

James C. Child
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THE

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OF THE

STATE OF MINNESOTA.

(1849—1858.)

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ISSUES.

✓ [Chapter 71, Revised Statutes.

- (1.) SEC. I. Issues arise upon the pleadings, when a fact or conclusion of law is maintained by the one party and controverted by the other; they are of two kinds:
 1. Of law; and,
 2. Of fact.
- (2.) SEC. II. [As amended on page 10 of the amendments of 1852 to the revised statutes.] An issue of law arises upon a demurrer to the complaint, answer or reply.

When issues arise upon the pleadings.

An issue of law arises upon a demurrer, &c.
- (3.) SEC. III. [Subdivision 2 and 3 are as amended on page 10 of the amendments of 1852 to the revised statutes.] An issue of fact arises:
 1. Upon a material allegation in the complaint, controverted by the answer; or,
 2. Upon new matter in the answer controverted by the reply; or,
 3. Upon new matter in the reply, except when an issue of law is joined thereon; issues both of law and of fact may arise upon different and distinct parts of the pleadings, or of the same pleading in the same action.

When issue of fact arises.

Issues of law and fact may arise upon different parts of the pleadings.
- (4.) SEC. IV. A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

The term trial defined.
- (5.) SEC. V. An issue of law must be tried by the court, unless it be referred as provided by the statute relating to referees.

Court must try issues of law.
- (6.) SEC. VI. An issue of fact, in an action for the recovery of money only, or of specific, real or personal property, or for a divorce from the marriage contract on the ground of adultery, must be tried by a jury, unless a jury trial be waived, as provided by law, or a reference be ordered, as provided by statute relating to referees.

Issues of fact how tried.
- (7.) SEC. 7. Every other issue of fact must be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or be referred, as provided by statute.

Issue of fact in certain cases how disposed of.

Notice of trial and notice of issue when to be served.

(8.) SEC. VIII. At any time after issue, and at least ten days before the court, either party may give notice of trial; the party giving the notice must furnish the clerk, at least four days before the court, with a note of the issue, containing the title of the action, the names of the attorneys, and the time when the last pleading was served; and the clerk must thereupon enter the cause upon the calendar, according to the date of the issue. The issues once placed upon the calendar of a term, if not tried at the term for which the notice was given, need not be noticed for a subsequent term, but must remain upon the calendar from court to court, until finally disposed of; but when an issue of law is to be tried before a judge out of court, no calendar need be made or note of issue furnished.

Issues on the calendar how to be disposed of.

(9.) SEC. IX. The issues on the calendar must be disposed of in the following order, unless for the convenience of parties, or the dispatch of business, the court otherwise direct:

1. Issues of fact, to be tried by a jury;
2. Issues of fact, to be tried by the court;
3. Issues of law.

When either party may bring cause on for trial.

(10.) SEC. X. Either party, after the notice of trial, whether given by himself or by the adverse party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case and take a dismissal of the action, or a verdict, or judgment, as the case may require.

When separate trial may be allowed defendants.

(11.) SEC. XI. A separate trial between the plaintiff and any of several defendants, may be allowed by the court whenever in its opinion, justice will be thereby promoted.

Affidavit for continuance what to set forth.

(12.) SEC. XII. A motion to postpone a trial for the absence of evidence, can only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; the court may also require the moving party to state the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial or offered, and overruled as improper, the trial must not be postponed.

Plaintiff must furnish court] with copy of summons and pleadings.

(13.) SEC. XIII. The plaintiff must furnish the court, before the trial begins, with a copy of the summons and pleadings, and the offer of the defendant, if any shall have been made.

TRIAL BY JURY.

Jury how drawn by clerk.

(14.) SEC. XIV. When the action is called for trial by jury, the clerk must draw from the trial jury box of the court, the ballots containing the names of jurors, until the jury is completed or the ballots are exhausted; if the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, must summon from the bystanders or the body of the county, so many qualified persons as may be necessary to complete the jury.

Oath to be administered to jurors.

(15.) SEC. XV. As soon as the drawing of the jury is completed, an oath must be administered to each juror, that he will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give according to the evidence.

Ballots when to be returned to the box.

(16.) SEC. XVI. When the jury is completed and sworn, the ballots containing the names of the jurors sworn, must be laid aside till the jury so sworn is discharged, and then they must be returned to the box; and

every ballot drawn, containing the name of a juror not so sworn, must be returned to the box, as soon as the jury is completed.

(17.) SEC. XVII. Either party may challenge the jurors, but when there are several parties on either side, they must join in a challenge before it can be made; the challenges are to the panel and to individual jurors as in criminal actions, except that there can be but two peremptory challenges on each side.

Parties may challenge jurors; when to join challenge.

CONDUCT OF THE TRIAL.

(18.) SEC. XVIII. When the jury has been completed and sworn, the trial must proceed in the following order, unless the court for special reasons, otherwise directs:

Trial how to proceed.

1. The plaintiff after stating the issue, must open the case and produce the evidence on his part;

2. The defendant may then open his defense, and offer his evidence in support thereof;

3. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides without argument, the defendant must commence and the plaintiff conclude the argument to the jury;

5. If several defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument;

6. The court may then charge the jury.

(19.) SEC. XIX. Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which will be shown to them by the judge, or by a person appointed by the court for that purpose; while the jury are thus absent, no person other than the judge or person so appointed, must speak to them on any subject connected with the trial.

When and how jury may have a view of real property connected with the subject of litigation.

(20.) SEC. XX. The jury may be kept together in charge of proper officers, or may, in the discretion of the court, at any time before the submission of the cause to the jury, be permitted to separate; in either case, they may be admonished by the court that it is their duty not to converse with any other person or among themselves, on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

Jury how to be kept before cause is submitted to them.

(21.) SEC. XXI. If, after the impanneling of the jury, and before a verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged; in that case, a new juror may be sworn and the trial begin anew, or the juror may be discharged and a new jury then or afterwards impanneled.

When juror is taken sick, court how to proceed.

(22.) SEC. XXII. In charging a jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it present the facts of the case, it must also inform the jury that they are the exclusive judges of all questions of fact.

