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THE
REVISED STATUTES,
OF THE
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

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CHAPTER 69.

OF COURTS OF JUSTICE.

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- ARTICLE 2.—OF THE DISTRICT COURTS.
- ARTICLE 3.—OF PROBATE COURTS.
- ARTICLE 4.—OF COURTS OF JUSTICES OF THE PEACE.

ARTICLE I.

OF COURTS IN GENERAL; AND THE SUPREME COURT.

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SEC. 1. The following are the courts of justice in this territory :

1. The supreme court :
2. The district courts :
3. Probate courts :
4. Courts of the justices of the peace.

Courts of justice enumerated.

OF THE SUPREME COURT.

SEC. 2. The several judges of the supreme court in this territory, are hereby required to meet at the supreme court room, in St. Paul, and hold a session of the supreme court twice in each year; that is to say : The first session shall commence on the second Monday of January, in each year; and the second session shall commence on the second Monday of July, in each and every year.

Judges to meet at St. Paul, and hold session of court.

SEC. 3. Any session of the supreme court shall be continued from day to day, until the business before the court shall be disposed of.

Session to continue until business is disposed of.

SEC. 4. The supreme court of this territory shall have and exercise appellate jurisdiction, only except as otherwise provided by law, which shall extend to all matters of appeal, error, or complaint, from the decisions, judgments or decrees, of any of the district courts, in all matters of law or equity, and may also extend to all questions of law, arising in any of the said district courts :

Jurisdiction of supreme court.

1. Upon a motion for a new trial in arrest of judgment, or in cases reversed by the said court :

2. In a final judgment in the district courts, in any action commenced therein or brought there from another court, and upon appeal from that judgment, to review any intermediate order, involving the merits, and necessarily affecting the judgment:

3. In a judgment or decision of any district court in a criminal action.

Powers of supreme court.

SEC. 5. The supreme court shall have power to issue writs of error, certiorari, mandamus, prohibition, and all other writs and processes, not especially provided for by law, to all courts of inferior jurisdiction, to corporations and to individuals, that shall be necessary to the furtherance of justice and the execution of the laws; but no writ of error shall operate as a stay of proceedings or of execution, unless so ordered by the court, upon motion, or by one of the judges thereof in vacation, except in cases otherwise provided by law.

Powers of supreme court.

SEC. 6. The supreme court shall be vested with full power and authority necessary for carrying into complete execution all its judgments, decrees, and determinations in the matters aforesaid; and for the exercise of its jurisdiction as the supreme judicial tribunal of the territory; and any judge of said court, may in vacation, issue any of the processes mentioned in this article.

Court to give decisions in writing, to be filed with clerk. To appoint a reporter.

SEC. 7. The said court shall in all cases decided by it, give its decision in writing; which shall be filed with the clerk of said court, with the other papers in the case, and the said court shall appoint some proper person to report its doings in all causes decided; which reports shall be published from time to time according to law.

Any one of the judges may issue process in vacation.

SEC. 8. Any one of the judges of the supreme court shall have power in vacation to issue any of the writs or processes, which the said court is allowed by law to issue.

Court when to stand adjourned, &c.

SEC. 9. If any two of the judges of the supreme court shall not attend on the first day of the term, the clerk shall enter such fact of record, and the judge present shall adjourn the court to the next day, and so on from day to day, for six days, if neither of the absent judges appear; at the end of which period, all matters pending in said court, shall stand continued, until the next regular or special term of said court.

If neither judge appears, clerk to adjourn the court.

SEC. 10. If neither of the judges appear, the clerk of said court may adjourn from day to day, as provided in the preceding section.

Special term of said court when to be held.

SEC. 11. Whenever, from any cause, it shall appear to the judges of the said court, or any two of them, that the public interest requires that a special term of the said court be held, the said judges, or any two of them, shall have authority to appoint a special term of said court, giving thirty days previous notice thereof, by advertisement published in a newspaper, at the seat of government of the territory.

Notice of such term how given.

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THE DISTRICT COURTS.

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7. Court not to be open on Sunday, except in certain cases.
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11. Process not to abate by vacancy in office of judge.

SECTION

12. Process how tested, when term not held.
13. Adjournment of court not to affect the return of writ.
14. Writs how tested.
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18. Court may require books and papers to be procured.
19. Judge may have special term, upon giving notice thereof.
20. Judge may appoint place of holding court in certain cases.
21. Judge may order a special venire in certain cases.

SEC. 1. This territory shall be divided into three judicial districts, to be composed as follows:

Territory how divided into judicial districts.

1. The first judicial district shall comprise the county of Ramsey, and the county of Dakota shall be attached to the said county of Ramsey for judicial purposes:

2. The second district shall comprise the county of Washington, and the county of Wabashaw is attached to the said county of Washington for judicial purposes:

3. The third district shall comprise the county of Benton, and the counties of Pembina, Cass, and Itasca are attached to the said county of Benton, for judicial purposes.

SEC. 2. The district courts of the territory shall be held at the times and places following, to wit:

District courts when and where to be held.

1. In the county of Ramsey on the first Monday in May, and the second Monday in September,* in each year:

* See correction.

2. In the county of Washington on the first Monday in June, and the second Monday in October, in each year:

3. In the county of Benton, on the third Monday in June, and the second Monday in November, in each year.

SEC. 3. That the district courts of this territory shall have original jurisdiction in all civil actions, and suits in equity, within their respective districts, when the sum in controversy shall exceed one hundred dollars, and appellate jurisdiction in all cases from courts of probate and justices of the peace, when the value of the matter, or the sum in controversy shall exceed fifteen dollars; and the said courts respectively, shall have power and authority to hear and determine all cases of crimes or misdemeanor, of whatever kind, which shall have been committed in any county or place, within their respective districts, except as otherwise provided by statute; and the judges of the said courts shall be conservators of the public peace.

The jurisdiction of the several district courts.

SEC. 4. The said courts in term time, and the judges thereof in va-

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OF DISTRICT COURTS.

Powers of Judges of district court.

caution, shall have power to award throughout the territory, returnable to the proper county, writs of injunction, ne exeat, and all other writs or processes, which may or shall be necessary to the perfect exercise of the powers with which they are vested, and the due administration of justice.

Judge not to sit when interested.

SEC. 5. No judge of any of the courts of record of this territory, shall sit in any cause in which he is interested, either directly or indirectly, or in which he would be excluded under the common law from sitting as a juror.

Not to practice as attorney or solicitor.

SEC. 6. No judge of any of the courts of record of this territory, shall practice as an attorney, counsellor, or solicitor at law, or in equity; except it be in a cause in which he is a party in interest, nor shall he receive any fee for any legal or judicial services, other than those prescribed by law; nor shall he be the partner of any practicing attorney in the business of his profession, nor shall any one of the judges aforesaid, hold any other office under the laws of this territory, during the term of his judgeship. And each of the judges of the several district courts shall reside permanently within their respective judicial districts, during their term of office.

Not to have law partner.

Court not to be open on Sunday except in certain cases.

SEC. 7. No one of the courts of this territory, shall be opened for any purpose on Sunday, other than the receiving of a verdict, or discharging of a jury; but this section shall not in any wise prevent the judges of any of said courts or any justice of the peace, exercising jurisdiction, in any case where it shall or may be necessary for the preservation of the peace, the sanctity of the day, or in arresting and committing any offender.

When Judge is unable to hold court, clerk to notify governor.

SEC. 8. In case any judge of a district court from sickness, or any other cause, shall be unable to hold any of his courts, or in case any vacancy shall occur in any of the districts, the clerk thereof shall in due time give notice of such fact to the governor, who shall assign to one of the other district judges to hold the court or courts, in such district, until the inability of the judge shall be removed, or the vacancy filled.

If Judge shall not attend, clerk to adjourn court.

SEC. 9. In case the judge of any of the district courts shall not attend at the place of holding the same, by four o'clock in the afternoon, on the first day of the term of such court, the sheriff or clerk shall forthwith open and adjourn the same until nine o'clock in the forenoon of the succeeding day; and if the said judge does not then appear, the court shall be adjourned by one of the aforesaid officers, without day, and the jury dismissed.

When person bound to appear at one term, to appear at the next term.

SEC. 10. All persons bound by recognizance, or otherwise to appear at any court, the term whereof shall not have been held, shall be bound to appear at the next succeeding term of the said court.

Process not to abate by vacancy in office of judge.

SEC. 11. No process, proceeding, or writ, civil or criminal before any of the said courts, shall abate or be discontinued by reason of any vacancy in the office of any of the judges of said courts, but shall be proceeded in, in like manner, by the judge who shall be assigned, or when such vacancy has been filled, as if the said vacancy had not occurred.

Process how tested when term not held.

SEC. 12. In case a stated term of any court, shall not have been holden, any process issuing therefrom, may be tested on the first or any other succeeding day, when such term should have been held.

Adjournment of court not to affect the return of writ.

SEC. 13. The adjournment of any one of the said courts before the end of its term shall not affect the test, service, or return of any writ or process, made returnable to any day of such term subsequent to such adjournment.

Writs how tested.

SEC. 14. All writs or processes, issuing from or out of any of the said district courts, may be tested in the name of the presiding judge

thereof, or in the name of any one of the judges of the supreme court.

SEC. 26. All writs or processes issuing from, or out of any of the courts of this territory, shall be in the name of the United States.

Writs to be in the name of the United States.

SEC. 27. In all cases where, by the statutes of this territory, writs or processes, are required to be issued out of any of the courts of record of this territory, the same shall be sealed with the seal of the court, dated on the day on which it is issued, signed by the clerk and made returnable on the first day of the term succeeding their date, when no other time is fixed by law for the return thereof.

Writs how sealed and when returnable.

SEC. 28. All writs or processes issuing from or out of said courts shall, before the delivery thereof to the officer whose duty it is to serve the same, be indorsed by the clerk, with the name of the attorney or other person demanding the process.

Writs to be indorsed with name of attorney.

SEC. 29. The district courts shall have power in any action pending in them, or either of them, upon motion, and upon good and sufficient cause, being shown by affidavit, or affirmation, and due notice thereof being given, to order the parties or either of them to produce all books, papers, or writing in their possession or power which contain evidence pertinent to the issue; and if either party shall fail to comply with such order, or to satisfy the said courts, why they have not power so to do, it shall be lawful for the said courts, if the party so refusing shall be the plaintiff, to give judgment for the defendant, as in case of non-suit; and if a defendant, to give judgment against him or her by default, as far as relates to such part of the plaintiff or plaintiffs' demand, or of the defendant's defence, to which the books of the party are alleged to apply.

Court may require books and papers to be produced.

SEC. 30. The judge of any of the district courts is hereby authorized to hold adjourned terms of said court, at any time he may see proper, or appoint special terms in any county of his district, for the trial of either civil or criminal cases, giving thirty days previous notice thereof, by advertisement, to be published four successive weeks in a newspaper printed in the said county, if there be one, and if not, in the nearest paper published in the territory, and also by posting a notice thereof on the door of the place for holding court, in the county in which said term is to be held.

Judge may hold special term, upon giving notice thereof.

SEC. 31. Whenever the court house, or place of holding court, in any county, shall by any means have been destroyed, or shall from any cause be unsafe, unfit, or inconvenient, for the holding of any court, or in case no court house shall have been provided, the judge of the district court of the county, may appoint some convenient building in the vicinity of the place where the court is required to be held as a temporary place for the holding of said court.

Judge may appoint place of holding court in certain cases.

SEC. 32. It shall be lawful for the judge of the district court of either of the counties of this territory, whenever there shall happen to be a deficiency of jurors for any cause whatever, to rule a special venire through the term or any days of the term, to the sheriff of the proper county, to summon a number of jurors sufficient to complete the number of the original panel.

Judge may order a special venire in certain cases.

ARTICLE III.

OF PROBATE COURTS.

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3. Jurisdiction of probate court.
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40. Judge how to proceed upon application to remove guardian.
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Courts of probate established.

Sec. 1. There is established in each organized county in this territory, a probate court, with the jurisdiction conferred by this article, but nothing contained in this article shall affect the proceedings now in said courts.

Jurisdiction of probate courts.

Sec. 2. The said probate courts have exclusive jurisdiction in the first instance, in the county to take the proof of wills.

