

31700

THE  
REVISED STATUTES,  
OF THE  
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE  
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

---

PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

---

SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

.....  
1851

CHAPTER 82.

OF MISCELLANEOUS PROCEEDINGS IN CIVIL ACTIONS,  
AND GENERAL PROVISIONS.

SECTION

1. Parties not summoned in an action may be summoned after judgment.
2. If judgment debtor die, his representatives may be summoned.
3. Contents of summons.
4. Affidavit must accompany summons.
5. Party summoned may defend by answer.
6. Party issuing summons may reply.
7. Answer and reply must be verified.
8. Defendant may serve offer to compromise action.
9. Defendant may offer to liquidate damages conditionally.
10. If plaintiff accept or refuse, effects thereof.
11. A party may be required to admit paper to be genuine or pay expenses of proving it.
12. Party may demand inspection and copy of paper.
13. An order defined.
14. Motion defined.
15. Motion how made.
16. Motions to be made in the district, &c.
17. When notice necessary, how to be served.
18. In the absence of judge, motion may be transferred.
19. Order for the payment of money how enforced.
20. On motion, witnesses may be examined orally.
21. When answer admits part of claim, court may order it satisfied.
22. Notices and other papers how served on opposite party.
23. Notices and other papers how served on opposite party.

SECTION

24. When and how served by mail.
25. When and how served by mail.
26. Defendant appearing, entitled to notice.
27. Service of papers when party resides out of the territory.
28. Summons, pleadings, &c., to be filed.
29. Notice good, though title omitted.
30. The above provision not to apply to summons or process.
31. Paper lost or withheld how supplied.
32. Successive actions on same contract.
33. Actions when consolidated.
34. Action when deemed pending.
35. Action to determine adveso claims.
36. Jurisdiction of court over persons.
37. Jurisdiction of court over corporations.
38. Jurisdiction of court over causes of action.
39. Actions barred in another state or territory.
40. Register of actions to be kept by clerk.
41. Majority of referees may act.
42. Time how computed.
43. Legal notices, how published.
44. Counsel to speak only one hour without leave.
45. Persons prosecuting or defending without probable cause liable.
46. Rights of action prosecuted as prescribed by this statute.
47. Appeals from justices' and probate courts where to be made in first instance.
48. Defendant must answer complaint in twenty days.

SEC. 1. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided by statute, those who were not originally summoned to answer the complaint, may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned.

Parties not summoned in an action may be summoned after judgment.

SEC. 2. In case of the death of a judgment debtor, after judgment, the heirs, devisees, legatees, or personal representatives of the judgment debtor, or the tenants of real property owned by him, and affected by the judgment, may be summoned to show cause why the judgment should not be enforced against the estate of the judgment debtor, in their hands respectively. The proceedings thereon are subject to the provisions of the chapter upon actions by or against executors, administrators, legatees, heirs and devisees.

If judgment debtor die, his representatives may be summoned.

SEC. 3. The summons provided in the last two sections, must be subscribed by the judgment creditor, his representative, or attorney, describe the judgment, and require the person summoned, to show cause,

Certificates of summons.

within twenty days after service of the summons, and must be served in the same manner as the original summons.

Affidavit must accompany summons.

SEC. 4. The summons must be accompanied by an affidavit, of the person subscribing it, that the judgment has not been satisfied, to his knowledge or information and belief, and must specify the amount due thereon.

Party summoned may defend by answer.

SEC. 5. Upon such summons, the party summoned may answer, within the time specified therein, denying the judgment, or setting up any defence which may have arisen subsequently, and in addition thereto; if he be proceeded against according to section one, he may make the same defence which might have been made originally to the action, except the statute of limitations; if he be proceeded against according to section two, he may make the same defence which he might have made to an action upon the judgment.

Party issuing summons may reply.

SEC. 6. The party issuing the summons may reply to the answer if a counter claim be set up therein, and the issue may be tried, and judgment may be given, in the same manner as in an action, and enforced by execution, or the application of property charged to the payment of the judgment, may if necessary, be compelled by attachment.