Court how to charge the jury

(23.) SEC. XXIII. After hearing the charge, the jury may either decide in court, or retire for deliberation; if they retire, they must be left together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict,

When jury to retire under charge of an officer.

Duties of officer having charge of jury.

or are discharged by the court; the officer must, to the utmost of his ability, keep the jury thus together, separate from other persons without drink, except water, and without food except ordered by the court; he must not suffer any communication to be made to them, nor make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he must not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on.

When jury to be provided with food and lodging at expense of county.

(24.) SEC. XXIV. If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they must be so provided by the sheriff at the expense of the county.

What papers jury may take with them to their room.

(25.) SEC. XXV. Upon retiring for deliberation, the jury may take with them, all papers, (except depositions,) which have been received as evidence in the cause, or copies of such parts of public records or private documents, given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Jury may return into court for information.

(26.) SEC. XXVI. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court; upon their being brought into court, the information required must be given in presence of, or after notice to the parties or counsel.

Jury not to be discharged until verdict is rendered, except in certain cases.

(27.) SEC. XXVII. Except as otherwise provided by statute, or in case of some accident or calamity requiring their discharge, the jury cannot be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the court deem proper, it satisfactorily appear that there is no probability of an agreement.

When jury is discharged without giving verdict, cause when to be tried.

(28.) SEC. XXVIII. In all cases where a jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

While jury are absent court may adjourn.

(29.) SEC. XXIX. While the jury are absent, the court may adjourn from time to time, in respect to other business; but it is, nevertheless, to be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury is discharged. A final adjournment of the court discharges the jury.

When jury may be discharged without giving verdict.

(30.) SEC. XXX. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge; their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict.

Jury how to render verdict.

(31.) SEC. XXXI. If the jury appear, they must be asked by the court or the clerk, whether they have agreed upon their verdict; and, if the foreman answer in the affirmative, they must, on being required, declare the same.

Jury may be polled at request of either party.

(32.) SEC. XXXII. When a verdict is rendered, and before it is recorded, the jury may be polled on the request of either party, for which purpose each juror must be asked whether it be his verdict; if any one answer in the negative, the jury must be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

(33.) SEC. XXXIII. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full in the minutes, and must read it to the jury and inquire of them whether it be their verdict; if any juror disagree, the fact must be entered in the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

Clerk must record verdict, and read it to the jury.

THE VERDICT.

(34.) SEC. XXXIV. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court; it must present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented, as that nothing remains to the court, but to draw from them conclusions of law.

Verdict is either general or special.

(35.) SEC. XXXV. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict; in all other cases, the court may direct the jury to find a special verdict in writing, upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk, and entered upon the minutes.

When jury may render general or special verdict.

(36.) SEC. XXXVI. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

When special verdict is inconsistent with general verdict which to control.

(37.) SEC. XXXVII. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery.

When jury must assess the amount of the recovery.

(38.) SEC. XXXVIII. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer, claim a return thereof, the jury must, if their verdict be in favor of the plaintiff, or if being in favor of the defendant, they also find that he is entitled to a return thereof, must assess the value of the property, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Verdict in action to recover personal property.

(39.) SEC. XXXIX. [As amended on page 11 of the amendments of 1852 to the revised statutes.] Upon receiving a verdict, an entry must be made in the minutes of the court, specifying the time and place of trial, the names of the jurors and witnesses, the verdict, and either the judgment to be rendered thereon, or when the court is in doubt what judgment ought to be given, it may order that the case be reserved for argument or further consideration; or the judge trying the cause, may in his discretion and upon such terms as shall be just, stay the entry of judgment and further proceedings until the hearing and final decision of a motion for a new trial, or in arrest of judgment, or for judgment notwithstanding the verdict, or to set aside the verdict, or a dismissal of the action, on the ground of surprise or irregularity, or on a case or bill of exceptions.

Upon receiving a verdict, an entry must be made in the minutes of the court.

Court may stay the entry of judgment.

TRIAL BY THE COURT.

When trial by jury may be waived by the parties.

(40.) SEC. XL. The trial by jury may be waived by the several parties to an issue of fact in actions arising on obligations, and with the assent of the court in other actions, in the manner following :

1. By failing to appear at the trial ;
2. By written consent, in person or by attorney, filed with the clerk ;
3. By oral consent in open court, entered in the minutes.

When question of fact is tried by the court, decision when and how to be made.

(41.) SEC. XLI. Upon the trial of a question of fact by the court, its decision must be given in writing, and filed with the clerk within twenty days after the term at which the trial took place ; in giving the decision, the facts found and the conclusions of law must be separately stated ; judgment upon the decision must be entered accordingly.

On judgment for plaintiff on issue of law plaintiff how to proceed.

(42.) SEC. XLII. On a judgment for the plaintiff upon an issue of law, the plaintiff may proceed in the manner prescribed by the statute, upon the failure of the defendant to answer where the summons was personally served. If judgment be for the defendant, upon an issue of law, and the taking of an account, or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered as by statute provided.

District court to be always open for the transaction of business.

(43.) SEC. XLIII. [*Subdivisions 1 and 4 as amended on page 11 of amendments of 1852 to the revised statutes.*] In addition to the regular terms of the district courts in this territory, the said court is always open for the transaction of any business which may be heard and determined by the court, and the said court in vacation has power to hear and determine all questions which may arise in the said court, in the following cases :

Application for judgment, where made.

1. Applications for judgment in all actions other than those arising on contract for the payment of money only, when a summons has been personally served upon the defendant, and no answer has been made to the complaint, after the time for answering the same has expired. The said court in vacation may, upon any such application, whenever it shall be proper so to do, take an account, or hear proof, and render judgment thereon, or may order a reference as herein provided ; and when the action is for the recovery of money only, or of specific, real or personal property, with damages for withholding thereof, the court may hear and determine the same in vacation, and assess the damages itself, or order a reference for that purpose, or assessment by a jury ;
2. In all cases where an action has been removed to the district court by a certiorari to a justice of the peace, the same may be brought on for argument before the court in vacation, and heard and determined as fully as if the same had been determined in term ;
3. All motions made to the said court in actions or proceedings pending therein, may be heard and determined by the court in vacation ;
4. All applications for judgment upon special verdicts, and all questions reserved for argument or further consideration, all motions for new trials, and all issues and questions of law pending in the said court, may also be heard and determined in vacation as well as in term.

