CHAPTER XL.

OF COURTS OF SPECIAL JURISDICTION.

TIT. I.

TIT. II.

TITLE I.

OF PROBATE COURTS.

(*This Title is Chapter XLIX. of the Statutes of* 1866.)

ARTICLE I.

POWERS AND JURISDICTION.

SECTION 1. *Each organized county to have a probate court.*—There is established in each organized county in this state a probate court, which shall have and use a common seal.

Lee *ex parte*, 1 Minn. 69; Baze *v.* Arper, 6 Minn. 220; United States *v.* Shanks, 15 Minn. 369.

SEC. 2 (AS AMENDED BY ACT OF MARCH 6, 1868). *Jurisdiction of probate courts.*—The several probate courts have exclusive jurisdiction, in the first instance, in their respective counties, to take proof of wills, and to direct the administration of the estates of deceased persons—

First. When the deceased, at or immediately before his death, was an inhabitant of the county, in whatever place he dies.

Second. When the deceased, not being an inhabitant of this state, dies in the county, leaving assets in the county.

Third. When the deceased, not being an inhabitant of this state, dies out of this state, leaving assets therein.

Fourth. When the deceased, not being an inhabitant of this state, not having assets herein, but when assets thereafter come into the county.

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

S. L. 1868, 136.

SEC. 3. *Further jurisdiction of said court.*—The probate court has jurisdiction also—

First. To take proof of a will relating to real property situated in the county, when the testator dies out of this state, not being an inhabitant thereof, and not leaving assets therein.

Second. To grant and revoke letters testamentary and of administration.

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

Fourth. To enforce the payment of debts and legacies, and the distribution of the estates of intestates.

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

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

Seventh. To take the care and custody of the person and estate of an insane person or spendthrift, residing in the county.

Eighth. To direct the admeasurement of dower.

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

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

SEC. 5 (AS AMENDED BY ACT OF FEBRUARY 27, 1872). *Probate judges interested in estate to call upon the judge of an adjoining county to transact the business.*—The probate court of each county shall be held by the judge of probate. But if the judge is an executor, administrator, or guardian, in respect to an estate or person which would otherwise come within his jurisdiction, or is interested in said estate, or in any property claimed thereby, or is of kin to said person, or any one interested in such estate in which any of said persons are parties, or in case the judge of probate is a material or necessary witness, either for the probate of any will, or other facts necessary or proper to be proven in such probate court, then, and in either of the cases herein provided, the said judge of probate shall have the right, and it shall be his duty to notify and require the judge of probate of an adjoining county to act for and in the place of the judge of probate so disqualified in all matters herein mentioned, and it shall be the duty of such judge of probate of an adjoining county to hear, try, and determine such matters in the same manner and like effect as the judge of probate of said court might have done had he not been so disqualified.

S. L. 1872, 130.

SEC. 6. *Judge of probate shall keep office, where.*—The judge of probate shall keep his office open at reasonable hours, suitable and convenient for the transaction of business, and for the deposit and safe keeping of the public books and papers under his charge. He shall keep his office at the county seat, and on the first Monday of each month hold a probate court therein, or at such other place in the county as he may appoint. He shall also provide suitable cases for the books and papers of his office, the expense of which is a county charge; they belong to the county, and shall be delivered by the judge of probate to his successor in office, who has power to complete all unfinished business.

ARTICLE II.

PROCEEDINGS IN PROBATE COURTS.

SEC. 7 (AS AMENDED BY ACT OF MARCH 1, 1870). *Proceedings in probate courts.*—There are no pleadings in probate courts, but the proceedings shall conform to the statute, and may be instituted upon the application of a party, verbal or written, which, when verbal, shall be entered in the minutes of the court, and when written, shall be filed. The judge of probate has the same power to examine witnesses and parties on oath, to compel their attendance, to preserve order during any proceedings before him, and punish contempts, as a district judge possesses under the provisions of law. He may exercise his powers, except when otherwise provided by law, by means of—

First. A citation to a party.

Second. An affidavit, deposition, examination, or statement under oath of a party, or witness, or other legal and competent evidence.

Third. A subpœna or attachment.

Fourth. Orders, judgments, and decrees.

Fifth. An execution, warrant, or other process to enforce them. The deposition of any witness without this state may be taken under a commission issued by any competent person in any state or county by the probate court in which the evidence is wanted, whether such evidence be in respect to matters pending before the court or before commissioners appointed by the court in the settlement of estates. The party desiring such deposition shall apply to the probate court by petition for such commission, and if by such petition it appears that the testimony of any witness not residing in this state is material respecting any matter pending before such probate court or commissioners, the probate court may, in its discretion, order such commission to issue upon written interrogatories, copies of which shall be served on any adverse party who has appeared in the matter, or his attorney, and upon cross-interrogatories to be filed by such adverse party. And such interrogatories and cross-interrogatories may be settled before the judge of probate upon notice as in the district court, and the notices to be given and time for filing interrogatories and cross-interrogatories, the form of the commission, and the manner of executing and returning the same, shall conform substantially and as near as may be to the practice adopted in the district courts relative to the taking of depositions of witnesses without this state, or such depositions may be taken upon stipulations in writing as in the district court. And depositions taken as provided in this section may be used in all matters between the parties thereto, pending before such probate court or commissioners appointed by it in the settlement of estates.

S. L. 1870, 123.

SEC. 8 (ACT OF FEBRUARY 28, 1870). *Books of record to be kept.*—He shall keep—

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

Second. A record of wills, in which shall be recorded all wills proven before him, with the certificate of the probate thereof; and of all wills proven elsewhere upon which letters of administration are issued by him.

Third. A record of letters testamentary and of administration and guardianship, in which shall be recorded all letters testamentary and of administration and guardianship issued by him.

Fourth. A record of orders, in which shall be recorded all orders made by him in the discharge of his duties, a summary balance sheet of the accounts of administration, executors, and guardians allowed by him, the reports of admeasurers of dowers, and the reports of commissioners on the distribution of estates; also a memorandum of executions issued and a note of satisfaction when satisfied.

S. L. 1870, 128.

SEC. 9 (REPEALED BY ACT OF MARCH 6, 1868.)

S. L. 1868, 137.

SEC. 10. *Each book to have index.*—Each of such books shall have an index

referring to the entries in alphabetical order, under the name of the person to whose estate or business they relate, and indicating the page of the book where the entry is made.

SEC. 11. *Judge of probate cannot be attorney, when.*—A judge of probate cannot be counsel or attorney in any civil action for or against any executor, administrator, guardian, or minor trustee, or other person over whom or whose accounts he would by law have jurisdiction, whether such action relates to the business of the estate or not.

SEC. 12. *Costs, how far allowable.*—Costs to the extent of the fees and disbursements paid or incurred may be awarded in favor of one party against another, to be paid out of the estate or fund in any proceeding contested adversely before the judge of probate.

SEC. 13. *Orders, how enforced—process, how issued.*—Orders for the payment of money may be enforced in the same manner as judgments for the payment of money in the district court; but all process shall be issued by the judge of probate.

ARTICLE III.

APPEALS FROM PROBATE COURTS.

SEC. 14. *Appeal to district court, when and how taken.*—An appeal may be taken to the district court from a judgment or order in a probate court in the following cases:

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

Second. An order appointing an administrator, executor, or guardian, or removing him, or refusing to make such appointment or removal.

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

Fourth. An order or judgment by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or such allowance or direction refused, when the amount in controversy exceeds fifteen dollars.

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

SEC. 15. *Appeal taken, by whom.*—The appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed the order or judgment appealed from, or who being entitled to be heard thereon, had not due notice or opportunity to be heard, the latter fact to be shown by affidavit and filed and served with the notice.