1. When the testator at or immediately before his death, was an inhabitant of the county, in whatever place he may have died:

2. When the testator not being an inhabitant of this territory, shall have died in the county, leaving assets therein:

3. When the testator not being an inhabitant of this territory, shall have died out of the territory, leaving assets in the county :

4. When the testator not being a resident of this territory, shall have died out of the territory, not leaving assets therein, but when assets thereafter come into the county :

5. When real property devised by the testator is situated in the county, and no other probate court has gained jurisdiction under either of the preceding subdivisions of this section.

SEC. 3. The probate court has jurisdiction also,

Jurisdiction of probate courts.

1. To take proof of a will relating to real property situated in the county, when the testator shall have died out of this territory, not being an inhabitant thereof, and not leaving assets therein :

2. To grant and revoke letters testamentary and of administration :

3. To direct and control the conduct, and settle the accounts of executors and administrators :

4. To enforce the payment of debts and legacies and the distribution of the estates of intestates :

5. To order the sale, and dispose of the real property of deceased persons :

6. To appoint and remove guardians, to direct and control their conduct and to settle their accounts :

7. To take the care and custody of the person and estate of a lunatic or habitual drunkard, residing in the county, and to appoint and remove guardians, to direct and control their conduct, and to settle their accounts :

8. To direct the admeasurement of dower :

9. To exercise the powers and duties conferred upon it by law.

SEC. 4. The jurisdiction acquired by any probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law, and when a guardian is appointed, or any other proceeding is commenced in the probate court of a particular county, all further proceedings in respect to the same, must be continued in that court.

Jurisdiction acquired by one judge of probate exclusive.

SEC. 5. The probate court of each county must be held by the judge of probate court; and in case the judge of probate is unable to act, or if the office be vacant, then the said court must be held by the district attorney of the county.

Probate court to be held by the judge, in his absence by the district attorney

SEC. 6. The probate court is always open for the transaction of business within its jurisdiction; but it is the especial duty of the judge of probate, to attend at his office on the first Monday of each month, and then hold a probate court.

Probate court is always open.

OF PROCEEDINGS IN PROBATE COURTS.

SEC. 7. There are no pleadings in the probate courts of this territory. The proceedings are those prescribed by statute, except that letters of administration and testamentary, may be known as the appointment of administrators or executors; these proceedings are had upon the application of a party, verbal or written; and when verbal, entered in the minutes of the court, and when written, they are to be filed. The powers of a judge of probate are exercised by means of

No pleading in probate court, proceedings, &c.

1. A citation to the party :

2. An affidavit, deposition, or statement of a party :

3. A subpoena to a witness :

4. Orders and judgments; and,

5. An execution or warrant to enforce them.

SEC. 8. The judge of probate must keep an office open at reason-

Judge of probate

must keep office open at all hours.

ble hours, suitable and convenient for the transaction of business, and for the deposit and safe keeping of the public books and papers under his charge. He may hold his court at any other place in his county, which he may from time to time appoint. He must also provide suitable cases for the books and papers of his office, the expense of which is a county charge; they belong to the county, and must be delivered by the judge of probate to his successor in office.

Books of record to be kept by judge of probate.

Sec. 9. The following books must be kept by the judge of probate:

1. A register in which must be entered a memorandum of all official business transacted by him, or in his office, appertaining to the estate of each person deceased, under the name of such person; that pertaining to the general guardian of an infant, under the name of such infant; that pertaining to an insane person or drunkard, under his name:

2. A record of wills, in which he must record all wills proven before him, with the certificate of probate thereof; and of all wills proven elsewhere upon which letters of administration are issued by him:

3. A record of appointment of administrators and executors, of general guardians, of infants, of guardians of insane persons and drunkards, of the appointment of admeasurers of dower, with all orders relating to the same and the admeasurers' reports.

Register what to contain.

Sec. 10. The judge of probate must cause to be entered in the register, mentioned in the first subdivision of the preceding section, a summary ballance sheet of the accounts of administrators, and guardians, and trustees before him, with his orders and judgments relating to the same, a memorandum of execution issued thereon, with a note of satisfaction when satisfied; also, all orders relating to the sale of real estate, and to the distribution of the proceeds thereof, all orders made by him in the discharge of his official duties.

Each book to contain an index of entries.

Sec. 11. To each of such books there must be attached an index referring to the entries in alphabetical order, under the name of the person to whose estate or business they relate, and indicating the page of the book where the entry is made.

Successor may complete unfinished business.

Sec. 12. The successor in office of any judge of probate, has power to complete any unfinished business commenced by his predecessor.

Judge of probate cannot be attorney in certain cases.

Sec. 13. A judge of probate cannot be council or attorney in any civil action for or against any executor, administrator, guardian, or minor, trustees, or other person over whom or whose accounts he would by law have jurisdiction, whether such action relates to the business of the estate or not.

Costs may be allowed by judge of probate.

Sec. 14. Costs may be awarded in favor of one party against another, to be paid personally out of the estate or fund in any proceeding contested adversely before the judge of probate; but such costs shall not exceed those allowed in the district court for a trial in an action at law; witnesses fees and other disbursements, equal to those allowed in the district court, may also be allowed.

Judge may issue execution as in district courts.

Sec. 15. Orders for the payment of money, may be enforced by execution, or otherwise, in the same manner as judgments for the payment of money in the district court; except in the probate court, all process is issued by the judge of probate.

Process by whom executed.

Sec. 16. Executions, warrants, and other process issued by a judge of probate, must be executed by the sheriff or coroner of the county to which they are sent to be executed, in the same manner, and with the same powers and responsibilities and fees, as process issued from the district court.

PROCEEDINGS IN CASES OF INSANITY AND HABITUAL DRUNKENNESS.

Judge of probate to

Sec. 17. The judge of probate of the county, has the care and cus-

tody of the person and property of idiots, lunatics, and other persons of unsound mind; and of persons who, in consequence of habitual drunkenness, or for any other cause, are incapable of the proper care and management of their own property, all of whom are known in the statute, as insane persons or habitual drunkards.

have custody of In-
sane persons and
drunkards.

SEC. 18. For the purpose of exercising these powers, the court may appoint one, two, or three guardians in each case, whose duty it is,

Guardians appoint-
ed, their powers
and duties.

1. To take possession of the property of the person, and manage the same in a manner proper to produce income, and to prevent its being wasted or destroyed:

2. To take the care and custody of such person, and so far hold him in restraint as may be necessary to prevent injury to the person or property of himself or others:

3. To provide out of his property for the maintenance of such person and his family, and the education of his children:

4. To make an inventory of his property, real and personal, and to file the same in the office of the judge of probate, immediately after the appointment of such guardian, and to keep, and annually file in the office of the judge of probate, an account of all sums received and expended for the year, verified by his oath.

SEC. 19. The county commissioners of the county, or any justice of the peace therein, where the insane person or habitual drunkard resides, or any member of the family of such insane person or drunkard, or any person related to him by blood or marriage, may apply to the judge of probate for the appointment of the guardian.

County commis-
sioners or justice
may apply for the
appointment of
such guardian.

SEC. 20. Such application must be in writing, stating the facts upon which it is founded, and verified by the affidavit of the applicant, to the effect that he believes it to be true.

Application how to
be made, and what
to contain, &c.

SEC. 21. Upon receiving the application, the judge of probate must immediately appoint a time and place in the county where the insane person or drunkard resides, to investigate the truth of the allegations made in the application, which time must not be less than eight, nor more than twenty days thereafter.

Judge to appoint
time and place for
hearing.

SEC. 22. The judge of probate must also issue a citation to the insane person or drunkard, to appear at the time and place specified, and show cause, if any he have, against the application; such citation, with a copy of the application, must be served by the sheriff or coroner, at least six days before the time of appearance on the insane person or drunkard, and on some member of the family of such person, or of the family in which he resides, of suitable age and discretion other than the applicant.

Judge to issue cita-
tion to such person,
how served.

SEC. 23. At the time and place appointed, or at such other time as the hearing may be adjourned to, for cause shown, the judge of probate must attend, and draw and impanel a jury of six persons in the same manner as a jury is drawn and impaneled by a justice of the peace, for the trial of civil actions. When a jury is duly impaneled, it must be sworn by the judge of probate, to investigate the truth of the matters stated in the application, and to find a true inquisition thereon according to the evidence.

Jury impaneled to
try matters of the
application.

SEC. 24. The judge of probate must preside at the trial, and decide all questions of law arising therein; and the trial must be conducted in all respects like a trial in a civil action, except as otherwise provided in this chapter.

Judge of probate to
preside at the trial,
and decide ques-
tions of law as in
civil action.

SEC. 25. Upon such trial, the alleged insane person or drunkard may appear by counsel, and may produce witnesses on his part; but whether he appear or not, the applicant must prove the truth of the allegations made in his application.

Party complained
of may appear by
counsel on the trial.

SEC. 26. The inquisition of the jury must be in writing, and sub-

Inquisition of the

Jury how made and what to contain.

scribed by the jury, or the foreman thereof, and must declare that there exists no sufficient reason for the appointment of guardians, or that the person is in one of the conditions mentioned in section seventeen, specifying which of them; the judge of probate must instruct the jury as to the form of the inquisition, and it may be formed and subscribed in his presence; but he can take no part in the deliberation of the jury, nor advise them in respect to their decision, except on questions of law.

When the Judge to appoint one or more guardians.

SEC. 27. If the jury find that the person is in one of the conditions mentioned in section seventeen, the judge of probate must immediately appoint one or more guardians (not exceeding three in number,) for him; when the application sets forth a cause other than habitual drunkenness, they must state in the inquisition, whether or not, in their opinion, the disability is likely to be permanent. If the jury find that there exists no sufficient reason for the appointment of guardians, the application must be dismissed.

Appointment of guardian how made and what to contain.

SEC. 28. The appointment must be in writing, and must define the general duties of the guardians, as prescribed in section eighteen. It must be recorded in the office of the judge of probate, in the book kept by him for that purpose. The guardian must also give public notice of his appointment, by advertisement in a newspaper printed and published in the county; if there is no newspaper printed and published in the county, then such notice must be printed in a newspaper printed and published at the seat of government of the territory.

Guardian must be sworn, and give bond.

SEC. 29. The guardian must be sworn to execute faithfully the duties of his trust, according to the best of his ability; he must also give security in the same manner and to the same effect as the general guardian of an infant. The oath and undertaking must be filed in the office of the judge of probate.

Judge must appoint appraisers to make inventory and appraisal of effects.

SEC. 30. The judge of probate must also appoint appraisers, and an inventory and appraisal of the personal property of the insane person or drunkard must be taken, verified and returned in the same manner and with the same effect, as in case of administration of the estate of a deceased person, except that it must contain a description of the real property, and a valuation by the appraisers, of the annual income thereof.

The power and responsibilities of guardians.

SEC. 31. The powers and responsibilities of guardians, in the execution of the trusts reposed in them by this article, are in all respects like those of a general guardian, in respect to an infant and his estate, except as in this article otherwise provided.

Guardians how to pay the debts, &c., of ward.

SEC. 32. In the payment of debts, the guardian must be governed by the same rules as those which regulate the conduct of administrators.

When Judge may order real property to be sold to pay debts.

SEC. 33. When there is not personal property sufficient, with the income of the real property, for the payment of the debts, or for the proper maintenance of the insane person or drunkard, and his family, the judge of probate may upon a proper accounting by the guardian of the personal, and of the income of the real property, order the real property, or such part thereof, as he may deem necessary, to be sold or mortgaged to procure the necessary funds therefor.

When disability is not permanent how Judge to proceed.

SEC. 34. When the inquisition does not state that the disability is likely to be permanent, the judge of probate must, before ordering a sale, ascertain the probable necessary expenditure over the annual income, for a period not exceeding three years in advance, and must limit the sale or mortgage to so much of the real property as can be sold or mortgaged separately, without material injury to the residue of the property, and as may be sufficient to raise such sum, and in all cases he must ascertain by evidence, the present condition of the person. Fur-

ther sale or mortgage may be ordered from time to time as may be necessary.

SEC. 35. The proceedings of a sale or mortgage, must be conducted in all respects in the same manner as for a sale by administrators, except as herein otherwise provided; but the proceeds of the sale, instead of being paid to the judge of probate, are to be placed in the hands of the guardian.