Court may in vacation hear proof and render judgment.

(44.) SEC. XLIV. [*As amended on page 11 of the amendments of 1852 to the revised statutes.*] Whenever application is made to the judge of any of the said district courts in vacation, for the hearing and determination of any of the cases mentioned in the preceding section, the judge shall appoint a day in which he will hear and determine the same ; and any of said judges may appoint special terms for the hearing of such cases from time to time.

Applications for judgments and motions may be made to the court in vacation.

Court may appoint a day for hearing applications.

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(45.) SEC. XLV. The party making such application shall notify the adverse party that such application has been made, and that the hearing and determination will take place at a time and place mentioned in the said notice, which notice must be served on the opposite party at least six days before the day of hearing.

Notice of hearing to be served on adverse party.

(46.) SEC. XLVI. All judgments, orders, or determinations made by the said court in vacation, in any of the cases above mentioned, shall be as final and effectual as if the same had been made in term.

Judgments, &c., made in vacation to be effectual.

TRIAL BY REFEREES.

(47.) SEC. XLVII. A referee is a person appointed by the court or judge :

Referees and their powers.

- 1. To try an issue of law or of fact in a civil action, and report a judgment thereon;
- 2. To ascertain any other fact in an action at law, or in a special proceeding of a civil nature, when necessary for the information of the court, and report the fact either with or without his opinion thereon;
- 3. To execute an order or judgment.

(48.) SEC. XLVIII. The appointment of a referee is denominated a reference.

Appointment of referees, how denominated.

(49.) SEC. XLIX. Upon the agreement of the parties to a civil action, or a proceeding of a civil nature, filed with the clerk or entered upon the minutes, a reference may be ordered :

When and in what cases court may order reference.

- 1. To try any or all the issues in a civil action, whether of fact or law, (except an issue of fact when the action is for a divorce dissolving the marriage contract,) and to report a judgment thereon;
- 2. To try an issue or ascertain a fact in a special proceeding of a civil nature.

(50.) SEC. L. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases :

When and in what cases court may order reference.

- 1. When the trial of an issue of fact requires the examination of a long account on either side, which case the referees may be directed to hear, and decide the whole issue, or to report upon any specific question of fact involved therein;
- 2. When the taking an account is necessary for the information of the court, before judgment, or for the carrying a judgment or order into effect;
- 3. When a question of fact other than upon the pleadings arises, upon the motion or otherwise, in any stage of the action; or,
- 4. When it is necessary for the information of the court in a special proceeding of a civil nature.

(51.) SEC. LI. A reference may be ordered in a civil action, or in a special proceeding of a civil nature, in any court, (except a justice's court,) and may be ordered by a judge or court in vacation.

In what cases reference may be ordered.

(52.) SEC. LII. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties; if the parties do not agree, the court or judge must appoint one or more, not exceeding three, who reside in the county in which the action is brought, or the proceeding is triable.

Number of referees to be appointed.

any number
1 5 6 2
3 4 5 3
1 8 6 4

(53.) SEC. LIII. When the appointment of referees is made by the court or judge, the referee must be :

Qualifications of referees.

- 1. Qualified as a juror, as provided by statute;
- 2. Competent as a juror between the parties.

Report of referees to stand as decision of the court.

(54.) SEC. LIV. The report of the referees upon the whole issue stands as the decision of the court, and judgment may be entered thereon, in the same manner as if action had been tried by the court; and their decision may be excepted to, and reviewed in like manner. When the reference is to report the facts, the report has the effect of a special verdict.

PROVISIONS RELATING TO TRIALS IN GENERAL; EXCEPTIONS.

Exceptions when and how to be taken.

(55.) SEC. LV. An exception is an objection taken at the trial, to a decision upon a matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, the production of evidence, the charge to the jury, or at any other time from the calling of the action for trial, to the rendering of the verdict or decision; but no exception is to be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect substantial rights of the party.

Exceptions when and how to be taken.

(56.) SEC. LVI. The point of the exception must be particularly stated, and either delivered in writing to the judge, or entered in his minutes, and immediately corrected or added to until made conformable to the truth, or it may afterward be settled in a statement of the case, as provided in section sixty-three of this chapter.

No form of exception required; what necessary to state.

(57.) SEC. LVII. No particular form of exception is required; the objection must be stated, with so much of the evidence as is necessary to explain it, but no more, and the whole as briefly as possible. If the decision excepted to, be verbally made, it must, upon the exception being taken, be reduced to writing, and entered either in the judge's minutes, or in the minutes of the court, or in the statement.

NEW TRIALS.

New trial defined.

(58.) SEC. LVIII. A new trial is a re-examination of an issue of fact in the same court, after a trial and decision by a jury, court, or referees.

For what causes new trial may be granted.

(59.) SEC. LIX. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or prevailing party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial;
2. Misconduct of the jury or of the prevailing party;
3. Accident or surprise, which ordinary prudence could not have guarded against;
4. Excessive damages, appearing to have been given under the influence of passion or prejudice;
5. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;
6. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;
7. Error in law, occurring at the trial and excepted to, by the party making the application.

When upon application for new trial party to prepare state-

(60.) SEC. LX. When the application is made for a cause mentioned in the fourth, fifth, and seventh subdivisions of the last section, it is made either upon the judge's minutes, or a statement of the case prepared as

prescribed in the next section; for any other cause, it is made upon affidavit.

ment of cause of motion.

(61.) SEC. LXI. The party preparing a statement, is to propose a draft of it, and within five days after the trial, serve it upon the adverse party, who may, within five days thereafter, propose amendments to it; if no amendment be proposed, the draft is adopted; if proposed, the statements and amendments may be submitted for settlement to the judge or referee, before whom the trial was had, upon a notice of five days; if such notice be not served within five days after the amendments are proposed, they are adopted.