SEC. 16. *May be taken on questions of law and fact.*—The appeal may be taken upon questions of fact or law, or both, by the service of a notice on the adverse party, stating the appeal from the order or judgment, or some specified part thereof, and by filing a copy of the said notice in the office of the judge of probate, together with a recognizance entered into by the party appealing, with one or more sureties, to be approved by the judge of probate, conditioned that the party will prosecute his appeal with due diligence to a final determination, and pay all costs adjudged against him in the district court; which appeal shall be taken within sixty days after notice of the order or judgment appealed from.

Wood *v.* Myrick, 9 Minn. 149.

TITLE II.

OF COURTS OF JUSTICE OF THE PEACE AND THE PRACTICE THEREIN.

(*This Title is Chapter LXV. of the Statutes of* 1866.)

ARTICLE I.

JURISDICTION.*

SEC. 17 (1). *Jurisdiction of justices of the peace.*—The jurisdiction of a justice of the peace is co-extensive with the limits of the county in which he resides, except in the following cases:

First. Writs of attachment may be directed to the proper officer in any county for the purpose of causing an attachment of property therein.

Second. Garnishee process issued in an action before a justice may run into and be served on the garnishee in any county in the state.

Vide S. L. 1870, 149. Repealed by S. L. 1872, 163.

SEC. 18 (2, AS AMENDED BY ACT OF FEB. 18, 1868). *Justice shall keep his office, where.*—Every justice of the peace shall keep his office in the town, city, or ward for which he is elected; but he may issue process in any place in the county, and may in his discretion, for the convenience of parties, make any process issued by him, either civil or criminal, returnable, and may hold his court at any place appointed by him, in a town or ward adjoining the town or ward in which he resides, provided the place so appointed be within his county.

S. L. 1868, 134.

SEC. 19 (3). *Office in room with practising attorney, effect.*—No justice of the peace shall hold his office in the same room with a practising attorney, unless such attorney is his law partner; and in that case, such partner shall not appear or practice as an attorney in any case tried before such justice.

SEC. 20 (4). *Powers of justice—laws applicable to justice's court.*—A justice of the peace is authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same; and for that purpose, where no special provision is otherwise made by law, such court is vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature apply to such justice's court, so far as the same are applicable, and not inconsistent with the provisions of this title; but no justice of the peace shall charge the jury.

SEC. 21 (5). *Jurisdiction of certain actions and proceedings.*—Such justice has jurisdiction of the following actions and proceedings:

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

Second. Of an action for damages for an injury to the person or to real property, or for taking, detaining, or injuring personal property, if the damages claimed, or, in replevin, the value of the property in controversy, does not exceed one hundred dollars.

* An ommission by justice to file the pleading in the cause does not affect jurisdiction, Barber *v.* Kennedy, 18 Minn. 216.

Third. Of an action for a penalty given by statute not exceeding one hundred dollars.

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

Fifth. Of an action upon an official bond or bond taken by him, if the penalty does not exceed one hundred dollars.

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

Jurisdiction where amount is a hundred dollars or less, Dodd *v.* Cady, 1 Minn. 289; Castner *v.* Chandler, 2 Minn. 88. Section not in conflict with constitution, Barber *v.* Kennedy, 18 Minn. 216. No jurisdiction where amount exceeds a hundred dollars, Turner *v.* Halleran, 8 Minn. 451.

SEC. 22 (6). *Limitation of jurisdiction conferred by last section.*—The jurisdiction conferred by the last section does not extend, however, to a civil action:

First. In a cause involving the title to real estate.

Second. Nor for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, or upon a promise to marry.

Third. Nor for an action against an executor or administrator as such.

ARTICLE II.

COMMENCEMENT OF ACTIONS, SERVICE, AND RETURN OF PROCESS.

SEC. 23 (7). *Justice to keep docket.*—Every justice of the peace shall keep a docket in which he shall enter:

First. The title of all causes commenced before him.

Second. The time when the process issued, the nature thereof, when returnable, and the return of the officer.

Third. The time when the parties appeared before him.

Fourth. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off was pleaded, a similar statement of the set-off.

Fifth. Every adjournment, stating at whose request, and to what time and place.

Sixth. The time when the trial was had, stating whether the same was by jury or by the justice.

Seventh. The verdict of the jury and when rendered.

Eighth. The judgment, time of issuing execution, the name of the officer to whom delivered, an account of the debt, damages and costs, and the fees due to each person separately.

Ninth. The fact that an appeal was taken and allowed, and the time thereof.

Tenth. Satisfaction of judgment when made.

Eleventh. All questions of law raised by either of the parties to any action or proceeding, the order made by the court thereon, any exception taken to such order by any party, and all other matters that are material.

Vide S. L. 1867, 134 sec. *infra.* What is sufficient showing of service of summons, Bidwell *v.* Coleman, 11 Minn. 78. What sufficient statement of costs, Payson *v.* Everett, 12 Minn. 216. Pleadings in writing, an omission to state plaintiff's demand, immaterial, *ib.* Docket

must show jurisdiction, Barnes *v.* Hilton, 14 Minn. 357. Presumptions in favor of proceedings, Clague *v.* Hodgson, 15 Minn. 329. Statute does not require return of justice to show county of which he is justice, Kennedy *v.* Barber, 18 Minn. 216. A justice's docket is not required to show verification of the pleadings, Tyrrell *v.* Jones, 18 Minn. 312.

SEC. 23A (1 OF ACT OF MARCH 9, 1871). *Shall provide himself with docket, in what case.*—Every justice of the peace who shall not receive a suitable docket from his predecessor in office shall provide himself with such docket at the expense of his town, and at the expiration of his term he shall deliver such docket, together with such docket if any as he may have received from his predecessor, to his successor in office: *provided, however*, that at the time of the expiration of his term of office, if no successor shall have been elected, it shall then be the duty of said justice to turn over and deliver to the clerk of the district court of his county all books, dockets, and papers pertaining to his office, to be by said clerk delivered to the successor in office of said justice whenever the same may be called for.

S. L. 1867, 135.

SEC. 24 (8). *Action, how commenced.*—Actions may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process; when the name of the defendant is not known to the plaintiff an action may be commenced against him by a fictitious name, and his true name shall be inserted when discovered.

SEC. 25 (9). *Justice may require security for costs.*—Any justice of the peace in this state may in all actions instituted before him, before or after the process issues, require of the plaintiff security for costs; and the person giving such security shall sign a memorandum in writing to that effect, which such justice shall keep as a part of the record in the cause, and an action may be maintained thereon before said justice to recover the costs, and if the plaintiff refuses to give such security, the justice shall dismiss the action.

SEC. 26 (10). *Process, form of, how issued and when void.*—Every summons or process issued by a justice of the peace, shall run in the name of the state of Minnesota, be dated on the day it issues, be signed by the justice issuing the same, and be directed to the sheriff or any constable of the proper county. It shall be entirely filled up, and have no blank either in date or otherwise at the time of its delivery to an officer to be executed; every such process which is issued and delivered to an officer to be executed, contrary to the provisions of this section, shall be void.

SEC. 27 (11). *Summons, first process, shall contain what.*—In all cases not otherwise provided for, the first process is by summons, commanding the officer to summon the defendant to appear before such justice at a time and place expressed in such summons, not less than six nor more than twenty days from the date thereof, to answer to the plaintiff in a civil action, which summons shall be served at least six days before the time of appearance therein mentioned, by reading the same to the defendant, and delivering a copy thereof to him, if requested, if such defendant can be found, and if not found, by leaving a copy thereof at his or her last usual place of abode.

Waiver of irregularity in service, Tyrrell *v.* Jones, 18 Minn. 312.

SEC. 28 (12). *Summons served by publication, when.*—When the plaintiff or his agent makes an affidavit stating that the plaintiff has a just cause of action against the defendant, founded upon contract express or implied, and that the

defendant can not be found in the state, a justice may order that service be made on the defendant by publication of the summons in the form hereinafter prescribed in either of the following cases:

First. When the defendant is a foreign corporation.

Second. When the defendant, being a resident of the state, has departed therefrom with intent to defraud his creditors or to evade the service of a summons, or keeps himself concealed therein with like intent.