Small Sale or mortgage of real estate how conducted.

SEC. 36. The guardian may be required to give new or additional security, or to render an account, and may be removed by the judge of probate; he is also subject in all other respects to the control and direction of the judge of probate, in the same manner as a general guardian of an infant.

Guardian may be required to give bonds and may be removed.

SEC. 37. The guardian has power, under the direction of a court of competent jurisdiction, to execute a conveyance of real property, or to do any other act in the specific performance of a contract made by the insane person or drunkard, when he was capable to contract.

Guardian may execute conveyance of property.

SEC. 38. The power of the guardian ceases upon the death of the insane person or drunkard, and also when the disability in respect to which he was appointed, has been adjudged by the judge of probate to have ceased; or when he has been removed for any cause, as provided in the next two sections.

When powers of guardian cease.

SEC. 39. Upon the application, to the judge of probate, to remove a guardian, or revoke his appointment, made upon the affidavit of some respectable person, showing misconduct of the guardian, or that the disability in respect to which the guardian was appointed, has ceased, a citation must be issued to the guardian to the person upon whose application such guardian was appointed, if living within the county, and to the next of kin, if any within the county who are of full age, to show cause, if any they have, why the appointment of the guardian should not be removed, or his appointment revoked.

Judge how to proceed upon application to remove guardian.

SEC. 40. The citation must be served at least ten days before the time appointed for the hearing; upon its return duly served, or upon another day to which the hearing may be adjourned, the judge of probate must hear the evidence offered for and against the application; if sufficient cause for the continuance of the guardian be not shown, the judge of probate must by an order declare that the disability in respect to which the guardian was appointed has ceased, that the powers of the guardian are therefore revoked, and that the party for whom he was appointed is restored to his original rights. If misconduct of the guardian be established he must be removed, and another appointed in his place.

Judge how to proceed upon application to remove guardian.

SEC. 41. The fees of a judge of probate on appointing of a guardian are the same as in the proof of a will, and for his removal and the proceedings in relation thereto, the same as for similar services in case of administrators. Upon a trial before him, the judge of probate may order costs to be paid, either by a party or out of the funds of the estate, to any other party, not exceeding the costs allowed for the trial of a civil action.

Fees of judge of probate in appointing guardian.

SEC. 42. Every insane person or habitual drunkard, for whom a guardian shall be appointed in accordance with the provisions of this article, is during the continuance of such appointment, incapable in law to make any civil contract by which the estate of such insane person or drunkard will be bound.

Persons over whom guardians have been appointed incapable to contract.

APPEALS FROM THE PROBATE COURTS.

SEC. 43. An appeal may be taken to the district court from a judgment or order in a probate court in the following cases:

Appeals from probate court, when and how taken.

1. An order admitting a will to record or probate, or refusing the same :

2. An order appointing a person administrator, executor, or guardian of an infant, or a trustee for an insane person or drunkard, or removing him, or refusing to make such appointment or removal :

3. An order directing real property to be sold, mortgaged, or leased, or confirming the same :

4. An order or judgment by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or such allowance or direction refused :

5. Judgment upon an accounting by an executor, administrator, guardian, or trustee, including an intermediate order involving the merits and necessarily affecting such judgment.

Who may take an appeal.

SEC. 44. The appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed the order or judgment appealed from, or who being entitled to be heard thereon, had due notice or opportunity to be heard, the latter fact to be shown by affidavit and filed and served with the notice.

Appeals on questions of law or fact how taken.

SEC. 45. The appeal may be taken upon questions of fact or law ; and may be made by the service of a notice of the appeal on the adverse party, stating the appeal from the order or judgment, or some specified part thereof, and filing a copy of the said notice in the office of the judge of probate ; together with a recognizance to be made by the party appealing, with one or more sufficient sureties, to be approved by the judge of probate, conditioned that the party will prosecute his appeal with due diligence to a determination, and will pay all costs that may be adjudged against him in the district court.

Appeals to be taken within thirty days.

SEC. 46. The appeal must be taken within thirty days after notice of the order or judgment appealed from.

ARTICLE IV.

OF COURTS OF JUSTICES OF THE PEACE.

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JURISDICTION OF JUSTICES OF THE PEACE.

SEC. 1. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater.

Jurisdiction of justices of the peace.

SEC. 2. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in the county.

Justice where to keep his office.

SEC. 3. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice.

Justice not to hold his office with practicing attorney.

SEC. 4. Every justice of the peace elected in any precinct in this territory is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature are to apply to such justice's court, so far as the same may be applicable.

Powers and jurisdiction of justice of the peace.

SEC. 5. Every such justice shall have jurisdiction over and cognizance of the following actions and proceedings:

Powers and jurisdiction of justice of the peace.

1. Of an action arising on contract for the recovery of money only, if the sum claimed does not exceed one hundred dollars:

2. Of an action for damages for an injury to the person or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars:

3. Of an action for a penalty not exceeding one hundred dollars, given by the statutes:

4. Of an action upon a bond, conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for such installment as it becomes due:

5. Of an action upon a surety bond or undertaking taken by them, if the penalty do not exceed one hundred dollars:

6. To take and enter judgment on the confession of a defendant when the amount does not exceed one hundred dollars.

SEC. 6. The jurisdiction conferred by the last section does not extend, however to a civil action,

Jurisdiction not to extend to civil actions in certain cases.

1. In which the title to real property shall come in question:

2. Nor for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, or upon a promise to marry:
3. Nor of an action against an executor or administrator as such.

COMMENCEMENT OF SUITS; SERVICE AND RETURN OF PROCESS.

Justice to keep a docket, and what to contain.

SEC. 7. Every justice of the peace, shall keep a docket in which he shall enter,

1. The title of all causes commenced before him:
2. The time when the process was issued, against the defendant, and the particular nature thereof:
3. The time when the parties appeared before him either without, or upon the return of process:
4. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set off was pleaded, a similar statement of the set off, and the amount estimated:
5. Every adjournment, stating at whose request, and for what time:
6. The time when the trial was had, stating whether the same was by jury or by the justice:
7. The verdict of the jury and when rendered:
8. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, and the fees due to each person separately:
9. The fact of an appeal having been made and allowed, and when made and allowed:
10. Satisfaction of judgment when made:
11. And such other entries as may be material.

Suits how commenced before justice.

SEC. 8. Suits may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process; also when the name of the defendant is not known to the plaintiff, a suit may be commenced against him by a fictitious name and it shall not be abated for that cause, but may be amended on such terms as the justice shall think reasonable.

Justice may require security for costs of plaintiff.

SEC. 9. Any justice of the peace in this territory, may in all actions hereafter instituted either before or after the process shall issue, at his discretion, require of the plaintiff in such action to give security for the costs; and the person giving such security shall sign a memorandum in writing to that effect, which such justice shall keep as a part of the record in the case, and if the plaintiff refuse to give such security, the justice shall dismiss the suit.

Process to be in the name of the United States.

SEC. 10. All processes issued by justices of the peace shall run in the name of the United States, be dated on the day it issued, and shall be signed by the justice granting the same, and be directed to the sheriff or any constable of the proper county.

Summons the first process, what to contain.

SEC. 11. In all cases not otherwise especially provided for, the first process shall be by summons, commanding the officer to summon the defendant, to appear before such justice at the time and place to be expressed in such summons, not less than six nor more than twenty days from the date thereof, to answer to the plaintiff in a civil action, which summons shall be served at least six days before the time of appearance therein mentioned, by reading the same to the defendant, and delivering a copy thereof to him, if requested by such defendant, if such defendant shall be found, and if not found, by leaving a copy thereof at his or her last usual place of abode.

Officer serving process how to make return.

SEC. 12. Every constable or sheriff, serving any process authorized by this article, shall return thereon in writing the time and manner of service, and shall sign his name to such return.

When justice may

SEC. 13. A justice of the peace shall issue a warrant in every case

where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is a non-resident of the county, or is about to remove from the county, with an intent not to return thereto.

Issue warrant in civil action.

SEC. 14. A warrant shall command the sheriff or constable to take the body of the defendant, and bring him forthwith before such justice, to answer the plaintiff in a civil action, and shall further require the sheriff or constable after he shall have arrested the defendant, to notify the plaintiff of such arrest.

Warrant what to contain.

SEC. 15. A warrant shall be served by arresting the defendant, and taking him before the justice who issued the same; but if such justice be on the return thereof, absent or unable to try the cause, or if it be made to appear to the justice, by the affidavit of the defendant, that said justice is a material witness for the defendant in the case, or is near of kin to the plaintiff in the suit, stating therein the degree, the officer shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause, and proceed therein as if the warrant had been issued by himself.

Warrant how served.

SEC. 16. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until the justice shall direct his release; but in no case shall the defendant be detained longer than twelve hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

Proceedings when person brought before justice on warrant.

SEC. 17. Every justice issuing any process, authorized by this article, upon being satisfied that such process will not be executed, for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an indorsement on the process to the following effect: "At the request and risk of the plaintiff, I authorized A. B. to execute and return this writ. E. F., justice of the peace;" and the person so empowered, shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Justice may empower person to serve process in certain cases.

SEC. 18. If any officer without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make false return, such officer for every such offence shall pay to the party injured ten dollars, and all damages such party may have sustained by reason thereof, to be recovered in a civil action founded upon this statute.

Officers failing to execute process, &c., how liable.

SEC. 19. Parties in justices' courts may prosecute or defend in person, or by attorney, and any person may act as attorney in justices' courts, except that the constable by whom the summons or jury process was served, cannot appear or act on the trial, in behalf of either party. The authority of a person, to act as attorney for another, may be oral or written; but unless admitted by the adverse party, must be proved by the oath of the attorney or otherwise.

Parties may prosecute or defend in person or by attorney.

SEC. 20. No suit shall be instituted by an infant plaintiff, until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein.

When infant plaintiff's next friend to be appointed.

SEC. 21. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age.

Who may not appear in person or by attorney.

SEC. 22. After the service and return of process against an infant defendant, the suit shall not be further prosecuted until a guardian for

Suit not to be prosecuted against infant defendant un-

if guardian is appointed.

such defendant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defence of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may at the request of the plaintiff, appoint any discreet person as such guardian; and the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant, shall not be liable for any cost in the suit.

Parties entitled one hour after time mentioned for appearance.

SEC. 23. The parties are entitled to one hour in which to make their appearance, after the time mentioned in the summons for appearance; but are not bound to remain longer than that time, unless both parties appear, and the justice being present, is actually engaged in the trial of another action, or of a special proceeding; in such case he may postpone the time of appearance until the close of the trial.

PLEADINGS AND TRIAL.

Pleadings when to take place.

SEC. 24. The pleadings in justices' courts must take place at the time mentioned in the summons for the appearance of the parties, or at such time thereafter, not exceeding one week, as the justice may appoint for the convenience of the parties, and by their consent.

Pleadings in justices' courts enumerated and defined.

SEC. 25. The pleadings in justices' courts are:

1. The complaint by the plaintiff, stating the cause of action;
2. The answer by defendant, stating the grounds of defence;
3. When the answer sets up a counter claim by way of a set off, the reply by the plaintiff.

Pleadings may be oral or in writing.

SEC. 26. The pleadings may be oral, or they may be in writing; if oral, the substance of them must be entered by the justice in his docket; if in writing, they must be filed in his office, and a reference to them made in his docket; they are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

Complaint what to contain.

SEC. 27. The complaint must state in a plain and direct manner the facts constituting the cause of action.

Answer how made and what to contain.

SEC. 28. The answer must contain a denial of all the material facts stated in the complaint which the defendant believes to be untrue, and also a statement in a plain and direct manner of any other facts constituting a defence or a counter claim, by way of set off, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

Reply of plaintiff when allowed.

SEC. 29. When the answer contains a counter claim, the plaintiff may reply, denying any of the material allegations relating thereto.

Pleadings how construed in certain cases.

SEC. 30. A statement in an answer or reply that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, is equivalent to a denial.

Written instrument how pleaded.