Statement how prepared and served.

(62.) SEC. LXII. The application for a new trial, must, in the first instance, be made at a regular term except when made upon an appeal.

Application for new trial when made.

(63.) SEC. LXIII. The application for a cause mentioned in the fourth and fifth subdivisions of section fifty-nine, can only be made when notice thereof, oral, or written, was given in open court, immediately after the verdict or other decision rendered; and thereupon if the adverse party consent, the court must appoint a day in the same term for hearing the application upon the judge's minutes; if however, the application be not heard at the same term, or if an appeal be taken, a statement of the case must be made.

Notice of application when made.

GENERAL PROVISIONS.

(64.) SEC. LXIV. Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages, to which he may be entitled for the cause of action established.

What rate of damages plaintiff may recover.

(65.) SEC. LXV. Any party may, and if required by the court, must when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both; they may be written and handed to the court, or, at the option of the court, oral and entered in the judge's minutes; but in either case they must be entered with any exceptions that may be taken, if either party require it.

When party to submit propositions upon which he claims to recover.

(66.) SEC. LXVI. The provisions of this chapter respecting trials by jury apply, so far as they are in their nature applicable, to trials by the court or referees, and in the same manner, the provisions respecting trials by the court, apply to trials by referees.

Provisions for trial by jury to apply to trial by court.

MANNER OF GIVING AND ENTERING JUDGMENT.

(67.) SEC. LXVII. When a trial by jury has been had, judgment must be entered by the clerk in conformity to the verdict, unless the court order the case to be reserved for argument, or further consideration, or grant a stay of proceedings.

Upon trial by jury, judgment how entered.

(68.) SEC. LXVIII. When the case is reserved for argument, or further consideration, as mentioned in the last section, on the ground that judgment ought not to be given in conformity to the verdict, or that it is doubtful what judgment should be given, the questions reserved may be decided by the court, and judgment thereupon rendered without further argument, or if not so decided, they may be brought before the court for judgment, upon notice, and judgment thereupon rendered.

Proceedings when case is reserved.

(69.) SEC. LXIX. If a counter claim established at the trial, exceed the plaintiff's demand so established, judgment for the defendant must be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

When and how judgment may be given for defendant.

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 Judgment how given in action to recover personal property.

(70.) SEC. LXX. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and of damages for the detention; if the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

Judgments to be entered under the direction of a single judge.

(71.) SEC. LXXI. [*As amended on page 11 of the amendments of 1852 to the revised statutes.*] Judgments upon an issue of law, or of fact, or upon confession, or upon failure to answer, except where the clerk is otherwise authorized to enter the same, must in the first instance, be entered upon the direction of a single judge, or referees' report upon the whole issue.

Clerk must keep judgment book.

(72.) SEC. LXXII. The clerk must keep among the records of the court, a book for the entry of judgments, to be called the judgment book.

Judgment must be entered in judgment book.

(73.) SEC. LXXIII. The judgment must be entered in the judgment book, and must specify clearly the relief granted, or other determination of the action.

When court may render judgment after death of party.

(74.) SEC. LXXIV. If a party die after verdict or decision upon an issue of fact, and before judgment, the court may nevertheless render judgment thereon; such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

Judgment roll, what to contain and where to be filed.

(75.) SEC. LXXV. Immediately after entering the judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:

1. In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, proof of service and that no answer has been received, the report, if any, and a copy of the judgment;

2. In all cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, and all orders relating to a change of parties, or in any way involving the merits and necessarily affecting the judgment. If a statement of the case be made, the same may be attached to the judgment roll on the request of either party, and henceforth forms a part thereof. When the defendant is entitled to judgment, if the plaintiff shall not have filed the summons, with proof of service, and the pleadings on his part, the copies of summons and pleadings served on the defendant, may be substituted therefor in making the judgment roll, or the plaintiff may at the instance of the defendant, be ordered by a judge forthwith to file such papers. Upon an exemplification of a judgment, as evidence, only that part of the roll which consists of the summons, pleadings, and judgment, need be given.

How judgment made lien on real property.

(76.) SEC. LXXVI. On filing a judgment roll, upon a judgment requiring the payment of money, the judgment may be docketed with the clerk of the court, where it was rendered, and in any other county upon filing with the clerk of the district court of such county a transcript of the original docket: and thereupon the judgment becomes a lien on real property in the county, from the time of docketing it therein.

To what property the lien extends.

(77.) SEC. LXXVII. The lien mentioned in the last section, extends to all the real property of the judgment debtor in the county, owned by him at the time of the judgment, or afterwards acquired.

In what order judgment to be entered in judgment book.

(78.) SEC. LXXVIII. The docket mentioned in section seventy-six, is a book which the clerk must keep in his office, and in which he must enter alphabetically, under the name of each person:

1. The names of the parties to the judgment;
2. The amount of the judgment; and,

3. The precise time of his entry.

(79.) SEC. LXXIX. Satisfaction of a judgment may be entered in the clerk's register and docket, upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or within two years after the judgment, by the attorney, unless a revocation of his authority is previously entered upon the register. Whenever a judgment is satisfied in fact, otherwise than upon an execution, it is the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it; and whenever a judgment is satisfied in fact, as to any one of several defendants, an entry to that effect may be made in the register and docket.

Satisfaction of judgment.

How acknowledged and entered.

THE EXECUTION.

(80.) SEC. LXXX. The party in whose favor judgment is given, may, at any time within five years after the entry thereof, proceed to enforce the same, as prescribed by statute.

Execution may issue in five years.

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(81.) SEC. LXXXI. (a) There are three kinds of writs of execution; one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same; they are issued in the name of the United States, and are deemed the process of the court; but they need not be sealed nor subscribed, except as prescribed in the next section.

Three kinds of executions.

(82.) SEC. LXXXII. The writ of execution must be directed to the sheriff, subscribed by the party issuing it, or his attorney, and must intelligibly refer to the judgment, stating the court, the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment if it be for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and must require the sheriff substantially as follows:

Execution by whom issued and to whom directed.