Third. When the defendant is not a resident of the state, but has property, real or personal, therein, and the justice has jurisdiction of the action.

Vide S. L. 1871, 129. Sec. 116, *sequi, infra.*

SEC. 29 (13). *Order of publication—summons returnable, when.*—The order shall direct the publication to be made in a newspaper published in the county where the action is brought, and if there is no newspaper published in the county, in a newspaper published at the capital of the state, not less than once a week for three weeks. In case of publication the summons shall be made returnable in not less than six nor more than twenty days from the expiration of the period of publication, and the justice shall direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence unless it is stated in the affidavit that such residence is not known to the party making the application.

SEC. 30 (14). *Justice may empower person to serve process, when.*—Every justice issuing any process authorized by this title, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not a party to the action, to execute the same, by an indorsement upon the process to the following effect: "At the request and risk of the plaintiff, I authorize A. B. to execute and return this writ. E. F., justice of the peace;" and the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and be subject to the same obligations.

SEC. 31 (15). *Officer failing to execute process or making false return—penalty.*—If any officer, without showing good cause therefor, fails to execute any process to him delivered, and make due return thereof, or makes false return, such officer, for every such offense, shall pay to the party injured, ten dollars, and all damages such party may have sustained by reason thereof, to be recovered in a civil action.

SEC. 32 (16). *Next friend to be appointed for infant plaintiff.*—No action shall be instituted by an infant plaintiff until a next friend for such infant is appointed. Whenever requested, the justice shall appoint some suitable person, who consents thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein.

SEC. 33 (17). *Guardian for infant defendant to be appointed.*—After the service and return of process against an infant defendant, the action shall not be further prosecuted until a guardian for such defendant is appointed. Upon the request of such defendant, the justice shall appoint some person, who consents thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant does not appear on the return day of the process, or if he neglects or refuses to nominate such guardian, the justice may at the request of the plaintiff appoint any discreet person as such guardian; the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any cost in the action.

SEC. 34 (18). *Action may be transferred to another justice, when.*—If, on the return of the process, or at any time before the trial commences in any action or proceeding, civil or criminal, either party, his agent or attorney, makes affidavit that the justice before whom the same is pending is a material witness for said defendant, without whose testimony he cannot safely proceed to trial; or that from prejudice, bias, or other cause, he believes such justice will not decide impartially in the matter; or if it is proven that the justice is near of kin to the plaintiff, the justice shall transfer said action, and all papers appertaining to the same, to some other justice of the same or an adjoining election district, who may thereupon proceed to hear and determine the same in the same manner as the justice before whom the said action or proceeding was commenced might have done, but no cause or proceeding shall be removed more than once, and no justice is required to transfer any civil action until all his costs in the same are paid.

Transfer must be made before issue joined, and not for prejudice or partiality (under law of 1849), Cooper *v.* Brewster, 1 Minn. 95. "Commencement of action" defined, Curtis *v.* Moore, 3 Minn. 29. What essential to a transfer, Rahilly *v.* Lane, 15 Minn. 447; McGinty *v.* Warner, 17 Minn. 41.

SEC. 35 (19). *Time to appear.*—The parties are entitled to one hour in which to make their appearance after the time mentioned in the summons for appearance; but are not bound to remain longer than that time, unless both parties appear, and the justice being present is actually engaged in the trial of another action, or a special proceeding; in such case he may postpone the time of appearance until the close of the trial.

SEC. 36 (20, AS AMENDED BY ACT OF MARCH 1, 1872). *Failure to appear—proceedings.*—If either party fails to appear within one hour after the time specified for the return of the process or after the hour to which the cause is adjourned, the justice shall dismiss the action or proceed to hear the evidence of the party present and render judgment thereon: *provided*, that the defendant who has appeared may, before answering the complaint of the plaintiff, offer to allow judgment to be taken against him for the sum or property in said offer specified with costs. If the plaintiff accepts the offer, the justice shall thereupon enter judgment accordingly. If the plaintiff refuses to accept the offer, the same is to be deemed withdrawn and cannot be given in evidence; and if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs subsequently made to such offer, but must pay the defendant's costs and disbursements made and expended subsequently to such offer.

S. L. 1872, 135.

ARTICLE III.

PLEADINGS AND TRIAL.

SEC. 37 (21). *Pleadings shall take place, when.*—The pleadings in justices' courts must take place at the time mentioned in the summons for the appearance of the parties, or at such time thereafter, not exceeding one week, as the justice may appoint, for the convenience of the parties, and by their consent.

Pleadings must be made at time of appearance, unless by consent of parties, Holgate *v.* Broome, 8 Minn. 243. Justice cannot receive pleadings at any other time, Mattice *v.* Litcherding, 14 Minn. 142.

SEC. 38 (22). *Pleadings, what are.*—The pleadings in justice's court are:

First. The complaint stating the cause of action.

Second. The answer stating the grounds of defense.

Third. When the answer sets up a counter-claim by way of a set-off, the reply.

Counter-claim admitted by failure to reply, Taylor *v.* Bissell, 1 Minn. 225; Walker *v.* McDonald, 5 Minn. 455. Justice has nothing to do with equitable defenses, Fowler *v.* Atkinson, 6 Minn. 503.

SEC. 39 (23). *May be oral and entered in docket, or in writing, and filed.*—The pleadings may be oral, or in writing; if oral, the substance of them shall be entered by the justice in his docket; if in writing, they shall be filed in his office, and a reference to them made in his docket.

SEC. 40 (24). *Complaint, what to contain.*—The complaint shall state in a plain and direct manner the facts constituting the cause of action.

SEC. 41 (25). *Answer, what to contain.*—The answer shall contain a denial of all the material facts stated in the complaint which the defendant believes to be untrue, and also a statement in a plain and direct manner of any other facts constituting a defense or counter-claim, by way of set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

SEC. 42 (26). *Reply allowed, when.*—When the answer contains a counter-claim, the plaintiff may reply, denying any of the material allegations relating thereto.

SEC. 43 (27). *Denial in answer or reply, what is equivalent to.*—A statement in an answer or reply that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief is equivalent to a denial.

SEC. 44 (28). *Rules for proceeding in certain cases.*—When the cause of action or counter-claim arises upon an account or instrument for the payment of money only, it is sufficient for the party to deliver the account or instrument to the court; and to state that there is due to him thereon from the adverse party a specified sum which he claims to recover, or set off; the court may at the time of pleading require that such writing or account be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being afterward given in evidence.

SEC. 45 (29). *Pleading to be verified.*—Every complaint, answer, or reply shall be verified by the oath of the party pleading; or if he is not present, by the oath of his agent or attorney, to the effect that he believes it to be true; the verification shall be oral or in writing, in conformity with the pleadings verified.

Verification necessary, Taylor *v.* Bissell, 1 Minn. 255.

SEC. 46 (30). *Material allegations not denied, to be taken as true—exception.*—Every material allegation in a complaint, or relating to a counter-claim in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint with the summons, fails to appear and answer, the plaintiff cannot recover without proving his case.

Counter-claim admitted by failure to reply, Walker *v.* McDonald, 5 Minn. 455.

SEC. 47 (31). *Objections to pleadings.*—Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense. If the court deems the objection well founded, it shall order the pleadings to be amended, and if the party refuses to amend, the defective pleading shall be disregarded.

SEC. 48 (32). *Variance.*—A variance between the evidence and the allegations in the pleadings shall be disregarded as immaterial, unless the court is satisfied that the adverse party is prejudiced thereby.

SEC. 49 (33). *Amendments.*—The pleadings may be amended at any time before the trial, or during the trial, to supply any deficiency or omission in the allegations, necessary to support the action or defense. If the amendment is made after the issue, and it appears to the satisfaction of the court that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment may be granted.