SEC. 31. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it is sufficient for the party to deliver the account or instrument to the court; and to state that there is due to him thereon from the adverse party, a specified sum which he claims to recover, or set off; the court may at any time of the pleading, require that such writing or account be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being afterwards given in evidence.

To be exhibited to party.

Pleadings must be verified by oath of party.

SEC. 32. Every complaint, answer, or reply, must be verified by the oath of the party pleading; or if he be not present, by the oath of his agent or attorney, to the effect that he believes it to be true; the veri-

fication must be oral or in writing, in conformity with the pleadings verified.

SEC. 33. Every material allegation in a complaint, or relating to a counter claim in an answer, not denied by the pleading of the adverse party must, on the trial, be taken to be true, except that when a defendant who has not been served with a copy of the complaint with the summons fails to appear and answer, the plaintiff cannot recover without proving his case.

Statements in pleading not denied, to be taken as true.

SEC. 34. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it must order the pleading to be amended, and if the party refuse to amend, the defective pleading must be disregarded.

Defective pleadings how objected to.

SEC. 35. A variance between the proof on the trial and the allegations in the pleadings, must be disregarded as immaterial, unless the court be satisfied that the adverse party has been biased to his prejudice thereby.

Variance between proof and pleadings to be disregarded.

SEC. 36. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal to supply any deficiency or omission in the allegations or denial, necessary to support the action or defence, when, by such amendment, substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, that an adjournment is necessary to the adverse party, in consequence of such an amendment, an adjournment may be granted. The court may also, in its discretion, require as a condition for an amendment, the payment of costs to the adverse party, to be fixed by the court, not more than three dollars; but such payment cannot be required, unless an adjournment is made necessary by the amendment; nor can an amendment be allowed after a witness is sworn on a trial, when an adjournment will be made necessary.

Amendments of pleadings when allowed.

SEC. 37. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if sufficient cause be shown upon oath, adjourn the case for any time not exceeding thirty days; and upon an adjournment, all costs for the travel, attendance of witnesses, serving of subpoenas, &c., shall be taxed in the same manner as if no actual trial had been had, upon the day originally fixed for the trial of the case.

Costs allowed when adjournment is necessary.

SEC. 38. If it appear, on the trial of any cause before a justice, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceedings in the cause, and shall certify and return to the district court of the county, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to find judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

Adjournment when and on what terms allowed.

When the title of lands comes in question, Justice how to proceed.

SEC. 39. Every adjournment shall be for such reasonable time as will enable the party to procure such testimony or witness, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Adjournment at the cost of applicant.

SEC. 40. If a cause commenced by a warrant be adjourned by the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody.

Adjournment of cause commenced by warrant.

SEC. 41. But if such cause be adjourned upon the application of the defendant, he shall continue during the time of the adjournment in

When cause adjourned on applica-

tion of defendant to continue in custody.

custody of the officer, unless he shall enter into recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if said judgment be given against him in the suit, and execution be issued against his person, he will render himself up on such execution before the return day thereof; or that he or his security will pay the judgment so recovered.

When recognizance given upon prior adjournment.

SEC. 42. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any recognizance upon a subsequent adjournment, unless such recognizance be required by the justice, or the bail of the defendant, in such prior recognizance.

In suit brought up on recognizance, what plaintiff must prove.

SEC. 43. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover, unless he shows an execution, or a duly certified copy thereof, upon the judgment, obtained in the suit in which such adjournment was had, duly issued within six days after the time, when the same could have been issued against the person of the defendant, and a return thereon that such defendant could not be found.

SET OFFS.

When counter claims of defendant may be set off.

SEC. 44. Counter claims which the defendant may have against the plaintiff, may be set off in the following cases, and under the following circumstances:

1. It must be a demand arising upon a judgment, or upon a contract, express, or implied, whether such contract be written, or unwritten, sealed, or without a seal, and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of condition, only shall be set off:

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee and owner of the demand:

3. It must be for real estate sold, or for personal property sold, or for money paid, or services done; or if it be not such a demand, the amount must be liquidated, or be capable of being liquidated by calculation:

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant:

5. It can only be allowed in actions founded upon demands which could themselves be the subject of set off according to law:

6. If there be several defendants the demands set off must be due to all of them jointly:

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, in which case no set off of a demand against the plaintiff shall be allowed, unless as hereinafter specified:

8. If the action be founded upon a contract, other than a negotiable promissory note, or bill of exchange, which has been assigned by the plaintiff, a demand against such plaintiff, or any assignee of such contract at the time of assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off, to the amount of the plaintiff's debt, if the demands be such as might have been set off against such plaintiff or assignee, while the contract belonged to him.

Claim against the assignor of note, when may be set off.

SEC. 45. If the action be upon a negotiable promissory note, or bill of exchange which has been assigned to the plaintiff, after it becomes due, a set off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons, who shall have assigned

or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him.

SEC. 46. If the plaintiff be a trustee for any other, or if the suit be in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

Set off when suit brought by trustee, when allowed.

SEC. 47. To entitle a defendant to a set off of any counter claim he may have against the plaintiff, he must specifically and clearly allege the same in his answer, stating the particular items of such counter claim; but no set off shall be allowed by a justice's court unless the same shall be alleged in the defendant's answer as required in this section.

To entitle defendant to set off, he must allege the same in answer.

SEC. 48. If the amount of the set off duly established be equal to the plaintiff's debt or demand, judgment shall be entered that plaintiff take nothing by his action, if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Judgment where set off is proved.

SEC. 49. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff where the contract which is the subject of the suit shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

Judgment where there is a balance due defendant.

OF WITNESSES AND DEPOSITIONS.

SEC. 50. A subpoena may be served by any person by reading it to the witness or by delivering a copy thereof to him.

Subpoena how and by whom served.

SEC. 51. Whenever it shall appear to the satisfaction of the justice by proof made before him that any person duly subpoenaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided, however,* That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

Attachment when to issue against witness.

SEC. 52. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment, shall pay all costs of such attachment.

Such attachment how executed.

SEC. 53. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for damages which such party may have sustained by his non-appearance: *Provided,* That said witness had one day's attendance and his mileage tendered or paid him in advance.

Witness not appearing how liable.

SEC. 54. Either party in any civil suit depending before a justice, may, upon notice, cause the deposition of any witness therein, to be taken by any judge or justice of the peace, of any county in this territory where the said witness may be.

Deposition of witness how taken.

SEC. 55. The deposition shall be taken, certified, and returned according to the law of the territory concerning depositions.

How such deposition to be certified, &c.

SEC. 56. The justice shall allow every deposition, taken, certified,

Depositions when to be read in evidence.

and returned according to the provisions of this article, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness whose deposition is offered:

1. Is dead, or resides out of the county: or,
2. Is unable, or cannot easily attend before the justice, on account of sickness, age, or other bodily infirmity:
3. Has gone out of the county, without the consent or collusion of the party offering the deposition.

OF TRIAL BY JURY.

If either fail to appear for one hour justice to proceed with cause.

SEC. 57. If either party shall fail to appear within one hour after the time specified for the return of the process, or after the hour of adjournment, the justice shall proceed to hear the proof of the party present, and render judgment thereon accordingly.

Either party may demand trial by jury.

SEC. 58. In every action to be brought by virtue of this article, it shall be lawful for either of the parties to the suit, or for the attorney of either of them, after issue joined, before the court shall proceed to inquire into the merits of the cause, to demand of said court that the said action be tried by a jury of six persons, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand, the justice shall direct the sheriff or any constable of the county, who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear (or affirm, as the case may be,) that you will perform the duties required of you, according to the best of your abilities, without partiality to either party;" and if in the opinion of the justice the jurors above required cannot appear forthwith, for the trial of the cause, the justice shall adjourn the cause, for such reasonable time as he may think proper to enable the officer to summon the said jurors, and for them to appear, which time shall be specified in the venire facias; the person so sworn shall write down the names of eighteen persons, being inhabitants of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately six names, and in case of the absence of either party, or of his refusal to strike out, the justice shall strike out of the said list six names, and shall thereupon issue a venire facias, requiring the officer to summon the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors for the trial of the cause, named in said venire facias: *Provided*, That if any of said jurors shall not attend at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jury so selected shall take the following oath or affirmation: "You and each of you do solemnly swear, (or affirm) that you will well and truly try the matter of difference between _____, plaintiff, and _____, defendant, and true verdict give according to law and the evidence given to you in court; so help you God;" and after having been sworn, they shall sit together and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence. And to each witness on any trial, the justice shall administer the following oath (or affirmation,) to wit: "You do swear in the presence of Almighty God, (or affirm,) that the evidence you shall give in this matter of difference

Oath of officer summoning jury.

Jury how selected.

Oath of jurors.

Oath of witness.

between . . . , plaintiff, and . . . , defend-
 ant, shall be the truth, the whole truth, and nothing but the truth, so
 help you God;" and after hearing the proofs and allegations, the jury
 shall be kept together in some convenient place, until they all agree
 upon a verdict, or be discharged by the justice; and for which purpose
 a proper officer shall be sworn or affirmed, to whom the said justice
 shall administer the following oath, to wit: "You do swear in the
 presence of Almighty God, that you will, to the utmost of your ability,
 keep every person sworn in this inquest together, in some private con-
 venient place, without drink, except water; you will not suffer any per-
 son to speak to them, nor speak to them yourself unless by order of the
 justice, except it be to ask them whether they have agreed on their ver-
 dict, or are discharged by the court, so help you God." And when the
 jurors have agreed on their verdict, they shall deliver the same to the
 justice, in the same court, who is hereby required to give judgment
 thereupon, and to award execution in manner hereinafter directed.

Oath of officer hav-
 ing charge of jury.

SEC. 59. Whenever a justice shall be satisfied that a jury sworn in
 any civil cause before him, after having been out any reasonable time,
 cannot agree on their verdict, he may discharge them and issue a new
 venire, unless the parties consent that the justice may render judg-
 ment.

If jury cannot agree
 justice may dis-
 charge them.

SEC. 60. Every person who shall be duly summoned as a juror, and
 shall not appear, nor render a reasonable excuse for his default, shall be
 subject to a fine not exceeding ten dollars.

Penalty if juror
 does not appear.

JUDGMENTS, AND THE FILING TRANSCRIPTS THEREOF, AND THE STAY
 OF EXECUTIONS.

SEC. 61. No confession shall be taken or judgment rendered there-
 on, unless the following requisites be complied with:

How party may
 confess judgment.

1. The defendant must personally appear before the justice; or,
2. The confession must be in writing, signed by the defendant, at-
 tested by two witnesses, and filed with the justice.

SEC. 62. If there be mutual justice's judgments between the same
 parties, upon which the time for appealing has elapsed, on which there
 is no existing execution, one judgment on the application of either par-
 ty, and reasonable notice given to the adverse party, may be set off
 against the other, by the justice before whom the judgment against
 which the set off is proposed may be.

One judgment may
 be set off against
 another by justice.

SEC. 63. If the judgment proposed as a set off, was rendered before
 another justice, the party proposing such set off must produce before
 the justice, a transcript of such judgment, upon which there is a cer-
 tificate of the justice rendering the judgment, that it is unsatisfied in
 whole or in part, and that there is no appeal or existing execution there-
 on, and such transcript was obtained for the purpose of being a set off
 against the judgment to which it was offered as a set off. The justice
 granting such transcript, shall make an entry thereof in his docket, and
 all further proceedings on such judgment shall be stayed, unless such
 transcript shall be returned with the proper justice's certificate therein,
 that it has not been allowed in set off.

When justice to set
 off judgment ren-
 dered by another
 justice.

SEC. 64. If any justice shall set off one judgment against another,
 he shall make an entry thereof in his docket, and execution shall issue
 only for the balance, which may be due after such set off. If a justice
 shall allow a transcript of a judgment rendered by another justice to
 be set off, he shall file such transcript among the papers relating to the
 judgment in which it is allowed in set off; if he shall refuse such tran-
 script as a set off, he shall so certify on the transcript, and return the
 same to the party who offered it.

When judgment
 set off justice to
 make entry there-
 of.

When justice to transfer cause to another justice.