Execution what to contain.

1. If it be against the property of the judgment debtor, it must require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient property cannot be found, out of his real property; or if the judgment be a lien on real property, then out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter, or if the judgment be entered pursuant to the statute, the execution must conform to such judgment;

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it must require the sheriff to satisfy the judgment with interest, out of such property;

3. [*Repealed by laws of 1855, page 125.*]

4. If it be for the delivery of the possession of real or personal property, it must require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, charges, damages, rents, or profits, recovered by the same judgment, out of the personal property of the party against whom it was rendered and the value of the property for which the judgment was recovered, to be specified therein, if a deliv-

(a) See section 3 of chapter 47, of laws of 1855, on page 125, which repeals all laws authorizing execution against the body.

ery thereof cannot be had, and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section, and in that respect, it is to be deemed an execution against property.

Execution when made returnable.

(83.) SEC. LXXXIII. The execution must be made returnable within sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed.

When certified copy of record to be served with execution.

(84.) SEC. LXXXIV. Where a judgment requires the payment of money, or the delivery of real or personal property, the same is enforced in these respects, by execution, as provided in the three last sections. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for contempt.

After five years, execution to be issued on leave of the court.

(85.) SEC. LXXXV. After the lapse of five years from the entry of a judgment, if no execution has been already issued, an execution can be issued only by leave of the court on motion, upon notice to the adverse party; such leave must not be given, unless it be established by the oath of the party, or other proof, that the judgment, or some part thereof, remains unsatisfied and due. When the judgment has been rendered in a justice's court and docketed in the office of the clerk of the district court, the application for leave to issue execution must be to the district court of the county where the judgment was rendered.

In case of death of party after judgment, execution may issue against his property.

(86.) SEC. LXXXVI. Notwithstanding the death of a party after judgment, execution thereon against his property may be issued and executed in the same manner and with the same effect as if he were still living; except that such execution cannot be issued within a year after his death, unless upon permission granted by the judge of probate.

To what sheriff execution must be directed.

(87.) SEC. LXXXVII. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. Where it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

SEC. LXXXVIII., LXXXIX., XC. [*Repealed by laws of 1855, page 125.*]

Property liable to attachment may be taken on execution.

(88.) SEC. XCI. All property liable to an attachment is liable to execution; it must be levied on in the same manner as similar property is attached; until a levy, property is not affected by the execution.

When property is claimed by third person, how sheriff to proceed.

(89.) SEC. XCII. If the property levied on be claimed by a third person as his property, the sheriff may summon from his county any twelve persons, qualified as jurors, between the parties, to try the validity of the claim; they and the witnesses must be sworn by the sheriff, and if their verdict be in favor of the claimant, the sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon; the fees of the jury must be paid by the claimant if the verdict be against him, otherwise by the plaintiff. The following property is exempt from execution, except as herein otherwise specially provided.

SEC. XCIII TO XCIX, INCLUSIVE. (a)

What property exempt from attachment, and levy and sale on final process.

(90.) SEC. C. The following named property shall be exempt from sale under any execution, writ of attachment, or any other final process of a court:

(a) These sections provide for a homestead exemption, and regulate the sale of it when above the allowed value. They are all superseded by laws of 1858, chapter 35, page 84, which provides a new homestead exemption.

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1. All spinning wheels, weaving looms, with the apparatus, and all stoves and pipes with their utensils, put up or kept in any dwelling house;
2. A seat, pew, or slip, occupied by any person or family, in any house or place of public worship;
3. All cemeteries, monuments, tombs, and rights of burial, while in use as repositories of the dead;
4. All arms and accoutrements required by law to be kept by any person;
5. All wearing apparel of every person or family;
6. The miscellaneous library, and school books, of every individual and family, not exceeding in value one hundred and fifty dollars, and all family pictures;
7. To each householder, ten sheep, with their fleeces, and the yarn and cloth manufactured from the same, two cows, five swine, and provisions and fuel for the comfortable subsistence of such householder and family for six months;
8. To each householder, all household goods, furniture and utensils, not exceeding in value two hundred and fifty dollars;
9. The tools, implements, material, stock, apparatus, team, vehicle, horses, harness, library, or other things, to enable any person to carry on the profession, trade, occupation or business in which such person may be wholly or principally engaged, not exceeding in value two hundred and fifty dollars; the word team, in this subdivision, shall be construed to mean either one yoke of oxen, a horse, or a pair of horses, as the case may be;
10. A sufficient quantity of hay, grain, feed and vegetables necessary for keeping for six months the animals mentioned in the several subdivisions of this section exempted from execution, and any chattel mortgage, bill of sale, or other lien created on any part of the property, except such as is mentioned in the ninth subdivision of this section, shall be void, unless such mortgage, bill of sale, or lien, be signed by the wife of the party making such mortgage, bill of sale, or lien.

(91.) SEC. CI. The property hereinbefore mentioned shall not be exempt from any execution or other process issued upon a judgment rendered for the purchase money for the same property.

Property holden for purchase money, &c.

An Act for a Homestead Exemption. (a) c.35

See ch. of 75 [Passed August 12, 1858.] 286. 1860

(92.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That a homestead consisting of any quantity of land not exceeding eighty acres, and the dwelling house thereon, and its appurtenances, to be selected by the owner thereof, and not included in any incorporated town, city, or village, or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one lot, being within an incorporated town, city, or village, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of this state, shall not be subject to attachment, levy or sale upon execution or any other process, issuing out of any court within this state. This section shall be deemed and construed to exempt such homestead in the manner aforesaid, during the time it shall be occupied by the widow, or minor child or children of any deceased person who was, when living, entitled to the benefits of this act.

Homestead exemption; area and dwelling house.

applied to
ch. of 73, p. 141.

(a) The exemption law of 1858 repeals all laws inconsistent with its provisions. Many of the exempted articles which it specifies, are embraced in the original act of the revised statutes, but there seems to be some difference in the provisions of the two acts, and as to the class of persons who are to enjoy their benefits. They are, therefore, both inserted, and should be read together.

Mortgage when not effected by this law.