SEC. 50 (34, AS AMENDED BY ACT OF MARCH 1, 1872). *Adjournments.*—When the pleadings are closed, the justice on the application of either party shall adjourn the case for not exceeding one week, or may upon application, upon oath, adjourn the case for any further time not exceeding thirty days.

S. L. 1872, 134. Requisites of an affidavit for adjournment, Board of Commissioners of Washington County *v.* McCoy, 1 Minn. 100; School District *v.* Thompson, 5 Minn. 280. Justice cannot change adjourned day, Wardlow *v.* Besser, 3 Minn. 307.

SEC. 51 (35). *When title to real estate is involved justice shall proceed, how.*—If it appears on the trial of any action before a justice of the peace, from the evidence of either party, that the title to real estate is involved, which title is disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all other proceedings in the cause, and shall certify and return to the district court of the county, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution, the same as if the action had been originally commenced therein.

Justice does not lose jurisdiction until evidence puts title in issue, Goenen *v.* Schrœder, 8 Minn. 387. May certify case up when pleadings raise issue as to title, Merriam *v.* Fridley, 9 Minn. 34; Flandrau, J., dissenting.

SEC. 52 (36). *Adjournments subsequent to the first shall be for what time.*—Every adjournment after the first shall be for such reasonable time as will enable the party to procure such absent testimony or witness as is necessary and material, which the party applying for the adjournment has not been able to procure by the use of proper diligence.

SEC. 53 (37). *Set-offs.*—Counter-claims may be set off in the following cases:

First. A demand arising upon a judgment or contract, express or implied, and if it is founded upon a bond or other contract having a penalty, the sum equitably due by virtue of the condition, only shall be set-off.

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

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

Fourth. It must exist at the time of the commencement of the action, and then belong to the defendant;

Fifth. It can only be allowed in actions founded upon demands which could themselves be the subject of set-off;

Sixth. If there are several defendants the demands set off must be due to all of them jointly;

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

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

Counter-claims exceeding $100 does not oust justice of jurisdiction, Barber *v.* Kennedy, 18 Minn. 216.

SEC. 54 (38). *Set-offs against assignees in certain cases.*—If the action is upon a negotiable promissory note, or bill of exchange which has been assigned to the plaintiff, after it becomes due, a set-off to the amount of the plaintiff's demand may be made of a demand existing against any person who has assigned or transferred such note or bill after it became due, if the demand is such as might have been set off against the assignor, while the note or bill belonged to him.

SEC. 55 (39). *Set-offs against trustees and nominal plaintiffs.*—If the plaintiff is a trustee for any other, or if the action is in the name of the plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's demand, if the same might have been set-off in an action brought by those beneficially interested.

SEC. 56 (40). *Counter-claim not allowed unless pleaded.*—To entitle a defender to set off a counter-claim, he shall specifically and clearly allege the same in his answer, stating the particular items of such counter-claim.

SEC. 57 (41). *Judgment in case counter-claim is established.*—If the amount of the counter-claim duly established is equal to the plaintiff's demand, judgment shall be entered for the defendant for his costs; if it is less than the plaintiff's demand, the plaintiff shall have judgment for the residue only.

SEC. 58 (42). *Judgment in case balance is found due defendant.*—If a balance is found due from the plaintiff to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff where the contract, which is the subject of the action, has been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff.

ARTICLE IV.

WITNESSES AND DEPOSITIONS.

SEC. 59 (43). *Subpœnas, how served.*—A subpœna may be served by any person by reading it to the witness, or by delivering a copy thereof to him.

SEC. 60 (44). *Witness failing to appear, attachment may issue, when.*—Whenever it appears to the satisfaction of the justice, by proof made before him, that any person duly subpœned to appear before him in an action has failed without just cause to attend as a witness in conformity to such subpœna, and the party in whose

behalf such subpœna was issued, or his agent, makes oath that the testimony of such witness is material, the justice has power to issue an attachment to compel the attendance of such witness; but no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

SEC. 61 (45). *Attachment, how executed.*—Every such attachment shall be executed by arresting the party named therein and taking him before the justice issuing the warrant, and the fees for issuing and serving the same shall be paid by such person, unless he shows reasonable cause to the satisfaction of the justice for his omission to attend, in which case the party procuring such attachment shall pay all costs accruing thereon.

SEC. 62 (46). *Delinquent witness liable for damages.*—Every person subpœned as aforesaid, and neglecting to appear, is also liable to the party in whose behalf he was subpœned, for damages which such party has sustained by his non-appearance: *provided*, that said witness had one day's attendance and mileage tendered or paid him in advance.

SEC. 63 (47). *Depositions.*—Either party in any civil action pending before a justice may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace, of any county in this state where the said witness may be.

SEC. 64 (48). *How taken, certified, and returned.*—The deposition shall be taken, certified, and returned, according to the law concerning depositions.

SEC. 65 (49). *May be read on trial of cause, when.*—The justice shall allow every deposition, taken, certified, and returned according to the provisions of this title, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness whose deposition is offered:

First. Is dead, or resides out of the county.

Second. Is unable, or cannot easily attend before the justice on account of sickness, age, or other bodily infirmity.

Third. Has gone out of the county, without the consent or collusion of the party offering the deposition.

SEC. 66 (50). *Commission to examine witness, when awarded.*—Whenever an issue of fact is joined in any action before a justice, and it appears, on the application of either party, that any witness not residing within the state where such action is pending is material in the prosecution or defense of such action, the justice may award a commission to one or more competent persons, authorizing them or any of them to examine such witness on oath, upon the interrogatories, settled and approved by the justice, or by the written agreement or assent of the parties annexed to such commission, to take and certify the deposition of such witness, and to return the same according to the directions given, with such commission, in which commission both parties may unite.

SEC. 67 (51). *Commission, at whose instance and how granted.*—Such commission may be granted at the instance of either party by such justice at any time, upon proof that due notice of application for such commission was served on the adverse party at least two days before the time of making such application; and whenever the defendant neglects to appear or plead in such action, and the plaintiff makes application for a commission to take the deposition of a material witness, the

justice may award a commission without notice to one or more competent persons, to examine such witness on oath, upon interrogatories proposed by the plaintiff to be settled by the justice, and certify the deposition, and return the same according to the directions giving in such commission.

SEC. 68 (52). *How executed and returned.*—The commission shall be executed and returned to the justice as is prescribed by statute when a commission issues out of a court of record, and the deposition and testimony taken in pursuance thereof shall be received on the trial, as testimony in the cause, with the like effect as if such witness was personally examined at such trial.

SEC. 69 (53). *Commission issued, action may be adjourned.*—Whenever such commission is issued by any justice, the action may be adjourned for not more than ninety days, unless by consent and agreement of the parties to such action.

ARTICLE V.

TRIAL BY JURY.

SEC. 70 (54). *Jury, how impanneled.*—In all civil actions before a justice in which either party demands a trial by jury, such jury shall be impanneled by said justice in the manner following, to wit: The justice shall direct the sheriff, or any constable of the county, to make a list in writing of the names of twenty-four inhabitants of the county, qualified to serve as jurors in the district court.

SEC. 71 (55). *Names, how selected.*—The parties may each strike out six names; in case of the refusal or neglect of either party so to strike out such names, the justice shall strike out the names for either or both; and upon such names being stricken out, the justice shall issue a venire directed to the sheriff or any constable of the county, directing him to summon the twelve persons whose names remain upon such list, to appear before such court at the time and place named therein, as a jury for the trial of such action: *provided*, that upon consent of both parties entered on the record, a jury of six may be ordered by the justice, and in such case a list of eighteen names shall be made, from which each party may strike six, and the said jury shall be selected, impanneled, and summoned as provided in this section.