SEC. 65. If, previous to joining issue in any cause, the defendant, his agent or attorney, shall make affidavit that the justice before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to a trial thereof; or if it shall be proven that the justice is near of kin to the plaintiff, then and in such case the said justice shall transfer said suit, and all other papers appertaining to the same, to some other justice of the same county, who may thereupon proceed to hear, try and determine the same, in the same manner as it would have been lawful for the justice before whom the said suit was commenced, to have done: *Provided*, That no cause or trial shall be removed from a justice more than once; and no cause or proceeding shall be so removed, unless the application thereof be made on the return day of the process, and before any proceedings had on the part of the defendant.

When justice to render judgment forthwith.

SEC. 66. In cases where the plaintiff shall be non-suited or withdraw his action, or where judgment shall have been confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and shall enter the same in his docket. In all other cases he shall render judgment, and enter the same in his docket, within three days after the cause shall have been submitted to him for his decision.

Execution when and for what time stayed.

SEC. 67. The execution upon a judgment by a justice of the peace, may be stayed in the manner hereinafter provided, and for the following periods of time to be calculated from the date of the judgment:

1. If the judgment be for any sum not exceeding ten dollars, exclusive of costs, one month:
2. If it be for any sum above ten dollars, and not exceeding thirty dollars, two months:
3. If it be for any sum above thirty dollars, and not exceeding fifty dollars, three months:
4. If it be for any sum above fifty dollars, and not exceeding seventy-five dollars, four months:
5. If it be for a sum above seventy-five dollars, exclusive of costs, six months; but if all the parties to the judgment, agree upon any other time, the stay shall be for the time so agreed upon.

Party staying execution must enter into recognizance.

SEC. 68. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering the judgment, enter into a recognizance before the justice to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

Form of recognizance.

SEC. 69. Such recognizance must be signed by the person entering the same, and may be in the following form:

"I, _____, acknowledge myself indebted to _____, in the sum of _____ dollars, to be void upon this condition: Whereas, _____ obtained a judgment before _____, a justice of the peace of _____, on the _____ day of _____, 18____, against _____. Now, if such judgment shall be paid at the expiration of _____ months from the time it was rendered, this recognizance shall be void."

Execution may issue against principal and bail.

SEC. 70. If at the expiration of such stay, the judgment be not paid, the execution shall issue against the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

Bail entitled to

SEC. 71. After the return of such execution, the bail shall be en-

titled; on motion, to a judgment before a justice for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent., per annum; and such return of the officer, upon motion, shall be evidence of the facts therein stated. No motion shall be made after three months from the return of the execution.

Judgment against principal on motion.

SEC. 72. If a judgment be stayed, in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with the like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed; and if the defendant has been committed, shall order him to be discharged from custody.

Judgment stayed after execution the same as on appeal.

SEC. 73. Every justice, on demand of any person in whose favor he shall have rendered judgment for more than ten dollars exclusive of costs, shall give to such person, a certified transcript of such judgment; and the clerk of the district court of the said county in which the judgment was rendered, shall upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the district court judgments and decrees, and shall note therein the time of filing such transcript.

When transcript of judgment to be filed with clerk of district court.

SEC. 74. Every such judgment, from the time of such filing of the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried into execution in the same manner and with like effect as the judgment of such district courts; but no execution shall be issued thereon out of the district court, until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

Transcript so filed lien on real estate.

OF EXECUTIONS, AND PROCEEDINGS THEREON.

SEC. 75. Upon every judgment rendered by a justice, execution shall be issued by such justice, in the manner hereinafter prescribed, at any time on demand.

Execution to be issued on demand.

SEC. 76. In the following cases execution may be issued by the justice against the person of the debtor, and in no other:

When execution may issue against the person of defendant.

1. Where the debt is founded on contract, and the creditor shall prove, to the satisfaction of the justice, that the debtor has property sufficient to satisfy the judgment, over and above that which is by law exempt from being taken on execution, which cannot be come at, to be levied upon, and the debtor shall refuse to assign or deliver the same to the creditor, or so much thereof as shall be necessary to satisfy the judgment: and,

2. When the action in which judgment is rendered, is founded in the tortious act of the defendant.

SEC. 77. The execution shall command the officer to levy the debt or damages, together with the interest thereon and the costs, upon the goods and chattels of the person against whom the execution shall be granted, (his arms and accoutrements excepted, and also such other articles as are exempt by law, from execution,) and to pay the money within thirty days from date, to the justice who issued the execution, to render to the party who recovered the same; and if the execution be issued against a male person, in case where imprisonment is authorized by law, it shall command the sheriff or constable, that if no goods or chattels can be found, or not sufficient to satisfy such execution, then to take the body of the person against whom the execution shall be issued, and convey him to the common jail of the county, there to remain

Execution what to contain.

until such execution shall be satisfied and paid, or he be otherwise discharged according to law.

Duty of justice before issuing execution.

SEC. 78. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of his execution, the amount of the debt or damages and costs separately, and the officer receiving such execution, shall indorse thereon the time of the reception of the same.

Execution when and how renewed.

SEC. 79. If any execution be not satisfied, it may, at the request of the plaintiff, be removed from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall renew the execution in full force, in all respects for thirty days, and no longer. An entry of such renewal shall be made in the docket of the justice.

Notice of sale how to be given, and what to contain.

SEC. 80. The officer after taking goods and chattels into his custody by virtue of an execution, shall without delay give public notice, by at least three advertisements, put up at three public places in the township or precinct where the property is to be sold, of the time and place when and where the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Sale of goods and return of execution how made.

SEC. 81. At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall in all cases return the execution, and have the money before the justice at the time of making such return.

Officer not to buy goods sold by him.

SEC. 82. No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution; but every such sale shall be absolutely void.

Garnishees may be summoned when no property found.

SEC. 83. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, the officer shall upon the demand of the plaintiff, summon in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceedings shall be had thereon before the justice to final judgment and execution, as in suits instituted by attachment in justice's court.

Officer holding execution to give receipt for money paid on same.

SEC. 84. The officer who shall hold any execution, shall receive all money tendered to him in payment thereof, and shall indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

REPLEVIN.

Affidavit to be made in case of replevin.

SEC. 85. When the object of the action is to recover the possession of personal property, the plaintiff or some other person, shall in all cases before any writ shall be issued, take and subscribe an affidavit, and file the same with the justice,

Such affidavit what to contain.

SEC. 86. Such affidavit must state that the property (describing it) is wrongfully detained by the defendant, that the plaintiff is entitled to the immediate possession thereof, that it was not taken from him by any process legally and properly issued against him, or if so taken, that it was exempt from seizure in such process; it must also state the value of the property, according to the best knowledge and belief of the affiant.

Plaintiff to give bond to defendant.

SEC. 87. The plaintiff shall also execute a bond to the defendant with sureties, to be approved by the justice, in a penalty at least double

the value of the property sought, conditioned that he will appear at the return day thereof and prosecute his action to judgment, and return the property to the defendant, if a return thereof be ordered by the court, and also pay all costs and damages that may be adjudged against him; the bond shall be filed with the justice, and shall be for the use of any person injured by the proceeding.

Sec. 88. The justice shall thereupon issue a writ, directed to the sheriff or any constable of the county, commanding him to take the property therein described and deliver the same to the plaintiff, and summon the defendant to appear and answer the same on the return day mentioned in the writ.

Justice to issue writ.

Sec. 89. In obedience to such writ, the officer must forthwith take possession of the property mentioned in the writ, if the same be in the possession of the defendant or his agent, for which purpose he may break open any dwelling house or other inclosure, having first demanded entrance, and exhibited his authority if required.

Officer forthwith to take possession of the property.

Sec. 90. If a third person claim the property, he must be made a co-defendant.

Third party when made co-defendant.

Sec. 91. If the property sought be not obtained, the plaintiff, if he establishes his right thereto, shall recover the value of that right, whether obtained or not, he shall recover the damages he has sustained in consequence of the illegal detention thereof.

When property not obtained plaintiff may recover value thereof.

Sec. 92. If the plaintiff fails to establish his right to the property, the defendant shall recover such damages as under the circumstances he shews himself entitled to.

If plaintiff fail in his suit, defendant to recover damages.

OF PROCEEDINGS BY ATTACHMENT.

Sec. 93. Any creditor shall be entitled to proceed by attachment in a justice's court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this article.

Creditor entitled to attachment in certain cases.

Sec. 94. Before any such writ of attachment shall be issued, the plaintiff, or some person in his behalf, shall make and file with the justice, an affidavit stating that the defendant therein is indebted to the plaintiff, in a sum exceeding five dollars; and specifying the amount of such indebtedness, as near as may be, over and above all legal set offs, and that the same is due upon contract, expressed or implied, or upon judgment or decree of some court, and containing a further statement that the deponent has good reason to believe either:

Affidavit to be made before attachment issues.

Affidavit what to set forth.

1. That the defendant is a non-resident corporation; or
2. That the defendant is not a resident of this territory, and has not resided therein for three months immediately preceding the time of making such affidavit:
3. That the defendant has absconded, or is about to abscond from this territory:
4. That the defendant has removed, or is about to remove any of his property out of this territory, with intent to defraud his creditors:
5. That the defendant resides in any other county, and more than one hundred miles from the residence of the justice:
6. That the defendant contracted the debt under fraudulent representations:
7. That the defendant so conceals himself that the process of summons cannot be served upon him; or,
8. That the defendant has fraudulently conveyed or disposed of, or is about fraudulently to convey or dispose of any of his property or effects, so as to hinder or delay his creditors.

Sec. 95. In the first five cases mentioned in the preceding section,

In certain cases,

attachment returnable in three days.

the writ of attachment shall be returnable in three days; but in all other cases, it shall be returnable as an ordinary summons.

Form of writ of attachment.

SEC. 96. The writ of attachment shall be in the following form:

Territory of Minnesota, }
County of } ss.

To the sheriff or any constable of said county:

In the name of the United States you are commanded to attach the goods and chattels, moneys, effects, and credits of _____, or so much thereof, as shall be sufficient to satisfy the sum of _____, with interest and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached, may be subject to further proceedings thereon, as the law requires; and also to summon the said _____, if to be found, to be and appear at my office in said county, on the _____ day of _____ A. D. 18____, at _____ o'clock in the _____ noon, to answer to _____, in a civil action to his damage one hundred dollars or under.

Given under my hand at _____, this _____ day of _____ A. D. 18____.

J. P., Justice of the peace.

Attachment how executed.

SEC. 97. The officer shall execute a writ of attachment, by summoning the defendant as in case of a summons, if to be found within the county, and by attaching the goods and chattels, moneys and credits, of the defendant, not exempt by law.

When defendant to obtain possession of property.

SEC. 98. When property of the defendant shall be actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming, when and where the justice shall direct, and shall abide the judgment of the justice.

Justice may order perishable property to be sold.

SEC. 99. When property shall be seized on attachment, which is likely to perish or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer, in the same manner and on the same notice, as goods are required to be sold on an execution; and the proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

Compensation of officer having charge of property.

SEC. 100. When property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his trouble and expense in keeping and maintaining the same, as shall be reasonable and just.

When defendant summoned, cause continued and notice given.

SEC. 101. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty, nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debt.

Form of notice.

SEC. 102. The notice may be in the following form:

Territory of Minnesota, }
County of } ss. In Justice's Court:

To

You are hereby notified that a writ of attachment has been issued

against you, and your property attached, to satisfy the demand of
 , amounting to : Now, unless
 you shall appear before J. P., a justice of the peace in and for said coun-
 ty, at his office in said town, on the day of A.
 D. 18 , at o'clock in the noon, judgment will be rendered
 against you, and your property sold to pay the debt.
 Dated this day of A. D. 18 .

Plaintiff.

SEC. 103. Such notice shall be set up, or published at least fifteen days before the expiration of the time at which the party is required to appear, and the setting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

Notice how posted or published.

SEC. 104. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant with security, to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof; the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case.

If defendant does not appear judgment to be entered against him.

Execution not to issue until bond is given.

SEC. 105. Like pleadings of the parties and like proceedings shall be had, as far as practicable, in suits commenced by attachment, and suits founded on contracts and commenced by summons.

Pleadings same as in other cases.

