the time of the service of the summons, shall be deemed "effects" under the provisions of this Section.

Examination of
garnishee

SEC. 10. After the appearance of the garnishee before the Court or officer named in the summons on the day specified therein, or on the day to which an adjournment may be had, the said garnishee shall be examined on oath, touching the matters alleged in the affidavit, and the examining officer shall take full minutes of such examination, and file the same with the other papers in the cause; *Provided, however*, that unless the defendant in the action shall appear at the time and place specified in the summons, for the appearance of the garnishee, such Court or officer shall not proceed to the examination of such garnishee, or to the taking of any evidence whatever therein until the plaintiff shall produce and file an affidavit, or return of an officer showing the service of the summons and notice upon the defendant, as prescribed in Sections two (2) and three (3) of this Act, but in case the plaintiff shall have been unable so to notify such defendant, the said Court or officer may postpone the examination for such reasonable time as may be necessary to enable the plaintiff to notify such defendant, and he then may be notified of the day to which such postponement is had, in the manner provided by law for the service of a summons in ordinary cases, except that it shall be a notice of ten days in a District Court, and of four days in a Justices' Court.

Person claiming
prior interest
may appear and
maintain right

SEC. 11. If it shall appear from the evidence taken or otherwise, that any person not a party to the action, is interested or claims any interest in any of the property or effects in the hands of the garnishee by virtue of any agreement or matter which existed prior to the service of the summons, the examining officer, upon application, may permit such person to appear in the action and maintain his right, and if he does not voluntarily appear, notice may be given him to appear or be barred of his claims, which notice may be served as such officer shall direct. In case such person voluntarily appears, or notice be given as aforesaid, he shall be joined as a party to the action and judgment therein shall bind him in the same manner as if he had been an original party.

SEC. 12. If any person shall have in his possession any property or effects of the defendant, which he holds by a con-

veyance or title that is void as to creditors of said defendant, he may be charged therefor, although the defendant could not have maintained an action against him for the same; but in such case, and in all cases where the garnishee shall deny any indebtedness to, or the possession or control of any property, money or effects of the defendant, the plaintiff shall proceed no further against the said garnishee upon the questions thus named except as hereinafter provided. If the plaintiff in such case shall have reason to believe that such garnishee does not answer truly in response to the questions put to him upon such examination or that the conveyance under which he claims title to property, is void as against the creditors of the defendant, he may on notice to such garnishee and to the defendant at any time before the garnishee has been discharged by the Court or officer, if not less than six days, apply to the Court in which the action is pending or a Judge thereof, for permission to file a supplemental complaint in the action making the garnishee a party thereto, and set forth the facts upon which he claims to charge such garnishee, and if probable cause be shown by the plaintiff, such permission shall be granted, and such supplemental complaint shall be filed and served upon both the defendant and garnishee either or both of whom may answer the same, and the plaintiff may reply if necessary and the issues thus made up shall then be brought to trial and tried in the same manner in all respects as civil actions and the prevailing party shall recover his costs as in civil actions; *Provided, however,* That the provisions of this Section shall not apply to proceeding in Justices' Courts.

Proceeding in
case of fraudu-
lent conveyance

SEC. 13. When any person who has been duly summoned as a garnishee shall neglect to appear at the time specified in the summons or within two hours thereafter, he shall be defaulted and judgment shall be rendered against him for the amount of the damages and costs recovered by the plaintiff in the action against the defendant payable in money, and execution may issue directly against the goods and chattels and estate of said garnishee therefor; *Provided,* The Court may, upon good cause shown, remove such default and permit the garnishee to appear and answer on such terms as may be just.

Neglect of garnishee to appear
Judgment rendered
against him

SEC. 14. No judgment shall be rendered against any garnishee until after judgment has been rendered against the defendant; but a garnishee may be discharged after examination and disclosure, if it clearly appear that he ought not to be held; whenever a garnishee is not discharged as aforesaid the cause shall be continued to abide the result of the original action.

No judgment rendered
against
garnishee until
rendered against
defendant

SEC. 15. No judgment shall be rendered upon the disclosure of a garnishee except by order of the Judge of the Court in which the action is pending, or in case of his absence or inability to act, by order of a Judge from another district.

Judgment rendered
by order of
Judge

SEC. 16. Court Commissioners or any referees appointed by the Court for the purpose, are hereby authorized and required

Disclosure of garnishee may be taken

ken by referee or commissioner to take the disclosure of any garnishee in writing, together with any other testimony offered by the parties to the action, and report the same to the Court; all testimony offered by the parties to be taken subject to any objection reasonably interposed thereto.