Answer and reply must be verified.

SEC. 7. The answer and reply must be verified in the same manner, and are subject to the same rules as the answer and reply in an action.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF THE ACTION.

Defendant may serve offer to compromise action.

SEC. 8. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him, for the sum or property, to the effect therein specified. If the plaintiff accept the offer, and give notice thereof, within ten days, he may file the summons, complaint and offer, with an affidavit of notice of acceptance, and the clerk must thereupon enter judgment accordingly; if the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

Defendant may offer to liquidate damages conditionally.

SEC. 9. In an action for the recovery of money only, the defendant may with his answer, serve upon the plaintiff an offer in writing, that if he fail in his defence, the amount of the recovery be assessed at a specified sum, and if the plaintiff signify his acceptance thereto in writing, with or before the notice of trial, and on the trial have a verdict, the amount must be assessed accordingly.

If plaintiff accept or refuse, effects thereof.

SEC. 10. If the plaintiff do not accept the offer, he must prove the amount to be recovered, as if the offer had not been made, and cannot be permitted to give it in evidence; and if the amount assessed in his favor do not exceed the sum mentioned in the offer, the defendant may recover his expenses incurred in consequence of any necessary preparation or defence, in respect to the question of amount; such expenses must be ascertained at the trial.

ADMISSION OR INSPECTION OF WRITINGS.

A party may be required to admit paper to be genuine or pay expenses of proving it.

SEC. 11. Either party may exhibit to the other, or to his attorney, at any time before the trial, any document or papers, material to the action, and request an admission in writing, of its genuineness; if the adverse party, or his attorney fail to give the admission within four days after the request, and if the party exhibiting the document or paper, be afterwards put to expense, in order to prove its genuineness, and the

same be finally proved, or admitted on the trial, such expense, to be ascertained at the trial, must be paid by the party refusing the admission, unless it appears to the satisfaction of the court that there were good reasons for the refusal.

SEC. 12. The court, before which an action is pending, or a judge thereof, may order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any book, document, or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defence therein; if compliance with the order be refused, the court may exclude the book, document, or paper, from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

Part may demand inspection and copy of paper.

MOTIONS AND ORDERS.

SEC. 13. Every direction of a court, or judge, made or entered in writing, and not included in a judgment, is denominated an order.

An order defined.

SEC. 14. An application for an order is a motion.

Motion defined.

SEC. 15. All motions may be made to the court at term; motions may likewise be made to a judge out of court, as provided in other parts of the statute.

Motions how made.

SEC. 16. Motions must be made within the district in which the action is triable, or in a county adjoining that in which it is triable, except that where the action is triable in one judicial district, the motion must be made therein. Orders made out of court, without notice, may be made by any judge of the court, in any part of the territory; no order to stay proceedings for a longer time than twenty days, can be granted by a judge out of court, except upon previous notice to the adverse party.

Motions to be made in the district, &c.

SEC. 17. When a notice of a motion is necessary, it must be served eight days before the time appointed for the hearing; but the court, or judge, may by an order to show cause, prescribe a shorter time.

When notice necessary, how to be served.

SEC. 18. When a notice of a motion is given, or an order to show cause provides for a motion, before a judge out of court, and at the time fixed for the motion, he is unable to hear it, the same may be transferred, by his order, to some other judge, before whom the motion might originally have been made.

In the absence of judge, motion may be transferred.

SEC. 19. Whenever an order for the payment of a sum of money is made by a court pursuant to a provision of the statute, the same may be enforced by execution, in the same manner as if it were a judgment, except that the person cannot be arrested unless specially directed in the order, nor can real property be sold thereon, except in the cases where the same is by law a charge upon real property.

Order for the payment of money how enforced.

SEC. 20. Upon a motion, any person present in court, whose affidavit or deposition would be admissible thereupon, may be orally examined.

On motion, witness may be examined orally.