(93.) SEC. II. Such exemption shall not extend to any mortgage thereon, lawfully obtained, but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same, unless such mortgage shall be given to secure the payment of the purchase money, or some portion thereof.

Homestead to be selected in case of levy.

(94.) SEC. III. Whenever a levy shall be made upon the lands or tenements of a householder, whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer at the time of making such levy of what he regards as his homestead, with a description thereof, within the limits above prescribed; and the remainder alone shall be subject to sale under such levy.

Survey of land in case of dissatisfaction.

(95.) SEC. IV. If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making the levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set off in a compact form, including the dwelling house and its appurtenances, the amount specified in the first section of this act, and the expense of such survey shall be chargeable on the execution and collected thereupon.

May sell property not included in the set-off.

(96.) SEC. V. After the survey shall have been made, the officer making the levy may sell the property levied upon, and not included in the set-off, in the same manner as provided in other cases for the sale of real estate on execution, and in giving a deed of the same, he may describe it according to his original levy, excepting therefrom by metes and bounds, according to the certificate of the survey, the quantity set off as aforesaid.

Dwellings on leased property exempt.

(97.) SEC. VI. Any person owning and occupying any house or land not his own, and claiming said house as a homestead, shall be entitled to the exemption aforesaid.

No exemption from taxes.

(98.) SEC. VII. Nothing in this act shall be considered as exempting any real estate from taxation or sale for taxes.

Personal property free from levy or sale.

(99.) SEC. VIII. No property hereinafter mentioned or represented shall be liable to attachment, execution or sale, or any final process issued from any court in this state:

1. The family bible;
2. Family pictures, school books or library, and musical instruments for use of family;
3. A seat or pew in any house or place of public worship;
4. A lot in any burial ground;
5. All wearing apparel of the debtor and his family, all beds, bedsteads and bedding, kept and used by the debtor and his family; all stoves and appendages put up or kept for the use of the debtor and his family; all cooking utensils, and all other household furniture not herein enumerated, not exceeding five hundred dollars;
6. Three cows, ten swine, one yoke of oxen, and one horse in lieu of one yoke of oxen and a horse, a span of horses or mules, twenty sheep and the wool from the same, either in the raw material or manufactured into yarn or cloth; the necessary food for all the stock mentioned in this section, for one year's support, either provided or growing, or both, as the debtor may choose; also, one wagon, cart or dray, one sleigh, two ploughs, one drag, and other farming utensils, including tackle for teams, not exceeding three hundred dollars in value;
7. The provisions for the debtor and his family necessary for one year's support, either provided, or growing, or both, and fuel necessary for one year;
8. The tools and instruments of any mechanic, minor or other person, used and kept for the purpose of carrying on his trade or business, and in addition thereto, stock in trade not exceeding four hundred dollars in value;

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the library and implements of any professional man; all of which articles hereinbefore intended to be exempt, shall be chosen by the debtor, his agent, clerk or legal representative as the case may be.

(100.) SEC. IX. Nothing in this act shall be so construed, as to exempt any property in this state from execution or attachment for clerks', laborers', or mechanics' wages.

This section is not to be construed as exempting property for wages due.
7 March 1865

(101.) SEC. X. All laws inconsistent with provisions of this act are hereby repealed.

Inconsistent laws repealed.

(102.) SEC. XI. This act shall take effect and be in force from and after its passage.

Take effect when

✓ [Chapter 71, Revised Statutes.]

(103.) SEC. CII. When a levy shall be made upon property of any class or species, which is by law exempt from execution to a specified amount or value, the officer levying the execution may make an inventory of the whole of such property, and cause the same to be appraised at its cash value, by two disinterested freeholders of the precinct where the property may be, on oath to be administered by him to such appraisers. The appraisers shall be entitled to fifty cents each for their services, and six cents per mile for traveling fees, for which the plaintiff in the execution shall be liable to them, but the same may be collected on the execution for his use.

Officer how to proceed when part of certain property is exempt.

(104.) SEC. CIII. Such inventory being completed, the defendant in the execution, or his authorized agent, may select from such inventory an amount of such property, not exceeding, according to such appraisal, the amount or value exempted by law from execution; but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same.

Defendant may select from property the amount exempt.

(105.) SEC. CIV. A levy may be made upon grain or grass while growing, and upon any other unharvested crops; but no sale thereof shall be made under such levy, until the same shall be ripe or fit to be harvested; and any levy thereon by virtue of an execution, issued by a justice of the peace, shall be continued beyond the return day thereof, if necessary, and remain in life, and the execution thereof may be completed at any time within thirty days after such grain, grass, or other unharvested crop shall be ripe, or fit to be harvested.

Levy may be made upon grain or grass growing.

Proceedings in such case.

(106.) SEC. CV. (a) Any real or personal estate which may have been acquired by any female before her marriage, either by her own personal industry, or by inheritance, gift, grant, or devise, or to which she may at any time after her marriage, be entitled by inheritance, gift, grant, or devise, and the rents, profits, and income of any such real estate, shall be and continue the real and personal estate of such female after marriage, to the same extent as before marriage; and none of such property shall be liable for her husband's debts, engagements, or liabilities; but such property shall be liable for all debts of the wife contracted prior to her said marriage: *provided*, that nothing in this section contained shall be construed to authorize any married woman to give, grant, or sell any such real or personal property during coverture, without the consent of her husband, except by order of the district court of the county; and, *provided further*, that in the case of a separation or divorce between such husband and wife, by an adjudication of a court, or by act of the legislature, such married woman shall in no case be authorized to remove any such property from the premises of her husband without his consent, except by order

Real and personal property of wife, not liable for husband's debts.

In case of separation of husband and wife, wife not authorized to remove any property.

(a) The second proviso of this section is as amended on page 12 of the amendments of 1852 to the revised statutes, and the last proviso is added by laws of 1858, on page 96.

Liability for wife's debts.

of the court, or in pursuance of such act; *provided*, also, that the husband shall be liable for the debts of his wife, contracted before marriage, to the extent only of the property real and personal, if any, acquired or received by such husband from his wife by-virtue of the marriage contract, or otherwise.