SEC. 106. Attachments may be dissolved, on motion made in behalf of the defendant, at any time before final judgment, if the defendant shall appear and plead to the action and give bond to the plaintiff, with good and sufficient surety to be approved by the justice, in double the amount of property, effects, and credits attached, conditioned that if judgment be rendered against him in such suit, he will pay the amount thereof, with costs and interest thereon.

Attachment how dissolved.

SEC. 107. When any attachment shall be dissolved, the property and effects attached shall be released, and the garnishees shall be discharged, and the suit proceed as if it had been commenced by a summons only.

When attachment dissolved, property to be released.

SEC. 108. When property of the defendant, found in the hands or possession of any other person than the defendant, shall be attached, such person may retain the possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

When third person may retain property.

SEC. 109. When judgment shall be rendered in any attachment case, execution may issue thereon, and the property attached may be sold in the same manner as in other cases, except as otherwise provided by this article.

Execution to issue and property to be sold as in other cases.

OF THE REMOVAL OF CAUSES, BY CERTIORARI AND PROCEEDINGS THEREON.

SEC. 110. If any person shall conceive himself injured by error in any process, proceeding, judgment, or order given by any justice of the peace, within this territory, it shall be lawful for such person, to remove such judgment to the district court, as hereinafter provided.

Cause when removed to district court by certiorari.

Application for certiorari to whom and when made.

SEC. 111. The party applying for such certiorari, his agent or attorney, shall within twenty days after the rendition of such judgment present to a judge of a court of record, an affidavit, stating that in his belief there is reasonable cause for granting such certiorari for error in such judgment, (setting forth the ground of error alleged) and that the application is made in good faith, and not for the purpose of delay; and shall together with one or more sureties, to be approved by the judge, enter into a recognizance before a judge or some justice of the peace, to the adverse party, in double the amount of the judgment, and costs rendered before the justice.

SEC. 112. Such recognizance must be signed by the persons entering into the same, and attested by the judge or justice, and shall be in the following form:

Form of recognizance.

We _____ and _____ acknowledge ourselves to owe and be indebted unto _____, in the sum of _____ dollars, to be levied of our several goods and chattels, lands and tenements, to the use of _____, or his assigns, if default be made in the condition following, to wit:

Whereas, the said _____, has applied for a certiorari from the judgment of _____, a justice of the peace of the county of _____, rendered _____, day of _____ A. D. 18 _____, in an action between _____ plaintiff, and _____ defendant; now if the writ of certiorari be allowed, and the said _____, shall prosecute the same with all due diligence to a judgment in the district court, or before the judge thereof, and abide the order the court or judge may make therein, then this recognizance to be void, otherwise of force.

Taken and acknowledged before me _____ this _____ day of _____ A. D. 18 _____

C. D.
E. F.
G. H.

Judge, or (Justice.)

Judge when to allow the certiorari.

SEC. 113. If such judge shall be satisfied that any error affecting the merits of the controversy has been committed by the justice or jury in the proceeding, verdict or judgment, he shall allow a writ of certiorari, by indorsing on the affidavit his allowance thereof.

Affidavit and recognizance to be filed with clerk.

SEC. 114. The affidavit and recognizance, so given, shall be filed with the clerk of the district court for the county, who shall thereupon issue a writ of certiorari, commanding the justice, rendering such judgment, to make return as to all facts contained in such affidavit, and of all the testimony and proceedings in the case.

Certiorari when to be served.

SEC. 115. The certiorari so allowed, shall be served within ten days after its allowance, upon the justice by whom the judgment was rendered.

After service, proceedings stayed.

SEC. 116. Upon the service of a writ of certiorari upon the justice as aforesaid, all further proceedings at law in such case shall cease, and if the execution shall have issued on such judgment upon which the certiorari is allowed, the justice shall immediately recall the same.

Copy of affidavit to be served with writ.

SEC. 117. Upon the service of a writ of certiorari to reverse a judgment as aforesaid, it shall be the duty of the party serving the same, to deliver at the same time to the justice a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit, and of the testimony and proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the suit; and he shall also certify the time when the writ was served upon him.

SEC. 118. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

District court has power to compel justice to amend return.

SEC. 119. When such certiorari and return shall be so filed with the clerk, the cause may be brought on to argument before the judge of said court, at any time thereafter, according to the statutes relating thereto.

When cause brought on to argument.

SEC. 120. The judge of the district court shall proceed and give judgment in the cause as the right of the matter may appear, without regarding technical omissions, imperfections, or defects in the proceedings before the justice which did not affect the merits, and may affirm or reverse the judgment in whole or in part; and may make any such final order or judgment as he shall deem proper, in furtherance of justice.

Judge may affirm or reverse the judgment.

SEC. 121. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue thereon.

When restitution awarded.

SEC. 122. No justice of the peace shall be required to make return to any writ of certiorari, until all the costs of the suit to which such return relates, have been paid, and one dollar for the justice's return.

Justice not to make return until costs are paid.

CONCERNING APPEALS.

SEC. 123. Any person aggrieved by any judgement rendered by any justice of the peace under this article, when the judgment shall exceed fifteen dollars, may appeal by himself or agent to the district court of the county, where the same was rendered: *Provided, however,* That when the claims of either party as proved in the cause at the trial, shall exceed one hundred dollars, or the claims of both parties as proved on the trial shall exceed two hundred dollars, then either party may appeal from such judgment, although the recovery before the justice be less than fifteen dollars; in which case the fact of such sum or sums having been proven on the trial shall be set forth and certified by the justice in his return: *Provided,* This law shall not interfere with any action in cases of forcible entry and detainer: and *Provided, further,* That no appeal shall be allowed in any case, unless the following requisites are complied with within ten days after judgment rendered, viz:

Appeals when and in what cases allowed.

1. An affidavit shall be filed with the justice before whom the cause was tried, stating that the appeal is made in good faith, and not for the purpose of delay:

Affidavit what to contain.

2. A recognizance entered into by the party appealing, his agent or attorney, to the adverse party in a sum sufficient to secure such judgment, and costs of appeal, must be entered into with one or more sureties, to be approved by the justice.

Recognizance entered into by appellant.

SEC. 124. Upon an appeal being made, according to the foregoing provisions, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal; and if in the meantime, execution shall have been issued, the justice shall give to the applicant a certificate that such appeal has been allowed.

Justice when to allow appeal.

SEC. 125. On such certificate being presented to the officer holding the execution, he shall forthwith release the body and the property of the defendant that may have been taken on execution; and if the applicant shall have been committed to jail, the jailor, upon the service of a like certificate on him, shall release the appellant from imprisonment.

Officer when to release body or property of defendant.

Justice to file transcript of docket with clerk of district court.

SEC. 126. On or before the first day of the term of the district court, next after the appeal shall have been allowed, the justice shall file in the office of the clerk of said court, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, and filed with the justice.

The issue before the justice to be the issue above.

SEC. 127. The issue before the justice shall be tried before the court above without other or further new declaration or pleading, except in such cases as shall be otherwise directed by the court.

The person appealing shall cause an entry to be made with clerk.

SEC. 128. The person or persons appealing, shall cause an entry of the appeal to be made by the clerk of the court, on or before the second day of the term, unless otherwise ordered by the court, and the plaintiff in the court below shall be the plaintiff in the court above: *Provided*, That if the appellant shall fail or neglect to enter the appeal as aforesaid, the appellee may have the same entered at any time during that or some succeeding term, and the judgment of the court below shall be entered against the appellant for the same, with interest and twelve per centum damages, and the costs of both courts.

When district court may compel return by rule.

SEC. 129. Upon an appeal being made and allowed, the district court may, by rule and attachment, compel a return by the justice of the proceedings in the suit, and of the papers required to be by him returned.

When district court may compel justice to allow appeal.

SEC. 130. If a justice fail to allow an appeal in a cause, when the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may by rule and attachment, compel the justice to allow the same, and to return his proceedings in the suit, together with all papers, required to be returned by him.

Court may compel justice to amend return.

SEC. 131. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may, by rule and attachment compel him to amend the same.

When appeal shall not be dismissed.

SEC. 132. No appeal allowed by a justice shall be dismissed on account of their being no recognizance, or that the recognizance given is defective, if the appellant will, before the motion to dismiss is determined, enter before the district court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

Appeals when to be determined.

SEC. 133. All appeals allowed, ten days before the first day of the term of the district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

When judgment rendered against appellant to be against his sureties.

SEC. 134. In all cases of appeal from a justice's court, if the judgment of the justice be affirmed, or if on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the recognizance for the appeal.

Execution may be collected from surety.

SEC. 135. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of said principal to satisfy the same, such execution shall be enforced against the sureties, and the officer shall specify on his return, by whom the money was paid, and the time thereof.

Security when entitled to judgment against principal.

SEC. 136. After the return of an execution satisfied in whole or in part out of the security, such security shall be entitled to a judgment on motion, against the principal, for the amount so paid by him, together with interest at twelve per cent. per annum from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

No appeal shall be allowed until costs are paid.

SEC. 137. No appeal shall be allowed by any justice of the peace, until the appellant, in addition to the requirements of section one hundred and twenty-three of this article, shall pay all costs which may have accrued in the justice's court, and one dollar for the return of the justice.

OF PROCEEDINGS FOR CONTEMPTS BEFORE JUSTICES OF THE PEACE.

SEC. 138. In the following cases and no others, a justice of the peace may punish for contempt:

In what cases justice may punish for contempt.

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or to impair the respect due to his authority:

2. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice:

3. Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him.

SEC. 139. Punishment for contempt may be by fine not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days, unless otherwise provided, at the discretion of the justice.

Punishment for contempt to be by fine and imprisonment.

SEC. 140. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defence; and for that purpose the justice may issue his warrant to bring the offender before him.

Persons entitled to be heard before being punished for contempt.

SEC. 141. If the offender be present he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

When offender may be summarily arraigned.

SEC. 142. The warrant for contempt may be in the following form:

Form of warrant for contempt.

Territory of Minnesota, }
County of } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he, the said A. B., should not be convicted of a criminal contempt, alleged to have been committed on the _____ day of _____ A. D., 18____, before the said justice while engaged as a justice of the peace in judicial proceedings.

Dated this _____ day of _____ A. D., 18____
J. P., justice of the peace.

SEC. 143. Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on the conviction, stating the particular circumstances of the offence, and the judgment rendered thereon, and shall file the same in the office of the clerk of the district court, and shall also enter the same in his docket as in civil cases.

Justice to make a record of conviction and file same.

SEC. 144. The warrant of commitment for any constable, shall set forth the particular circumstances of the offence, or it shall be void.

Warrant of commitment what to set forth.

SEC. 145. The record of conviction may be in the following form:

Form of record of conviction.

Territory of Minnesota, }
County of } ss.

Whereas, on the _____ day of _____, A. D. 18____, while we the undersigned, one of the justice's of the peace of the said county, was engaged in the trial of a cause between C. D., plaintiff, and E. F., defendant, in said county, according to the statute in such case made and provided, A. B., of the said county did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly) and whereas, the said A. B. was thereupon required, by the undersigned, to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas, the said A. B. did not show any cause against the said charge: Be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the criminal contempt aforesaid, before the undersigned, and is adjudged by the undersigned, to pay a fine of _____ dol-

lars, or to be imprisoned in the common jail of said county for the term of two days, or until he be discharged from imprisonment according to law.

Dated this _____ day of _____, A. D. 18 _____ J. P., justice of the peace.

When witness refuses to be sworn, may be committed.

SEC. 146. When any witness attending before a justice of the peace, in any cause, shall refuse to be sworn in some form prescribed by law, or to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county.

Order of commitment what to contain.

SEC. 147. Such order shall specify the cause for which the same is issued; and if it be refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he submit to be sworn, or to answer, as the case may be.

Justice to adjourn the cause, &c.

SEC. 148. The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

Witness failing to appear, guilty of contempt.

SEC. 149. If any person duly subpoenaed, and obliged to attend as a witness, shall fail to do so, he shall be considered guilty of a contempt, and shall be fined all the costs for his apprehension, unless he shall show reasonable cause to the satisfaction of the justice, for his omission to attend; in which case the party requiring such appearance, shall pay the costs thereof.

GENERAL PROVISIONS CONCERNING JUSTICES OF THE PEACE.

Process issued must be signed by justice.

SEC. 150. All process issued by any justice of the peace, shall be signed by him, and may be under seal, or without a seal.