SEC. 21. Where the answer of the defendant, admits part of the plaintiff's claim to be just, the court on motion, may order such defendant to satisfy that part of the claim, and may enforce the order, as it enforces a provisional remedy.

When answer admits part of claim court may order it satisfied.

NOTICES; FILING, AND SERVICE OF PAPERS.

Notices and other papers how served on opposite party.

SEC. 22. Notices must be in writing; and notices and other papers may be served on the party, or attorney, in the manner prescribed in the next three sections; where not otherwise provided by statute.

Notices and other papers how served on opposite party.

SEC. 23. The service may be personal, or by delivery to the party or attorney, on whom the service is required to be made; or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving the papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving it, between the hours of six in the morning, and nine in the evening, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion:

2. If upon a party, it may be made by leaving the papers at his residence, between the hours of six in the morning, and nine in the evening, with some person of suitable age and discretion.

When and how served by mail.

SEC. 24. Service by mail may be made, when the person making the service, and the persons on whom it is to be made reside in different places, between which there is a regular communication by mail.

When and how served by mail.

SEC. 25. In case of service by mail, the papers must be deposited in the post office addressed to the person on whom it is to be served at his place of residence, and the postage paid; and in such case, the time of service must be increased one day, for every fifty miles distance between the place of deposit, and the place of the address..

Defendant appearing entitled to notice.

SEC. 26. A defendant appears in action when he answers, demurs, or gives the plaintiff written notice of his appearance, after appearance otherwise than by answer, a defendant is entitled to notice of all subsequent proceedings, in the same manner as if he had answered; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action, need not be made upon him, unless he be imprisoned for want of bail.

Service of papers when party resides out of territory.

SEC. 27. Where a plaintiff or defendant who has appeared, resides out of the territory, and has no attorney in the action, the service may be made by mail, if his residence be known; if not known, on the clerk for him. But where a party has an attorney in the action, the service of papers must be upon the attorney, instead of the party.

Summons, pleadings, &c., to be filed.

SEC. 28. The foregoing provisions of this chapter, do not apply to the service of a summons, or other process, or of any paper to bring a party into contempt.

Notice good though title omitted.

SEC. 29. A notice or other paper is valid and effectual, though the title of the action in which it is made be omitted, or be defective either in respect to the court or parties, if it intelligibly refer to such action or proceeding; and in furtherance of justice upon proper terms, any other defect or error in any notice, or other paper or proceeding may be amended by the court, and any mischance relieved within one year thereafter.

The above provision not to apply to summons or process.

SEC. 30. The various undertakings required to be given by this statute and the affidavits and other written proceedings in an action, must be filed or entered in court, or with the clerk thereof, unless the court expressly provide for a different disposition thereof, except that the undertaking provided for by this chapter, on the claim and delivery of personal property, must after the justification of the sureties be delivered by the sheriff to the parties respectively for whose benefit they are taken; the summons and several pleadings in an action, must be filed with the clerk within ten days after the service thereof, respectively, or the adverse party, on proof of the omission is entitled,

without notice, to an order from a judge that the same be filed within a term specified in the order, or be deemed abandoned.

GENERAL PROVISIONS.

SEC. 31. If an original pleading or paper be lost or withheld, by any person, the court may authorize a copy thereof to be filed and used instead of the original.

Paper lost or withheld how supplied.

SEC. 32. Successive actions may be maintained upon the same contract, or transaction, whenever after the former action a new cause of action arises therefrom.

Successive actions on same contract.

SEC. 33. Whenever two or more actions are pending at one time between the same parties, and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated into one.

Actions when consolidated.

SEC. 34. An action is deemed to be pending from the time of its commencement, until its final determination upon appeal, or until the time for an appeal has passed, and the judgment has been satisfied.

Action when deemed pending.

SEC. 35. An action may be brought by one person against another, for the purpose of determining an adverse claim, which the latter makes against the former, for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as surety.

Action to determine adverse claims.

SEC. 36. No natural person is subject to the jurisdiction of a court of this territory, unless he appear in the court, or be found within the territory, or be a resident thereof, or have property therein; and in the last place, only to the extent of such property; at the time the jurisdiction attached.