Jurisdiction of district court in cases arising under the preceding section.

(107.) SEC. CVI. The district court for the county where the parties, or either of them reside, shall have jurisdiction in all cases arising under the provisions of the preceding section, except when the amount in controversy, is less than one hundred dollars, and relates to personal estate, in which case a justice of the peace shall have jurisdiction, and the wife may institute proceedings to enforce the said provision, in her own name, or otherwise.

Husband to have a life estate in property of wife.

(108.) SEC. CVII. If any married woman shall die without disposing of any such real estate, the husband surviving her shall have a life estate therein, by the curtesy.

Sheriff how execute writ against property of judgment debtor.

(109.) SEC. CVIII. [*As amended on page 12 of the amendments of 1852, to the revised statutes.*] The sheriff must execute the writ against the property of the judgment debtor, by levying on the property, collecting the things in action, or selling the same as prescribed by statute in cases of attachment, selling the other property, and paying to the plaintiff the proceeds, or so much thereof as will satisfy the execution.

Before sale, notice must be given.

(110.) SEC. CIX. Before the sale of property on execution, notice thereof must be given as follows:

1. In case of personal property, by posting written notice of the time and place of sale, in three public places of the county where the sale is to take place, six days successively;

2. In case of real property, by posting a similar notice, describing the property with sufficient certainty to enable a person of common understanding to identify it, for six weeks successively, in three public places of the county where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week, for the same period, in a newspaper of the county, if there be one, or if there be none, and the property is not occupied by the judgment debtor, or by a tenant or purchaser under him, then in a paper at the capital of the territory.

Notice how given and what to contain.

Penalty to officer for selling without notice.

(111.) SEC. CX. An officer selling without the notice-prescribed by the last section, shall forfeit one hundred dollars to the aggrieved party, in addition to his actual damages; and a person taking down or defacing the notice posted, if done before the sale, or the satisfaction of the execution, and without the consent of the parties, shall forfeit fifty dollars; but the validity of the sale is not affected by either act.

Sale how to be made.

(112.) SEC. CXI. A sale must be made by auction between nine o'clock in the morning and sunset; after sufficient property has been sold to satisfy the execution, no more must be sold; neither the officer holding the execution, nor his deputy can purchase; when the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold.

Real estate when and how may be redeemed.

(113.) SEC. CXII. (a) Upon a sale of real property, where the estate is less than a leasehold of two years unexpired term, the sale is absolute; in all other cases, the property sold is subject to redemption, as provided in the next five sections; the officer must give to the purchaser, a certifi-

(a) The laws of 1858, on page 140, provide new features in the redemption of real estate. The act is published in this collection under the head of "foreclosures of mortgages by advertisement."

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cate of the sale, proved or acknowledged, so that it may be recorded; containing,

1. A particular description of the property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. When subject to redemption, it must be so stated; a duplicate of which certificate must be filed by the officer, with the register of deeds of the county.

(114.) SEC. CXIII. [As amended on page 103 of the laws of 1854:] Property sold, subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner provided in the next four sections, by the following persons or their successors in interest:

1st. The judgment debtor or his successor in interest in the whole or on any part of the property.

2d. A creditor having lien by judgment or mortgage of the property sold, or on some share or part thereof subsequent to that on which the property was sold. The persons mentioned in this and the preceding subdivisions other than the judgment debtor, are in this chapter termed redemptioners.

(115.) SEC. CXIV. [As amended on page 103 of the laws of 1854:] The judgment debtor or redemptioner may redeem the property from the purchaser within one year after the day of sale, on paying him the amount of his purchase, with interest at ten per cent., and if he be also a creditor, having a lien prior to that of the redemptioner, the amount of such lien with interest.

(116.) SEC. CXV. [As amended on page 103 of the laws of 1854, and again on page 139 of laws of 1858:] If the property be redeemed by redemptioner, either the judgment debtor or another redemptioner may, at any time within one year after the sale of the said property, again redeem it from the last redemptioner, on paying the sum paid on his redemption, with interest, and, unless his lien be prior to that of the preceding redemptioner, the amount of such lien with interest. But if any redemptioner other than the judgment debtor redeem within the year after the sale thereof, the judgment debtor shall have thirty days after the expiration of the said year wherein to redeem. If no redemption is made in one year after the sale, the purchaser is entitled to a conveyance; or if so redeemed whenever thirty days have elapsed after the year from the sale, and no redemption has been made and notified therein, the time for redemption has expired, and the last redemptioner is entitled to a sheriff's deed. If the debtor or owner redeem at any time before the time for redemption shall expire, the sale is terminated and he is restored to his estate.

(117.) SEC. CXVI. The payment mentioned in the last two sections, may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale; and a tender of the money is equivalent to payment.

(118.) SEC. CXVII. A redemptioner must produce to the officer or person from whom he seeks to redeem, and file with his notice, in the sheriff's office:

1. A copy of the docket of the judgment, under which he claims the right to redeem, certified by the clerk of the court of the county, where the judgment is docketed, or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the clerk;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and,

2.41, s. 2
Who may re-deem.

2.41 s. 2
Redemption of property by creditors on judgment debtor.

See prop
643 in
amendment

Payment mentioned in last section, to whom made!

Redemptioner must produce to sheriff authority to redeem.

3. An affidavit of himself or his agent, showing the amount then actually due on the lien.

Court may grant order to stay waste, until time of redemption expires.

(119.) SEC. CXVIII. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or judgment creditor; but it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family, while he occupies the property.

When purchaser is evicted, may recover price paid with interest.

(120.) SEC. CXIX. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom, in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor; such judgment creditor, if the recovery was in consequence of the irregularity, shall thereupon be entitled to a new execution on the judgment, for the price paid on the sale, with interest; and for that purpose the judgment shall be deemed valid against the judgment debtor, his personal representatives, heirs or devisees; but not against a purchaser in good faith, or an incumbrancer, whose title or incumbrance shall have accrued before a levy on such new execution.

In case of several defendants, when contribution may be compelled.