SEC. 72 (56). *Adjournment to await summoning of jury.*—If, in the opinion of the justice, the jurors above required cannot appear forthwith for the trial of the cause, the justice shall adjourn the same for such reasonable time as he deems proper, to enable the officer to summon the said jurors, and for them to appear. And if any of said jurors shall not attend at the time, or in case there are legal objections raised to any of those who appear, the officer shall summon a sufficient number of talesmen to supply the deficiency. The jury so selected shall take the oath required by law, and after the cause is submitted to them, they shall be kept together in some convenient place until they all agree upon a verdict, or are discharged by the justice, for which purpose an officer shall be sworn to take charge of them.

SEC. 73 (57). *Verdict and judgment.*—When the jurors have agreed on their verdict, they shall deliver the same to the justice, who shall give judgment thereupon, and award execution.

SEC. 74 (58). *Justice may discharge jury, when.*—Whenever a justice is

satisfied that a jury sworn in any action before him, after having been out a reasonable time, cannot agree on a verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment.

SEC. 75 (59). *Juror failing to appear may be fined.*—Every person who is duly summoned as a juror and does not appear, nor render a reasonable excuse for his default, is subject to a fine not exceeding ten dollars.

ARTICLE VI.

JUDGMENTS.

SEC. 76 (60). *Mutual judgment may be set off.*—If there are mutual justices' judgments between the same parties, upon which the time for appealing has expired, on which there is no existing execution, one judgment, on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed was rendered.

Setting off justice's judgment against one obtained in district court, Brisbin *v.* Newhall, 5 Minn. 273.

SEC. 77 (61). *Set-off, how obtained.*—If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off shall produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and that such transcript was obtained for the purpose of being a set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript is returned with the proper justice's certificate thereon, that it has not been allowed in set-off.

SEC. 78 (62). *Duty of justice allowing set-off.*—If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance due after such set-off. If a justice allows a transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off; if he refuses such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

SEC. 79 (63). *Judgment by confession.*—Any justice may enter a judgment by confession of the defendant in any case when the debt or damage does not exceed one hundred dollars.

SEC. 80 (64). *Conditions precedent to judgment by confession.*—No confession shall be taken, or judgment rendered thereon, unless the following requisites are complied with:

First. The defendant shall personally appear before the justice.

Second. The confession shall be in writing, signed by the defendant, and verified by his oath, and filed with the justice.

Third. If it is for money due, or to become due, the confession shall state concisely the facts out of which it arose, and show that the sum confessed therefor is honestly due, or to become due. If it is for the purpose of securing a contingent

liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

SEC. 81 (65). *Papers to be filed—costs—judgment roll.*—The statement and affidavit shall be filed with the justice, who shall indorse upon it the time of filing, and enter upon his judgment book a judgment for the amount confessed, with one dollar costs. The statement and affidavit, with the judgment indorsed, thereupon become the judgment roll.

SEC. 82 (66). *Judgment shall be entered, when.*—In cases where the plaintiff is non-suited, or withdraws his action, or where judgment is confessed, and in all cases where a verdict is rendered, the justice shall forthwith render judgment, and enter the same in his docket. In all other cases he shall render judgment, and enter the same in his docket within three days after the action is submitted to him for decision.

SEC. 83 (67). *Judgment and execution for costs.*—Whenever an action is dismissed for any cause, judgment shall be rendered for costs, and execution may issue to enforce such judgment, in the same manner and with the same effect as in other cases.

Concerning costs in judgments generally. Fees of defendant's witnesses cannot be included in judgment, Griggs *v.* Larson, 10 Minn. 220; Payson *v.* Everett, 12 Minn. 216. Taxing for jury list and attendance of officer, Clague *v.* Hodgson, 16 Minn. 329. Witnesses, mileage, presumption, *ib.*

SEC. 84 (68, AS AMENDED BY ACT OF FEBRUARY 24, 1869). *When plaintiff to file bond.*—In all cases where the service of the summons is made by leaving a copy thereof at the last usual place of abode of the defendant, and where the service of the summons is made by publication, before judgment is rendered, the plaintiff shall file or cause to be filed with the justice a bond with sufficient sureties to be approved by said justice in double the amount of the judgment claimed, conditioned that if the defendant, within six months from the rendition of the judgment, appears and is admitted to defend the action, the plaintiff will abide the order of the court therein, and will refund all amounts collected upon said judgment, and make restitution of all property received in virtue thereof, if ordered by said court, and pay all costs and damages that may be adjudged against him.

S. L. 1869, 88.

SEC. 85 (69, AS AMENDED BY ACT OF FEBRUARY 24, 1869). At any time within six months from the rendition of the judgment, as provided in the preceding section, the defendant therein shall be permitted to appear and defend said action upon complying with the following conditions:

First. He shall serve a notice upon the plaintiff, his agent, or attorney, specifying that on a day therein named, which shall not be less than three nor more than ten days from the day of service thereof, that the defendant will apply to the justice of the peace before whom the judgment was rendered, or his successor in office, to have the said judgment re-opened.

Second. He shall file a bond with said justice, with sureties to be approved by him, in a sum double the amount of the judgment, conditioned that he will abide the order of the court in the case and pay all costs and damages that may be adjudged against him therein.

Third. He shall file a verified answer in said case. If said answer contains a good defense to the complaint in said action, or any material part thereof, said

justice shall order said judgment re-opened, and like proceedings shall thereafter be had therein as by law provided for actions in justices' courts.

S. L. 1869, 89.

SEC. 86 (70). *Justice to give transcripts—clerk of district court to enter same on docket.*—Every justice on demand of any person in whose favour he has rendered judgment for more than ten dollars exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the district court of the county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the district court judgments, and shall note therein the time of filing such transcript; and every justice having custody, by virtue of his office, of the docket of any former justice, shall give a transcript of any judgment therein appearing, with like effect as if such judgment had been rendered before him.

SEC. 87 (71). *Effect of filing transcript.*—Every such judgment from the time of filing the transcript thereof shall become a lien on the real estate of the defendant in the county, to the same extent as a judgment of the district court of the same county, shall be equally under the control of the district court, and be carried into execution in the same manner and with like effect as the judgment of such district court; and upon filing with the clerk of the district court of any other county, a transcript of the original docket of a justice's judgment in the district court of the county where it was rendered, the same shall be therein docketed, and thereupon become a lien upon the real property in such county, in the same manner as provided upon the filing of transcripts of judgments in the district court; but no execution shall be issued thereon out of any district court, until an execution has been issued by the justice, and returned that the defendant has no goods or chattels whereon to levy the same, which shall appear by a certificate from the justice, filed with the clerk of the district court.

SEC. 88 (72). *Execution, on what estate leviable.*—Every judgment, when a transcript thereof is filed in the clerk's office of any district court, shall become a lien upon the real estate of the defendant as in other cases, but in cases where the service of the summons was by publication, any execution issued out of the district or justice court, shall be enforced only against the real estate upon which such judgment is a lien, or in case any property, money, effects or credits of the defendant have been seized or attached by virtue of any writ of attachment or garnishee process issued in the action, then upon the property, money, effects, or credits seized, attached, or held by virtue of such process.

SEC. 89 (ACT OF MARCH 7, 1871). *Duly certified transcript to be received as evidence.*—In all cases where a judgment has been rendered by a justice of the peace, and the same has not been appealed from, or reversed, or annulled, and has remained undisturbed for a period of not less than two years, such justice of the peace shall be presumed to have had jurisdiction of the subject matter of the action, and the parties thereto at the time of rendering such judgment, where it appears by the docket or transcript thereof on file in the office of the clerk of the district court of the proper county, that at the time of rendering such judgment he did acquire such jurisdiction; and a duly certified transcript thereof, shall be received as evidence of such judgment in all the courts of this state: *provided*, that where such transcript is to be used outside of the county in which such judgment was rendered, there shall be attached thereto a certificate of the clerk of the district

court of the proper county, to the effect that at the date of the rendering of such judgment, such justice of the peace was such officer, duly elected and qualified as such.

S. L. 1871, 131.

ARTICLE VII.

EXECUTION AND PROCEEDINGS THEREON.