FEES OF REFEREE OR COMMISSIONER. SEC. 17. Any Court Commissioner or referee shall be entitled to receive from the plaintiff ten cents per folio for all evidence taken and reduced to writing, and the fees so paid by the plaintiff may be taxed in the judgment against the garnishee, if one be recovered.

PROPERTY HELD BY GARNISHEE TO BE DELIVERED AND SOLD. SEC. 18. When any person is charged as garnishee by reason of any property or effects other than an indebtedness payable in money, which he holds, or is bound to deliver to the defendant, such garnishee shall deliver the same or so much thereof as may be necessary, to the officer holding the execution, and the said property shall be sold by the officer and the proceeds accounted for in the same manner as if it had been taken on an execution against the defendant; *Provided*, The garnishee shall not be compelled to deliver any specific articles at any other time or place than as stipulated in the contract between him and the defendant.

COURT TO VALUE PROPERTY AND ORDER SALE. SEC. 19. Upon proper application and notice to the parties, the Court may determine the value of any property or effects so in the hands of the garnishee for delivery, and may make any order relative to the keeping, delivery and sale of the same, that may be necessary to protect the rights of those interested, and may make any order touching the property attached that may be necessary for the protection of all parties interested upon the application of any party in interest, and may require, at any time after the service of such garnishee summons, the property, money or effects so attached to be brought into Court, or delivered to a receiver appointed by the Court.

PLAINTIFF MAY PAY MORTGAGE ON PROPERTY. SEC. 20. Whenever it shall appear that any property or effects in the hands of the garnishee belonging to the defendant, are properly mortgaged, pledged, or in any way liable for the payment of any debt due to said garnishee, the plaintiff may be allowed under a special order of Court, to pay or tender the amount due, and the garnishee shall thereupon deliver the property or effects, as hereinbefore provided, to the officer holding the execution, who shall sell the same as in other cases, and out of the proceeds shall repay the plaintiff the amount paid by him to the garnishee for the redemption of such property or effects with legal interest thereon, and apply the balance upon the execution.

GARNISHEE MAY BE PUNISHED FOR CONTEMPT. SEC. 21. If any garnishee shall refuse or neglect to deliver any property or effects as provided in the preceding Section, he may be punished for contempt of Court, and shall in addition be liable to the plaintiff for the value of such property or effects, less the amount of the lien, if any, to be recovered in a proper action.

SEC. 22. Nothing herein shall prevent the garnishee from selling such property or effects so in his hands for the payment of the demand for which they are mortgaged, pledged, or otherwise liable at any time before payment or tender of the amount due to him; *Provided*, Such sale be authorized by the terms of the contract between said garnishee and the defendant.

Garnishee may sell property to pay claims for which they are mortgaged

SEC. 23. If any such property or effects shall be destroyed without any negligence or default of the garnishee after judgment and before demand by the officer holding the execution, such garnishee shall be discharged from all liability to the plaintiff, for the non-delivery of such property or effects.

Garnishee not liable for destruction of property

SEC. 24. Judgment against a garnishee shall be rendered, if at all, for the amount due the defendant, or so much thereof as may be necessary to satisfy the plaintiff's judgment against said defendant with costs taxed and allowed in the proceeding against garnishee.

Judgment how rendered

SEC. 25. Whenever any person shall be summoned as a garnishee in the District Court, he may at any time before the return day of the summons, appear before the officer named therein, or any Justice of the Peace competent to try causes between the parties, and with the consent of the plaintiff, to be certified by said officer or justice, make his disclosure upon oath with like effect as if made on the day named in the summons; in case such disclosure is taken by a Justice, he shall receive the same fees as are allowed by Section seventeen (17) of this Act.

When garnishee may appear before return day

SEC. 26. If the plaintiff will not consent to such examination and disclosure, the garnishee in case he is compelled to be absent from the county until after the return day of the summons, may make affidavit to that effect, which with a notice of time, place and the officer or justice, he shall serve upon the plaintiff or his attorney at least twenty-four (24) hours previous to the time specified in it for the disclosure, and upon due proof of such service, his disclosure shall be taken as provided in the preceding Section and with like effect.

Proceeding if plaintiff will not consent

SEC. 27. If any person summoned as a garnishee shall appear and submit himself to an examination upon oath as herein provided, he shall be allowed his costs for travel and attendance, and in special and extraordinary cases, such further sum as the Court shall deem reasonable for his counsel fees and other necessary expenses.