(121.) SEC. CXX. When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pay without a sale, more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property, or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing, is entitled to the benefit of the judgment to enforce contribution or repayment, if within ten days after his payment he file with the clerk of the court where the judgment was rendered, notice of his payment, and claim to contribution or repayment; upon filing of such notice, the clerk must make an entry thereof in the margin of the docket.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

When judgment debtor may be compelled to answer in regard to his property.

(122.) SEC. CXXI. When an execution against property of the judgment debtor, or of any one of several debtors, in the same judgment issued to the sheriff of the county where he resides, or if he do not reside in this territory, to the sheriff of the county where the judgment roll, or a transcript of a justices' judgment is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return made, is entitled to an order from a judge of the district court in which the execution was issued, requiring such judgment debtor to appear and answer concerning his property, before such judge, or a referee appointed by the judge of the court, at a time and place specified in the order.

Court may order judgment debtor before him to answer concerning property.

(123.) SEC. CXXII. After the issuing of an execution against property, and upon proof, by affidavit of a party, or otherwise, to the satisfaction of the court, or a judge thereof, that any judgment debtor has property, which he unjustly refuses to apply toward the satisfaction of the

Judgment, such court or judge may, by an order, require the judgment debtor to appear, at a specified time and place, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution.

(124.) SEC. CXXIII. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may upon proof, by affidavit or otherwise, to his satisfaction, that there is danger of the debtor leaving the territory, or concealing himself, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before such judge; upon being brought before the judge, he may be examined on oath, and ordered to enter into an undertaking with one or more sureties, that he will attend from time to time, before the judge, or referee, as he shall direct, during the pendency of the proceeding, and until the final determination thereof, and will not in the mean time dispose of any portion of his property, not exempt from execution; in default of entering into such undertaking, he may be committed to prison by warrant of the judge.

Judge may issue a warrant to arrest debtor.

(125.) SEC. CXXIV. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Sheriff's receipt discharge for judgment.

(126.) SEC. CXXV. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of the judgment debtor, or is indebted to him in an amount exceeding ten dollars, the judge may by an order require such person or corporation, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same; the judge may also, in his discretion, require notice of such proceedings to be given to any party in the action, in such manner as may seem to him proper.

When garnishee may be summoned to appear before the judge.

(127.) SEC. CXXVI. Witnesses may be required to appear and testify upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

Witness may be required to appear as in other cases.

(128.) SEC. CXXVII. The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge; if before the referee, the examination must be taken by the referee, and certified by the judge; all examinations and answers before a judge or referee under this chapter, must be on oath, except that when a corporation answers, the answer must be on the oath of an officer thereof.

Proceedings when matter is referred to referee.

(129.) SEC. CXXVIII. The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, cannot be so applied when it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Judge may order property to be applied to satisfaction of judgment.

(130.) SEC. CXXIX. The judge may also by order appoint a receiver of the property of the judgment debtor in the same manner, and with the like authority as if the appointment were made by the court; the judge may also by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt from execution, and any interference therewith.

Judge may appoint a receiver to take the property.

Judge may by order forbid a transfer of property in certain cases.

(131.) SEC. CXXX. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property, adverse to him, or denies the debt, such interest or debt is recoverable only in an action against such person or corporation, by the receiver; but the judge may, by order, forbid a transfer or other deposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution; such order may be modified or vacated by the judge granting the same, at any time, on such security as he may direct.

Judge may order a reference.

(132.) SEC. CXXXI. The judge may, in his discretion, order a reference to a referee, agreed upon or appointed by him, to report the evidence or the facts.

Charges and costs allowed.

(133.) SEC. CXXXII. The judge may allow to the judgment creditor, or to any person so examined, whether a party to the action or not, his charges, and a fixed sum in addition, not exceeding ten dollars as costs.

Persons who disobey judge or referee, liable for contempt.

(134.) SEC. CXXXIII. If any person, party, or witness, disobey an order of the judge or referee, duly served, such person, party, or witness, may be punished by the judge, as for a contempt; the proceedings therefor are prescribed in chapter ninety-two of this statute, respecting the punishment of contempt.

Foregoing provisions to apply to justice of the peace.

(135.) SEC. CXXXIV. The provisions hereinbefore, in relation to proceedings supplementary to the execution, shall apply to executions issued by a justice of the peace.

CHAPTER 62.

COSTS IN CIVIL ACTIONS.

see Chap 62 in 244 1860

SECTION

SECTION

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| <ol style="list-style-type: none"> 1. Fee bill abolished, allowance given termed costs. 2. When allowed, of course, to plaintiff. 3. In several actions on same instrument but one bill of costs. 4. When allowed to defendant. 5. When allowed to either party in discretion of the court. 6. Costs not allowed in actions on judgment except on leave granted. 7. Amount of costs allowed in certain cases. 8. Interest on verdict and report when allowed. 9. Costs how to be inserted in judgment. 10. The fees of referees. 11. Costs on postponement of trial. 12. Costs on motion. 13. Costs against infant plaintiff. 14. Costs not allowed when tender has been made. 15. Costs in action by or against executors, &c. 16. Costs in supreme court, on appeal in special proceedings. 17. Costs in actions by the territory or county. 18. Costs against assignee of cause of action, after action brought. 19. Costs on settlement. 20. Costs in actions by plaintiffs who reside out of the territory. | <ol style="list-style-type: none"> 21. Costs in action by county, to be paid by county benefited. 22. Costs in actions by United States on relation of individual. 23. Costs in actions upon writ of mandamus. 24. Costs on actions brought in name of another by assignee. 25. When defendant shall be entitled to costs on appeal from justice of the peace. 26. Interest accruing after first judgment not to be allowed in certain cases. 27. Where money is brought into court by defendant, costs may be recovered by plaintiff. 28. This chapter not to apply to justices' courts. 29. When plaintiff required to file security for costs. 30. When plaintiff required to file security for costs. 31. Order to file security for costs what to contain. 32. Bond for security for costs. 33. Bond how to be filed. 34. Defendant may except to sufficiency of security. 35. When securities may justify. 36. Attorneys when liable for costs. 37. How attorney may relieve himself from liability. |
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