Process shall be filled up by justice.

SEC. 151. Every summons or process, issued by a justice of the peace, shall be entirely filled up, and shall have no blank either in date, or otherwise, at the time of its delivery to an officer to be executed; every such process which shall be issued and delivered to an officer to be executed, contrary to the foregoing provisions, shall be void.

Vacancy in office of justice how filled.

SEC. 152. When, from any cause, a vacancy shall occur in the office of justice of the peace, in any of the organized counties of this territory, the clerk of the board of county commissioners, upon being notified that any such vacancy exists, may issue a notice to the electors of the precinct where such vacancy exists, stating in such notice, that a vacancy has occurred in the said office, and that an election will be held in the said precinct, to fill said vacancy; which notice shall be given in the same manner, and under the same regulations that other notices of elections are required by law to be given.

Person elected to fill vacancy, to qualify forthwith.

SEC. 153. Whenever one or more justices of the peace shall be elected in any precinct of this territory, to supply a vacancy or vacancies at the time existing, such justice or justices may take the oath and file their official bond, and forthwith enter upon the duties of their office.

Execution may issue for costs only.

SEC. 154. Whenever, by reason of a dismissal, non-suit, or for any other cause, a judgment shall be rendered against either party, for costs only, by a justice of the peace, execution may issue to enforce such judgment, in the same manner and with the same effect as in every other case.

Justices to enter upon duties of office on first of January.

SEC. 155. All persons elected justice of the peace in this territory, shall enter upon the duties of their respective offices, on the first day of January next succeeding their election, unless otherwise provided for in this article.

If justice elected to legislature, need not act as justice.

SEC. 146. No justice of the peace, being a member of the council or house of representatives, shall be obliged to take cognizance of any

action, or to entertain any proceedings under the provisions of this article; but he may act therein or not, at his discretion.

SEC. 157. In case any justice of the peace shall die, or his office shall in any wise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice may demand and receive such books and papers, from the person having the same in his possession.

When office of Justice vacant, books and papers how disposed of.

SEC. 158. If any books or papers required to be delivered to the nearest justice, by the preceding section, be withheld, or if any justice shall refuse to deliver over to his successor any books or papers, in either case, the person entitled to receive the said books or papers, may make complaint to the district judge of the United States district court of the proper county, and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or papers are withheld, he may grant an order, directing the person so refusing, to show cause before him on a day to be mentioned in said order, why he should not be compelled to deliver the same.

If books be withheld, how the same may be recovered.

SEC. 159. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances; and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had, shall by warrant commit the person so withholding, to the jail of the proper county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law.

Judge to inquire into the facts of the case, and may commit the person withholding books.

SEC. 160. If any money shall be collected for any party, by a justice of the peace in his official capacity, and he shall have neglected or refused, within a reasonable time after demand, to pay over the same, such neglect or refusal shall be deemed a misdemeanor, and on conviction thereof, such justice shall forfeit his office.

Justice failing to pay over money, guilty of misdemeanor.

SEC. 161. Whenever a certiorari, or appeal shall be duly brought and served upon a justice after he shall have gone out of office, upon a judgment rendered by him whilst in office, such person shall make return to such certiorari or appeal, in like manner and with like effect as if such certiorari or appeal had been served whilst he was in office.

When justice may make return to appeal after his office expires.

SEC. 162. The courts of justices of the peace shall be public, and every person may freely attend the same.

Justice's courts to be public.

SEC. 163. No justice of the peace shall have a law partner appear as attorney in any case before such justice.

Justice shall not have law partner appear before him.

OF FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

SEC. 164. The following, or equivalent forms shall be used by justices of the peace, in proceedings to be had under this article, to wit:

Forms in civil actions.

Form of warrant.

Territory of Minnesota, }
County of } ss.

Form of warrant.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the body of _____, if he be found within your county, and bring _____, forthwith before the undersigned, one of the justices of the peace, in and for said county, at _____, to answer to _____, in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff; and have you then and there this writ.

Given under my hand, this _____ day of _____ A. D. 18 _____
J. P., justice of the peace.

Form of summons.

Form of summons. Territory of Minnesota, }
 County of } ss.
 To the sheriff or any constable of said county :
 In the name of the United States, you are hereby commanded to summon _____, if he shall be found in your county, to be and appear before the undersigned, one of the justices of the peace, in and for said county, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, at _____, in said county, to answer to _____ in a civil action; and have you then and there this writ.
 Given under my hand this _____ day of _____ A.D., 18____.
 J. P., justice of the peace.

Form of execution.

Form of execution. Territory of Minnesota; }
 County of } ss.
 To the sheriff or any constable of said county :
 Whereas, judgment against _____ for the sum of _____ lawful money of the United States, and for costs of suit, was recovered the _____ day of _____ before me, at the suit of _____; these are therefore in the name of the United States, to command you to levy distress on the goods and chattels of the said _____, (excepting such as the law exempts) and make sale thereof, according to law in such case made and provided, to the amount of the said sum, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said _____ for _____ said _____ and costs. Hereof fail not, under the penalty of the law.
 Given under my hand this _____ day of _____ A. D., 18____.
 J. P., justice of the peace.

Form of execution against the goods or the body.

Form of execution against goods, &c. Territory of Minnesota, }
 County of } ss.
 To the sheriff or any constable of said county :
 Whereas, judgment against _____ for the sum of _____ lawful money of the United States, and for costs of suit, was recovered the _____ day of _____ before me at the suit of _____. These are therefore in the name of the United States, to command you to levy distress on the goods and chattels of the said _____, (excepting such as the law exempts,) and make sale thereof according to law in such case made and provided, to the amount of said sums, together with twenty-five cents for this execution, and the same to return to me within thirty days, to be rendered to the said _____ for _____ said _____ and costs; (and in case where imprisonment is allowed by law, the following shall be added,) and for want of such goods and chattels, whereon to levy, take the body of the said _____ and _____ convey and deliver unto the keeper of the common prison of said county, who is hereby commanded to receive, and keep the said _____ in safe custody in said prison, until the aforesaid sum and all legal expenses be paid and satisfied, or until he be discharged therefrom by due course of law. Hereof fail not under the penalty of the law.
 Given under my hand this _____ day of _____ A. D., 18____.
 J. P., justice of the peace.

Form of a Writ of Replevin.

Territory of Minnesota }
 County of } ss.

To the sheriff or any constable of said county :

Form of replevin.

Whereas, A. B. complains that C. D. has taken and does unjustly detain (or does unjustly detain as the case may be particularly describing the goods and chattels to be replevied and the value thereof,) therefore in the name of the United States you are commanded that you cause the same goods and chattels to be replevied without delay ; and if the said A. B. shall give security as required by law, that you cause the said goods and chattels to be delivered to the said A. B. and also that you smmon the said C. D. to be and appear before me, one of the justices of the peace in and for said county, on the day of A. D. 18 , at o'clock in the noon, at in the said county, to answer complaint of
 Given under my hand this day of A. D. 18 .
 J. P. justice of the peace.

Form of Subpœna.

Territory, of Minnesota }
 County of } ss.

Form of subpoena.

In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, at on the day of at o'clock, in the noon of said day, to give evidence in a certain cause then and there to be tried between plaintiff, and defendant, on the part of the
 Given under my hand this day of A. D. 18 ,
 J. P., justice of the peace.

Form of a venire for a jury.

Territory of Minnesota, }
 County of } ss.

Form of venire for jury.

To the sheriff or any constable of said county :

In the name of the United States, you are hereby commanded to summon to be and appear before the undersigned, one of the justices of the peace, in and for said county, on the day of at o'clock in the noon of said day, in the town of to make a jury for the trial of a civil action between plaintiff, and defendant, and have you then and there this writ.
 Given under my hand this day of A. D. 18 .
 , J. P. justice of the peace.

OF THE JURISDICTION OF JUSTICES IN CRIMINAL CASES, AND THE PROCEEDINGS THEREIN.

SEC. 165. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows :

Jurisdiction of justices in criminal cases.

1. To cause to be kept all laws made for the preservation of the peace :
2. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail or bail them, as the case may require :
3. To arrest and cause to come before them, persons who attempt to break the peace, persons who keep houses of ill-fame, or frequenters

of the same, or common prostitutes, and compel them to give security for their good behavior, and to keep the peace :

4. To cause to come before them, persons who are charged with committing any criminal offence, and commit them to jail or bail them as the case may require.

Justices may hold court to try offences.

SEC. 166. Justices of the peace shall have power to hold a court subject to the provisions hereinafter contained, to hear, try, and determine the charges for offences arising within their respective counties, where jurisdiction is conferred upon by any law of this territory.

Complaint being made to justice, warrant to issue.

SEC. 167. Upon complaint made to any justice of the peace by any constable or other person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing and cause the same to be subscribed by the complainant; and if it shall appear that such offence has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed, forthwith to arrest the accused and to bring him before such justice or some other justice of the same county, to be dealt with according to law; and in the same warrant, may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial.

When justice to enter suit in his docket.

SEC. 168. The justice shall enter a suit in his docket, in which the United States shall be plaintiff, and the accused defendant and he shall keep all such other entries as are required in civil causes.

On return of warrant justice how to proceed.

SEC. 169. On the return of the warrant with the accused, the said justice shall proceed to hear, try, and determine the cause within one day, unless continued for cause.

Accused may give bail.

SEC. 170. From the time of the return of the warrant, until the time of the trial, the accused may give bail, with one or more sufficient sureties for his appearance at the time fixed for the trial; or in the event of failure so to do, may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

Warrant to be read to accused, and he required to plead.

SEC. 171. The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him, and he shall be required to plead thereto, which plea the court shall enter in their minutes; if the accused refuse to plead, the court shall enter the fact with a plea of not guilty, in behalf of such accused, in its minutes.

When court to try issue.

SEC. 172. If the plea of the accused be not guilty, and no jury be demanded by him, the said court shall proceed to try such issue, and to determine the same according to the evidence which may be produced against, and in behalf of such accused.

Proceedings when defendant pleads guilty.

SEC. 173. If the accused shall plead guilty to such charge, the court shall thereupon convict him of the offence charged, and render judgment thereon.

Justice to direct officer to make list of jury, unless waived by defendant.

SEC. 174. After the joining of issue, and before the court shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive his right to a trial by jury, the court shall direct the sheriff or any constable of the county, to make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in the courts of record of this territory, from which list the complainant and accused may each strike out six names.

When justice to direct person to strike out jurors.

SEC. 175. In case the complainant or the accused, shall neglect to strike out such names, the court shall direct some suitable disinterested person, to strike out the names for either or both of the parties so neglecting; and, upon such names being struck out, the justice shall issue a venire, directed to the sheriff or any constable of the county, requiring him to summon the six persons whose names shall remain upon

such list, to appear before such court, at the time and place to be named herein, to make a jury for the trial of such offence.

SEC. 176. The officer to whom such venire shall be delivered, shall summon such jury personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with such venire, to the court, within the time therein specified.

Duty of officer to whom is directed venire.

SEC. 177. If any of the jurors named in such venire, shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the court shall supply the deficiency by directing the sheriff, or any constable who may be present and disinterested, to summon any of the bystanders or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

Justice may direct officer to summon bystanders in case of deficiency.

SEC. 178. If the officer to whom the venire shall have been delivered, shall fail to return the same, as thereby required, or if the jury shall fail to agree, and shall be discharged by the court, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had as herein prescribed, in respect to the first jury, unless the accused shall consent to be tried by the court; in which case the court shall proceed to the trial of the issue, as if no jury had been demanded.

When and in what cases new jury may be summoned.

SEC. 179. In all trials for criminal offences before a justice of the peace, either party may challenge any juror for cause, as in civil cases.

Either party may challenge jury as in civil actions.

SEC. 180. To each juror, such justice shall administer the following oath or affirmation:

Form of oath to be administered to jury.

"You do solemnly swear (or you do solemnly and sincerely declare and affirm, as the case may be,) that you will well and truly try this cause between the United States and _____, the accused, and a true verdict give according to law, and the evidence given you in court, unless discharged by the court."