SEC. 90 (73). *Execution, when issuable.*—Upon every judgment rendered by a justice, execution shall be issued by such justice, in the manner hereinafter prescribed, at any time on demand, after the expiration of the period allowed by law for taking an appeal from said judgment.

SEC. 91 (74). *Form of execution.*—The execution shall command the officer to levy the debt or damages, together with the interest thereon and the costs, upon the goods and chattels of the person against whom the execution is granted, except such articles as are exempt by law, from execution, and to pay the money within thirty days from date, to the justice who issued the execution.

SEC. 92 (75). *Justice to make certain entries before delivering execution.*—Before any execution is delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt or damages and costs separately, and the officer receiving such execution, shall endorse thereon the time of the reception of the same.

SEC. 93 (76, AS AMENDED BY ACT, FEBRUARY 24, 1871). *Execution may be renewed.*—If any execution is not satisfied, it may, at the request of the plaintiff, be renewed from time to time, by the justice issuing the same, by an indorsement to that effect, dated and signed by him; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall renew the execution in full force, in all respects for thirty days, and no longer. An entry of such renewal shall be made in the docket of the justice: *provided*, if an execution shall not have been issued prior to the delivery of a transcript of the judgment to the judgment creditor, and filing of the same with the clerk of the district court, as provided in section seventy of this chapter, the justice may issue an execution upon such judgment after such delivering or filing of such transcript, and on the return thereof unsatisfied in whole or in part, shall, on demand of such creditor, deliver to him a certified transcript of the entries in his docket relating to the issuing and return of such execution and the amount collected thereon and the costs accrued since the entry of judgment. The judgment creditor may file such transcript with the clerk of the district court where the judgment is docketed, who shall, thereupon, make a note of the facts in the docket of such judgment in his office, and thereafter execution may issue as provided in section seventy-one of this chapter for the amount of the original judgment unsatisfied at the time of issuing the same, and interest and costs accrued.

S. L. 1871, 132.

SEC. 94 (77). *Notice of sale of property taken in execution.*—The officer after taking goods and chattels into his custody by virtue of an execution, shall without delay give public notice, by at least three advertisements, posted in three public places in the election district where the property is to be sold, of the time and place when and where the same will be exposed for sale. Such notice shall describe

the goods and chattels taken, and be posted at least ten days before the day of sale.

SEC. 95 (78). *Sale, how made.*—At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall in all cases return the execution, and have the money before the justice at the time of making such return.

SEC. 96 (79). *Officer not to be purchaser.*—No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution.

SEC. 97 (80). *Officer to receive money tendered, and give receipt.*—The officer who holds an execution shall receive all money tendered to him in payment thereof, and indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid.

SEC. 97A (2 OF ACT OF MARCH 9, 1867). *May issue execution on judgment of predecessor.*—Every justice of the peace is hereby authorized to issue execution upon any unsatisfied judgment duly entered in any docket received from his predecessor, in like manner, and with the same effect, as if said judgment had been entered by him during his term of office: *provided*, that no execution shall be issued on such judgment after the expiration of the time provided by law.

S. L. 1867, 134.

ARTICLE VIII.

STAYING OF EXECUTION.

(*This Article is the Act of March* 6, 1871. S. L. 1871, 127.)

SEC. 98. *Stay of execution, how obtained.*—Execution upon a judgment rendered by any justice of the peace in this state may be stayed as hereinafter provided. Upon a judgment for any sum not exceeding ten dollars exclusive of costs, one month; upon a judgment not exceeding twenty-five dollars exclusive of costs, two months; upon a judgment exceeding twenty-five dollars and not exceeding fifty dollars, three months; upon a judgment exceeding fifty dollars and not exceeding seventy-five dollars exclusive of costs, four months; upon a judgment exceeding seventy-five dollars exclusive of costs, six months: *provided*, that in order to obtain such stay the party applying therefor shall, within ten days after judgment is rendered, file a recognizance with one or more responsible persons to be approved by the justice, as bail for him, conditioned that the judgment debtor will pay the amount of such judgment, interest and costs, within the time for which the stay is granted, and authorizing the justice to issue execution for such amount upon default of such payment: *provided*, that the interest to be allowed shall be at the rate of twelve per cent. per annum on the amount of the judgment, including the costs.

SEC. 99. *When execution may issue against judgment debtor.*—If the judgment, interest and costs, be not paid at the expiration of the time for which the same may have been stayed, the judgment creditor may have execution issued against the judgment debtor, and the bail for the amount thereof and accruing costs and interest.

SEC. 100. *Form of recognizance.*—The recognizance provided for in section ninety-eight (one of this act) may be in the following form: We, A. B. and C. D., do

hereby acknowledge ourselves to owe and be indebted to E. F. in the sum of dollars, to be levied and collected of our several goods and chattels if default be made in the condition following: *Whereas*, the above-named E. F. did, on the day of , A.D. 18 , recover a judgment for the sum of dollars against the above-named A. B., in the justice's court of E. H., Esq., a justice of the peace in and for the county of and state of Minnesota, and said A. B. desires a stay of execution thereon for the term of month from the date thereof. Now, if said A. B. shall pay to said justice of the peace, or his successor in office, for the use of said E. F., the said sum of dollars, and interest thereon at twelve per cent. a year, said term of month, then this obligation shall be void; but if default be made in such payment, execution may issue against said A. B. and C. D. for such amount as may be due on said judgment and interest as aforesaid, and costs accruing.

Dated this day of , A.D. 18 .

A. B.
C. D.

Taken and acknowledged before me the date aforesaid,

G. H., *justice of the peace.*

The recognizance shall be in double the amount of the judgment, including costs, and the bail shall justify in all cases, and shall possess the qualifications required by section one hundred and twenty-two of chapter sixty-six of the general statutes.

SEC. 101. *Certificate to be given of amount collected.*—Every officer to whom an execution shall issue against bail as provided in the next preceding sections, shall certify in his return thereon whether the same, and what amount, if any, was collected from the bail, and the true date [of] such collection.

ARTICLE IX.

REPLEVIN.

SEC. 102 (81). *Writ of replevin may issue, when.*—When the object of the action is to recover the possession of personal property, the plaintiff or some other person shall, before any writ is issued, make an affidavit, and file the same with the justice.

SEC. 103 (82). *Affidavit shall state, what.*—Such affidavit shall state that the property (describing it) is wrongfully detained by the defendant, that the plaintiff is entitled to the immediate possession thereof, that it was not taken from him by any process legally and properly issued against him, or if so taken, that it was exempt from seizure on such process; it shall also state the value of the property according to the best knowledge and belief of the affiant.

Affidavit must state value of property, Hecklin *v.* Ess, 16 Minn. 51.

SEC. 104 (83). *Plaintiff shall execute bond, which shall be filed—action on bond maintainable, when.*—The plaintiff shall also execute a bond to the defendant, with sureties, to be approved by the justice, in a penalty at least double the value of the property sought, conditioned that he will appear at the return day of the writ and prosecute his action to judgment, and return the property to the defendant, if a

return thereof is ordered by the court, and also pay all costs and damages that may be adjudged against him; the bond shall be filed with the justice for the use of any person injured by the proceeding, and an action may be maintained on such bond to recover the amount of any judgment rendered on dismissal of the action for want of jurisdiction or other cause, or for failure to abide by any such judgment, or to return the property when ordered by the court upon such dismissal.

SEC. 105 (84). *Justice shall issue writ.*—The justice shall thereupon issue a writ, directed to the sheriff or any constable of the county, commanding him to take the property therein described, and deliver the same to the plaintiff, and summon the defendant to appear and answer the same on the return day mentioned in the writ.

SEC. 106 (85). *Duty of officer.*—In obedience to such writ, the officer shall forthwith take possession of the property mentioned in the writ, if the same is in the possession of the defendant or his agent, for which purpose he may break open any dwelling-house or other inclosure, having first demanded entrance, and exhibited his authority if required.