Jurisdiction of court over persons.

SEC. 37. No corporation is subject to the jurisdiction of a court of this territory, unless it appear in the court, or have been created by, or under the laws of this territory, or have an agency established therein, for the transaction of some portion of its business, or have property therein; and in the last case, only to the extent of such property at the time the jurisdiction attached.

Jurisdiction of court over corporations.

SEC. 38. When the court has jurisdiction of the parties, it may exercise it, in respect to any cause of action, whenever arising, except for the specific recovery of real property situated out of this territory, or an injury thereto, and except as also provided by statute, in relation to proceedings against foreign corporations.

Jurisdiction of court over causes of action.

SEC. 39. When a cause of action has arisen in a state or territory out of this territory, or in a foreign country, and by the laws thereof, an action thereon cannot there be maintained against a person, by reason of the lapse of time, an action thereon cannot be maintained against him, in this territory, except in favor of a citizen thereof, who has had the cause of action from the time it accrued.

Actions barred in another state or territory.

SEC. 40. The clerk must keep among the records of the court, a register of actions; he must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed, and proceedings had therein.

Register of actions to be kept by clerk.

SEC. 41. When there are three referees, all must meet, but two of them may do any act which might be done by all; and whenever any authority is conferred on three or more persons, it may be exercised by a majority upon the meeting of all, unless expressly otherwise provided by statute.

Majority of referees may act.

SEC. 42. The time within which an act is to be done, as herein provided, must be computed by excluding the first day, and including the last. If the last day be Sunday, it must be excluded.

Time how computed.

Legal notices, how published.

SEC. 43. The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week, for a specified number of weeks, must be made on the day of each week in which such newspaper is published; and in all cases where a municipal corporation is required to publish legal notices, and may designate the papers in which the publication is to be made, it must make such designation; all such legal notices must be published in the paper so designated.

The time for publication of legal notices, must be computed so as to exclude the first day of publication, and to include the day on which the act or event of which notice is given, is to happen, or which completes the full period required for publication.

Counsel to speak only one hour without leave.

SEC. 44. No counsel can be permitted to speak on the argument of any case, more than an hour, without special leave of the court, granted before the argument begins.

Persons prosecuting or defending without probable cause liable.

SEC. 45. A person who, without probable cause, prosecutes an action, or makes a defence, or takes any legal proceedings against another, is guilty of a contempt, and is also liable to an action therefor, at the suit of the party aggrieved.

Rights of action prosecuted as provided by this statute.

SEC. 46. Rights of action, given or secured by existing laws, may be prosecuted in the manner provided by statute. If a case ever arise, in which an act for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this statute, the practice heretofore in use, may be adopted, so far as may be necessary to prevent a failure of justice.

Appeals from justices' and probate courts where to be made in first instance.

SEC. 47. No action or proceeding shall, in the first instance, be removed by any writ, process, or appeal whatever, from a probate or justice's court, to the supreme court of this territory; but in all cases where an action or proceeding is removed from either of the said probate or justice's court, the same must be, in the first instance, removed to the district court of the county.

Defendant must answer complaint in twenty days.

SEC. 48. In all actions in the district court, the defendant is required to answer the plaintiff's complaint, in twenty days after a summons has been legally served upon him; and if such answer is not made and served upon the complainant, within twenty days of the service of the summons, the plaintiff may proceed to take final judgment against the defendant, according to the provision of the statute in such case provided.

---

CHAPTER 83.

OF SPECIAL PROCEEDINGS.

---

SECTION

1. Parties designated plaintiff and defendant.
2. Judgment and order same meaning as in actions.
3. Writ of mandamus defined.
4. To whom and for what issued.
5. When not to issue.

SECTION

6. Writ alternative or peremptory.
7. When peremptory writ allowed.
8. Proceedings.
9. Answer on return of writ.
10. If no answer, peremptory writ allowed.
11. No pleading but writ and answer.