SEC. 181. After the jury shall have been sworn, they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public, and in the presence of the accused; and after hearing such proofs and allegations, the jury shall be kept together in some convenient place, until they agree on a verdict or are discharged by the court; and a sheriff or constable shall be sworn to take charge of the jury in like manner, as upon trial in justice's courts in civil proceedings.

After jury sworn, how to proceed.

SEC. 182. When the jurors have agreed on their verdict, they shall deliver the same to the court publicly, who shall enter it in his docket.

Jury to deliver verdict publicly.

SEC. 183. Whenever the accused shall be tried under the preceding provisions of this article, and found guilty either by the court or by the jury, or shall be convicted of the charge made against him on a plea of guilty, the court shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such punishment shall, in no case, exceed the limit fixed by law for the offence charged.

When accused found guilty, court to render judgment.

SEC. 184. Whenever the accused, tried under the preceding provisions of this article, either by the court or by a jury, shall be acquitted, he shall be immediately discharged; and if the court before whom the trial is had, shall certify in his docket that the complaint was willful and malicious, and without probable cause, it shall enter a judgment against the complainant, to pay all the costs that shall have accrued to the court and sheriff, or constable and jury, in the proceedings had upon such complaint; and unless he give satisfactory security by bond to this territory, with one or more sureties, to pay the same in thirty days after the said trial, execution shall issue therefor.

When accused to be discharged, court may give judgment for costs against complainant.

SEC. 185. The person charged with and convicted by any such justice of the peace of any such offence, may appeal from the judgment of such justice of the peace to the district court: *Provided*, Said person

Person convicted may appeal to district court.

Proviso.

shall within twenty-four hours enter into a recognizance, with one or more sufficient sureties, conditioned to appear before said court and abide the judgment of the court therein; and the justice from whose judgment an appeal is taken, shall make a special return of the proceedings had before said justice, and shall cause the warrant and return, together with the recognizance or recognizances, to be filed in said district court, on or before the first day of the term of the district court next to be holden for said county; and the complainant and witnesses may also be required to enter recognizances, with or without sureties, in the discretion of the court, to appear at said district court at the time last aforesaid, and to abide the order of the court therein.

Justice when to render judgment against complainant for costs.

SEC. 186. If the complainant shall refuse or neglect to pay such costs, or to give such security, the court may forthwith enter judgment against him for the amount of such costs, and forthwith issue execution thereon in the same manner, and with the like effect, as in case of an execution issued by a justice of the peace, on a judgment in an action for a trespass or other wrong, and such moneys, when collected, shall be paid over to such court.

Judgment of court, by whom executed.

SEC. 187. The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant under the hand of the justice who held the court, to be directed to such officers, and specifying the particulars of such judgment.

Juror and witnesses liable for contempt, as in civil actions.

SEC. 188. In case any person summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this article, as a juror or witness, shall fail to appear, or if any witness appearing shall refuse to be sworn or to testify, he shall be liable to the same penalties, and may be proceeded against in the same manner as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Justice to make certificate of conviction.

SEC. 189. Whenever any conviction shall be had before a court held by a justice of the peace, the justice by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient, briefly to state the offence charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Justice to cause such certificate to be filed in twenty days.

SEC. 190. Within twenty days after such conviction, the said magistrate shall cause such certificate to be filed in the office of the clerk of the district court in which the conviction shall have been had.

Such certificate to be evidence in courts.

SEC. 191. Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places, of the facts therein contained.

MISCELLANEOUS PROVISIONS IN CRIMINAL CASES.

What offences to be tried before justice of the peace.

SEC. 192. No assault, battery, or affray, shall be indictable, but all such offences shall be prosecuted and determined in a summary manner, by complaint made before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five dollars, nor more than one hundred dollars, according to the nature of the offence.

When justice to issue warrant on his own knowledge.

SEC. 193. If any justice of the peace shall have any knowledge that any of the offences mentioned in the last section, are about to be committed, he shall issue his warrant and proceed as is directed, when complaint has been made; and if any such offence is committed, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done, and for this purpose, no warrant or process shall be necessary; but the justice may summon to his assistance any sheriff,

coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice, or any of his assistants in the performance of their duty; and any person who shall when summoned to aid in arresting and securing an offender, refuse to give such assistance, shall pay five dollars to the use of the county.

SEC. 194. In case of the breach of any recognizance entered into in a criminal case, the same shall be certified and returned to the district court, to be proceeded in according to law.

Breach of recognizance to be certified to district court.

SEC. 195. If, in the progress of any trial before a justice of the peace, under the provisions of this article, it shall appear to the justice that he has not final jurisdiction in the case before him, and the accused ought to be put upon his trial for an offence cognizable before the district court, the justice shall immediately stop all further proceedings before him and proceed as in other criminal cases cognizable before the district court.

Justice how to proceed when he has not final jurisdiction.

SEC. 196. In all cases arising under this article, it shall be the duty of the justice of the peace acting, to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

Justice to summon the injured party.

SEC. 197. In all cases of conviction under the provisions of this article, the justice shall enter judgement for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

In case of conviction, justice to enter judgment for fine and costs.

SEC. 198. If the judgment of the justice shall be affirmed, or upon any trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties.

When judgment affirmed, judgment shall be rendered for fine and costs.

SEC. 199. When a trial under the provisions of this article shall be continued by the justice, it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witnesses, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

When cause continued witnesses present may be verbally notified to appear.

SEC. 200. The justice may require of the complainant to give security for costs, as in civil cases security may be required of the plaintiff, and if he refuse, the justice may dismiss the complaint.

Justice may require security for costs, as in civil actions.

SEC. 201. All fines imposed by any such court, if paid before the accused is committed shall be received by the magistrate who constituted the court, before which the accused was convicted, and by such magistrate paid over to the county treasurer, within thirty days after the receipt thereof, to be distributed according to law.

All fines collected by justice to be paid to county treasurer.

SEC. 202. If the accused be committed, payment of any fine imposed upon him, shall be made to the sheriff of the county who shall within thirty days after the receipt thereof, pay over the same to the county treasurer, for the purposes aforesaid.

If party committed, fines to be paid to sheriff.

SEC. 203. If any person who shall have received any such fine or any part thereof, shall neglect to pay over the same pursuant to the foregoing provisions, it shall be the duty of the district attorney immediately to commence suit therefor, and to prosecute the same diligently to effect.

Penalty for refusing to pay over money collected for fines.

OF FORMS OF WRITS &c. IN CRIMINAL PROCEEDINGS.

SEC. 204. The following forms may be used under this article:

Form of a warrant

Form of warrant.

Territory of Minnesota }
 County of } ss.
 To the sheriff or any constable of said county:
 Whereas, , has this day complained in writing to me, on
 oath, that did on the day of A. D. 18 ,
 at in said county (here insert the complaint
 whatever it may be,) and prayed that the said might be ar-
 rested and dealt with according to law; now therefore in the name of
 the United States, you are commanded forthwith to apprehend the said
 and bring him before me, to be dealt with according to
 law.
 Given under my hand this day of , A. D. 18 .
 J. P., justice of the peace.

Form of certificate of conviction.

Form of certificate
 of conviction.

Territory of Minnesota, }
 County of } ss.
 At a justice's court, held at my office in said county, before me,
 , a justice of the peace in and for said county, for the trial
 of for the offence hereinafter stated, the said
 of &c., was convicted of having on the day of , A. D.
 18 , at , in said county (here state the
 offence as in the warrant ;) and upon such conviction, the said court
 did adjudge and determine that the said should pay
 a fine of dollars, (and if imprisonment be allowed
 add) and be imprisoned in the common jail of the county
 days, (if the fine be paid, add) and the said fine has been paid to me.
 Given under my hand, this day of A. D. 18 .
 J. P., justice of the peace.

Form of execution.

Form of execution.

Territory of Minnesota, }
 County of } ss,
 To the sheriff or any constable of said county:
 Whereas, at a justice's court held at my office in said county, for
 the trial of , for the offence hereinafter stated, the said
 of &c. was convicted of having on the
 day of A. D. 18. in said county (here state the offence as in
 the warrant ;) and upon conviction, the said court did adjudge and de-
 termine that the said should pay a fine of dollars ;
 and whereas, the said fine has not been paid by the said ,
 these are therefore in the name of the United States, to command you
 to levy distress on the goods and chattels, (&c. as in execution against
 the goods or body in civil cases.)

Form of order to bring up prisoner.

Form of order to
 bring up prisoner.

Territory of Minnesota, }
 County of } ss.
 To the keeper of common jail of said county:
 The undersigned, one of the justices of the peace in and for said coun-
 ty, sitting at a court for the trial of , now in your
 custody in the common jail of said county, in the name of the United
 States, do hereby order and direct you to bring the said
 forthwith before me, at my office in said county, together with the war-
 rant by which he was committed to your custody, in order that he may
 be tried.
 Given under my hand, this day of A. D. 18 .
 J. P., justice of the peace.

Form of commitment upon sentence.

Territory of Minnesota, }
 County of } ss.

Form of commitment upon sentence

To any constable and the keeper of the common jail of said county:

Whereas, at a justice's court held at my office in said county, for the trial of _____, for the offence, hereinafter stated, the said _____, of &c., was convicted of having, on the _____ day of _____ A. D. 18 _____,

in the said county; (here state the offence, as in the warrant,) and upon conviction, the said court did adjudge and determine, that the said _____, should be imprisoned in the common county jail of said county for _____ days; therefore, you the said constable, are commanded in the name of the United States, forthwith to convey and deliver the said _____ to the said keeper; and you, the said keeper, are hereby commanded to receive the said _____ into your custody, in the said jail, and him there safely keep until the expiration of said _____ days, or until he shall be thence discharged by due course of law.

Given under my hand, this _____ day of _____ A. D. 18 _____
 J. P., justice of the peace.

Form of commitment after arrest, and before trial.

Territory of Minnesota, }
 County of } ss.

Form of commitment after arrest and before trial.

To the sheriff or any constable, and to the keeper of the common jail of said county:

Whereas, _____ has been this day brought before the undersigned, one of the justices of the peace in and for said county, charged on the _____ day of _____ A. D. 18 _____, in said county (here state the offence, as in the warrant,) and the said _____ not having given bail to appear and answer for the said offence, therefore you, the said constable, are commanded in the name of the United States, forthwith to convey, and deliver into the custody of the said keeper, the body of the said _____; and you, the said keeper are hereby commanded to receive the said _____ into your custody in the said jail, and him there safely keep, until he shall be required to be brought before the court to be tried, or shall be otherwise discharged by due course of law.

Given under my hand, this _____ day of _____ 18 _____
 J. P., justice of the peace.

Form of commitment where justice on the trial shall find that he has not jurisdiction of the case.

Territory of Minnesota, }
 County of } ss.

Form of commitment where justice on the trial shall find that he has not jurisdiction of the case.

To the sheriff or any constable of said county:

Whereas, _____, of, &c., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of _____, with having, on the _____ day of _____ A. D., 18 _____,

in said county, committed the offence of _____ (here state the offence charged in the warrant,) and in the progress of the trial on said charge, it appearing to the said justice that the said _____ had been guilty of the offence of _____ (here state the new offence found on the trial;) committed at the time and place aforesaid, of which offence, the said justice has not final jurisdiction; and whereas, after examination, had in due form of law, touching the said charge and

CIVIL ACTIONS.

offence last aforesaid, the said justice did adjudge that the said offence had been committed, and that there was probable cause to believe the said to be guilty thereof; and whereas, the said has not offered sufficient bail for his appearance to answer for said offence, you are therefore commanded, forthwith to take the said and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody, in said jail, until he shall be thence discharged according to law.

Given under my hand, this day of A. D., 18 .
J. P. justice of the peace.

CHAPTER 70.

OF CIVIL ACTIONS.

SECTION

1. Distinction between the forms of civil actions abolished; to be but one form to be called civil action.
2. Parties to actions how designated.
3. Actions when to be commenced.
4. Action to recover real property within twenty years.
5. Actions to be brought within ten years.
6. Actions to be brought within six years.
7. Actions to be commenced within three years.
8. Actions to be commenced within two years.
9. Actions to be commenced within one year.
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SECTION

23. Promise not evidence of new contract unless in writing.
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40. Actions to be tried in county where cause thereof arose.
41. What actions to be tried in county where parties reside.
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