SEC. 107 (86). *Claimant made co-defendant.*—If a third person claims the property, he shall be made a co-defendant.

SEC. 108 (87). *Value of plaintiff's right recoverable, and damages.*—If the property sought is not obtained, the plaintiff, if he establishes his right thereto, shall recover the value of that right; whether obtained or not, he shall recover the damages he has sustained in consequence of the illegal detention, or taking and withholding thereof.

SEC. 109 (88). *Judgment for defendant, for what rendered.*—If the plaintiff fails to establish his right to the property, the defendant shall recover such damages as under the circumstances he shows himself entitled to; and in addition thereto may have judgment for the return of the property, or the value thereof, if the same has been taken out of his possession, or delivered to the plaintiff.

SEC. 110 (89). *Judgment, what shall be in certain cases.*—If the property has been delivered to the plaintiff, and the action is dismissed before answer, or the defendant in his answer claims a return thereof, the defendant shall have judgment for a return of the property, and damages, if any, for the detention or taking and withholding thereof, but such judgment shall not be a bar to another action for the same property or any part thereof.

Judgment should be taken in the alternative, Kates *v.* Thomas, imp. 14 Minn. 460.

ARTICLE X.

PROCEEDINGS BY ATTACHMENT.

SEC. 111 (90). *Attachment allowed, when.*—Any creditor is entitled to proceed by attachment in a justice's court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this title.

SEC. 112 (91). *Affidavit for attachment shall state, what.*—Before a writ of attachment is issued, the plaintiff, or some person in his behalf, shall make and file with the justice an affidavit stating that the defendant is indebted to the plaintiff, in a sum exceeding five dollars, and specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs, and that the same is due upon con-

tract, express or implied, or upon judgment or decree of some court, and containing a further statement that the affiant has good reason to believe either—

First. That the defendant is a non-resident corporation ; or

Second. That the defendant is not a resident of this state, and has not resided therein three months immediately preceding the time of making such affidavit.

Third. That the defendant has absconded, or is about to abscond from the state.

Fourth. That the defendant has removed, or is about to remove any of his property out of this state, with intent to defraud his creditors.

Fifth. That the defendant resides in any other county, and more than one hundred miles from the residence of the justice.

Sixth. That the defendant contracted the debt under fraudulent representations.

Seventh. That the defendant so conceals himself that the summons cannot be served upon him ; or

Eighth. That the defendant has fraudulently conveyed or disposed of, or is about fraudulently to convey or dispose of, any of his property or effects, so as to hinder, delay, or defraud his creditors.

Affidavit sufficient if drawn in words of the statute, Curtis *v.* Moore, 3 Minn. 29.

SEC. 113 (92). *Writ, when returnable.*—In the first five cases mentioned in the preceding section the writ of attachment shall be returnable in three days ; but in all other cases it shall be returnable as an ordinary summons.

SEC. 114 (93). *Plaintiff shall file bond.*—Before issuing a writ of attachment, the justice shall require a bond on the part of the plaintiff, with sufficient surety, conditioned that if the plaintiff fails to recover judgment, the plaintiff will pay all costs that may be adjudged against him, and all damages which the defendant may sustain by reason of the attachment, not exceeding the sum of one hundred dollars.

SEC. 115 (94). *Writ, how executed.*—The writ of attachment shall be returnable as an ordinary summons, and the officer shall execute the same by summoning the defendant if to be found within the county, and by attaching the goods and chattels, moneys and credits, of the defendant, not exempt by law. In case the defendant cannot be found in the state, he may be summoned by the publication of the summons, as in other cases.

SEC. 116 (ACT OF MARCH 3, 1871). *When service of summons by publication.*—Whenever upon the return of a writ of attachment, issued by a justice of the peace, it is made to appear to the satisfaction of the justice, by the return of the officer thereon, or by affidavit, that the defendant therein, or in case of more than one defendant, either of them cannot be found in the state, or keeps himself concealed therein to avoid the service of legal process, the justice may make an order that each defendant be served with a summons in the action by the publication thereof, as hereinafter provided, and shall thereupon issue a summons directed to the defendant requiring him to appear before the said justice at a time and place in said summons to be specified, to answer to the plaintiff in a civil action (naming the said plaintiff), which summons shall be made returnable not less than six nor more than twenty days after the expiration of the period of publication. And whenever, upon the return of a writ of attachment, it shall appear by the

returns of the officer that he has found and attached property in his county, but that the defendant cannot be found in the county, and it shall be made to appear by affidavit that the defendant resides in another county in the state, then and in that case the action shall be continued for a period not exceeding twenty days, and the summons shall be served upon the defendant in the same manner as a summons is served under like circumstances in the district court.

S. L. 1871, 129.

SEC. 117 (ACT OF MARCH 3, 1871). *Justice may adjourn the action.*—Upon making such order the justice shall adjourn the action to the time when said summons is made returnable, during which time his jurisdiction in the action shall continue, for the purpose of the subsequent proceedings therein, and the detention of any property attached by virtue of the writ of attachment, in the custody of the officer, to abide the result of the action, or the disposal of any such property in pursuance of section ninety-seven of chapter sixty-five of the general statutes.

S. L. 1871, 129.

SEC. 118 (ACT OF MARCH 3, 1871). *Length of time summons to be published.*—The summons shall be published once in each week for three successive weeks in a newspaper published in the county in which the action is pending, if there is one, or if there is no newspaper published in said county, then in a newspaper published in an adjoining county in this state, or if there is no newspaper published in either of said counties, then in a newspaper published at the state capital. If such defendant's place of residence is known to the officer or person upon whose return or affidavit the order of publication is made, a copy of the summons and of the complaint in the action shall, within six days after the summons is issued, be deposited in the post office addressed to the said defendant at his place of residence, and the postage thereon paid.

S. L. 1871, 129.

SEC. 119 (95). *Defendant may re-bond property seized.*—When property of the defendant is actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving bond with sureties, to the satisfaction of the officer executing the writ, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

SEC. 120 (96). *Third person in possession of property attached may retain possession, when.*—When the property of the defendant, found in the hands or possession of any other person than the defendant, is attached, such person may retain the possession thereof, by giving bond with sureties, to the satisfaction of the officer executing the writ, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

SEC. 121 (97). *Perishable property sold, when and how.*—When property is seized on attachment, which is likely to perish or depreciate in value before the probable end of the action, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer, in the same manner and on the same notice as goods are required to be sold on an execution; and the proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

SEC. 122 (98). *Officer's compensation.*—When property is seized on attachment, the justice may allow to the officer having charge thereof such compensation for his trouble and expense in keeping and maintaining the same as is reasonable and just.

SEC. 123 (99). *Actions commenced by attachment, how governed.*—Like pleadings and proceedings shall be had, as far as practicable, in actions commenced by attachment, and actions founded on contracts and commenced by summons.

SEC. 124 (100). *Dissolution of attachments.*—Attachments may be dissolved, on motion, at any time before final judgment, if the defendant appears and pleads to the action and gives bond to the plaintiff, with good and sufficient surety, to be approved by the justice, in double the amount of property, effects, and credits attached, conditioned that if judgment is rendered against him, he will pay the amount thereof, with costs and interest thereon.

SEC. 125 (101). *Effect of dissolution of attachment.*—When any attachment is dissolved, the property and effects attached shall be released, and the action proceed as if it had been commenced by a summons only.

SEC. 126 (102). *Execution—sale of attached property.*—When judgment is rendered in any attachment case, execution may issue thereon, and the property attached may be sold in the same manner as in other cases, except as otherwise provided in this title.

*ARTICLE XI.**

OF APPEALS.

SEC. 127 (103). *Appeal may be taken, when.*—Any person aggrieved by any judgment rendered by any justice, when the judgment exceeds fifteen dollars, or in an action of replevin, when the value of the property as sworn to in the affidavit exceeds fifteen dollars, or when the amount claimed in the complaint exceeds thirty dollars, may appeal, by himself or agent, to the district court of the county where the same was rendered, but this does not apply to an action of forcible entry and detainer: *provided*, that an appeal upon questions of law, as herein provided, may be taken in any action without reference to the amount in controversy, or the amount of the judgment.