Garnishee allowed costs of travel

SEC. 28. If such person shall be adjudged chargeable as garnishee, his said costs and allowance shall be deducted and retained out of the property, money or effects in his hands and he shall be held accountable only for the balance to be paid on the execution.

Costs deducted from property

SEC. 29. If such person shall be charged on account of any specific articles or personal property, he shall not be

Specific property not delivered to

costs are paid obliged to deliver the same to the officer serving the execution until his costs allowed and taxed shall be fully paid or tendered; and if he be discharged for any cause he shall recover judgment against the plaintiff for his costs and have execution therefor.

Amount of costs recovered SEC. 30. The plaintiff under the provisions of this Section shall in no case, except in cases provided for in Section twelve (12) of this Act, recover a greater sum for costs, including the costs allowed to the garnishee, than the amount of damages recovered.

When judgment not rendered in Justices' Court SEC. 31. No judgment shall be rendered against a garnishee in a Justices' Court where the judgment against the defendant is less than ten (10) dollars exclusive of costs, nor where the indebtedness of the garnishee to the defendant or the value of the property, money or effects of the defendant in the hands or under the control of the garnishee, as proved, shall be less than ten (10) dollars.

When judgment not rendered in District Court If the action be in a District Court no judgment shall be rendered against the garnishee, where the indebtedness proved against him, or the value of the money, property or effects of the defendant in his hands or under his control shall be less than twenty-five (25) dollars; but in all such cases the garnishee shall be discharged and shall recover his costs as herein provided against the plaintiff.

Judgment to acquit garnishee from further claims SEC. 32. The judgment against a garnishee shall acquit and discharge him from all claims of all parties to the process, in and to the property, money or effects paid, delivered or accounted for by such garnishee by force of such judgment.

Discharge no bar to further action SEC. 33. It any person summoned as a garnishee shall be discharged, the judgment shall be no bar to an action brought against him by the defendant or other claimants for the same demand.

Parties aggrieved may appeal SEC. 34. Any party to a proceeding under this Act, deeming himself aggrieved by any order or final judgment therein, may remove the same from a Justices' Court to the District Court, or from a District Court to a Supreme Court, by appeal or writ of error in the same cases, in like manner, and with like effect as in a civil action.

Revised Statutes repealed SEC. 35. Chapter ninety-one (91) of the Revised Statutes the same being Chapter eighty (80) of the Compiled Statutes, and every part thereof, be and the same is hereby repealed.

Actions commencing prior to this act not affected thereby SEC. 36. This Act shall take effect from and after the twentieth day of March, one thousand eight hundred and sixty, and no proceedings commenced under the Act hereby repealed, prior to that time shall be invalidated by this Act; but the same may be prosecuted to final judgment in the same manner, as if this Act had not been passed, either under the provisions of this Act after the same shall take effect, or under the provisions of the Act hereby repealed.

AMOS COGGSWELL,

Speaker of the House of Representatives
E. HODGES,

President *pro tem.* of the Senate.

Approved March fifteenth, one thousand eight hundred and
sixty.

SECRETARY'S OFFICE, MINNESOTA, }
March 15th, 1860.

ALEX. RAMSEY.

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

J. H. BAKER, Secretary of State.

CHAPTER LXXI.

An Act fixing the time of holding Terms of the Dis- trict Court in various Counties in the First and Fourth Judicial Districts.

- SECTION 1. Times of holding District Court in the several counties com-
posing the First and Fourth Judicial Districts.
2. Repeal of conflicting acts.
 3. Writs &c., returnable at terms fixed by this act.
 2. Act to take effect from and after passage.

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

SECTION 1. The times of holding general terms of the
District Court in the counties hereinafter named in the First
and Fourth Judicial Districts, shall be as follows:

First—In the First Judicial District—

In the county of Goodhue, on the first Tuesday of January
and the third Tuesday of June.

In the county of Washington on the second Tuesday of Times of holding
terms of District
Court in First
District April and second Tuesday in November.

In the county of Dakota, on the fourth Tuesday of March
and the third Tuesday of September.

In the county of Chisago, on the third Tuesday of October.

Second—In the Fourth Judicial District—

In the county of Wright, on the fourth Monday of March
and the first Monday of September.

In the county of Benton, on the second Monday of Sep- Times of holding
terms of District
Court in Fourth
District tember.