Appeal will lie where amount claimed exceeds fifteen dollars, though judgment is less than ten dollars, Shunk *v.* Hellmiller, 11 Minn. 164. Will lie in an action for forcible entry and detainer, Barker *v.* Walbridge, 14 Minn. 469. Will not lie where amount of judgment is less than fifteen dollars, Dodd *v.* Cady, 1 Minn. 289. When justice is acquitted on charge of not posting fee table, Kennedy *v.* Raught, 6 Minn. 235.

SEC. 128 (104, AS AMENDED BY ACT OF MARCH 5, 1868). *Conditions precedent to allowance of an appeal.*—No appeal shall be allowed in any case unless the following requisites are complied with, within ten days after judgment rendered, viz.:

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

Second. A bond shall be executed by the party appealing, his agent or attorney, to the adverse party, in a sum sufficient to secure such judgment and costs of appeal, with one or more sureties, to be approved by the justice, conditioned that

* By Act of March 7, 1867, the provisions of this article were made applicable to the judgments and proceedings of the courts of the city justice of the city of St Paul (S. L. 1867, 130).

the appellant shall prosecute his appeal with effect, and abide the order of the court therein.

Third. The party appealing shall serve a notice upon the opposite party, his agent or attorney, who appeared for him on the trial, specifying the ground of the appeal generally, as follows: That the appeal is taken upon questions of law alone, or upon questions of fact alone, or upon questions of both law and fact. Said notice shall be served by delivering a copy thereof to the person upon whom service is made, or by leaving a copy at the residence of such person, and the original notice, with proof of service thereof, shall be filed with the justice who rendered the judgment appealed from, within ten days after such service is made.

Fourth. The party appealing shall pay to the justice his fees for making the return, if demanded by the justice.

S. L. 1868, 135. Papers need not be stamped, Dorman *v.* Bayley, 10 Minn. 383. Affidavit need not state reasons showing good faith, Rahilly *v.* Lane, 15 Minn. 447. Need not be sworn to before justice, *ib.* Admission of service does not waive signature to notice of appeal, Larrabee *v.* Morrison, 15 Minn. 196.

SEC. 129 (105). *Justice to allow appeal, when—further proceedings stayed.*—Upon a compliance with the foregoing provisions, the justice shall allow the appeal, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal.

SEC. 130 (106, AS AMENDED BY ACTS OF MARCH 4, 1872, AND MARCH 10, 1873). *Appeals, when to be filed.*—Within twenty days after filing the notice of appeal, and before the first day of the next term of the district court, the justice shall file in the office of the clerk of the district court wherein he resides a transcript of all the entries made in his docket, together with all the process and other papers relating to the action, and filed with the justice, and upon the filing of his return the district court shall become possessed of the action, and shall proceed therein in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided: *provided*, that upon an appeal upon questions of law alone, the justice before whom the action is tried shall, upon the request of either party to the suit, return to the district court a true transcript of all the evidence given upon the trial, and the same shall be filed with the clerk of the district court as a part of the return of said justice.

S. L. 1872, 133; S. L. 1873.

SEC. 131 (107, AS AMENDED BY ACT OF MARCH 5, 1868). *Appeal, how tried in district court.*—Upon an appeal upon questions of law alone, the action shall be tried in the district court upon the return of the justice; upon an appeal taken upon questions of fact alone, or upon questions of both law and fact, the action shall be tried in the same manner as actions originally commenced in the district court.

S. L. 1868, 135. Statute does not require justice's return to show of what county he was justice, Kennedy *v.* Barber, 18 Minn. 216.

SEC. 132 (108, AS AMENDED BY ACT OF FEBRUARY 28, 1871). *Appellant to cause appeal to be entered—penalty for default.*—The appellant shall cause an entry of the appeal to be made by the clerk of the district court upon the calendar of actions for trial on or before the second day of the term unless otherwise ordered by said court, and the plaintiff in the court below shall be plaintiff in said district court. And if the appellant fails or neglects to enter the appeal as aforesaid, the appellee may have the same entered at any time during that or some

succeeding term, and the judgment of the court below shall be entered against the appellant for the same with interest and the costs of both courts: *provided*, that it shall not be necessary for either party to notice the appeal for trial, nor file a note of issue with the clerk.

S. L. 1871, 135. Presumption in favor of regularity, Davidson *v.* Farrell, 8 Minn. 258.

SEC. 133 (109). *District court may compel justice to file return.*—Upon an appeal being made and allowed, the district court may, by attachment, compel a return by a justice of the proceedings in the action, and of the papers required of him to be returned.

SEC. 134 (110). *May compel justice to allow appeal, when.*—If a justice fails to allow an appeal in a cause, when the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may, by attachment, compel him to allow the same, and to return his proceedings in the action, together with all papers required to be returned by him.

SEC. 135 (111). *May compel him to amend his return.*—Whenever the court is satisfied that the return of the justice is essentially erroneous or defective, the court may, by attachment, compel him to amend the same.

SEC. 136 (112). *Appeal not to be dismissed, when.*—No appeal allowed by a justice shall be dismissed on account of there being no bond, or that the bond given is defective, if the appellant will, before the motion to dismiss is determined, execute such bond as he ought to have executed before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

SEC. 137 (113). *Appeal triable, when.*—All appeals allowed thirty days before the first day of the term of the district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

SEC. 138 (114). *Power of district court in cases of appeal.*—In all cases of appeal from a justice's court, the district court has power to affirm the judgment of the justice upon any default of the appellant to appear and prosecute his appeal; and in all cases if the judgment is against the appellant, such judgment shall be rendered against him and his sureties in the bond.

Power of district court to affirm, Davidson *v.* Farrell, 8 Minn. 258.

SEC. 139 (115). *Execution enforced against sureties, when.*—If upon an execution issued upon such judgment, the principal shall not pay the amount thereof, and the officer can not find sufficient property of said principal to satisfy the same, such execution shall be enforced against the sureties, and the officer shall specify on his return by whom the money was paid, and the time thereof.

SEC. 140 (116). *Rights of parties paying execution.*—After the return of an execution satisfied in whole or in part out of the property of the surety, such surety is entitled to a judgment on motion against the principal for the amount so paid by him, together with interest from the time of payment; such motion shall be made within one year after the return day of the execution, and the return of the officer is evidence, upon the hearing of such motion, of the facts therein stated.

Sec. 117 was repealed by Act of March 5, 1868 (S. L. 1868, 135). Defendant need not first pay his witnesses, Trigg *v.* Larson, 10 Minn. 220.

SEC. 141 (118). *Justice shall make return to appeal after term of office expires.*—Whenever an appeal is taken after any justice has gone out of office, from a judgment rendered by him while in office, such person shall make return to such appeal, in like manner and with like effect as if such appeal had been taken while he was in office.

ARTICLE XII.

PROCEEDINGS FOR CONTEMPT.

SEC. 142 (119). *Justice may punish for contempt, when.*—In the following cases a justice may punish for contempt:

First. Persons guilty of disorderly, contemptuous, and insolent behavior toward such justice, whilst engaged in the trial of an action, or in rendering judgment, or in any judicial proceeding, which tends to interrupt such proceedings, or to impair the respect due to his authority;

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

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

SEC. 143 (120). *Contempt, how punished.*—Punishment for contempt may be by fine not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days.

SEC. 144 (121). *Trial to be first had.*—No person shall be punished for contempt before a justice of the peace, until an opportunity is given him to be heard in his defence; and for that purpose the justice may issue his warrant to bring the offender before him.

SEC. 145 (122). *Proceedings summary, when.*—If the offender is present he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

SEC. 146 (123). *Duty of justice on conviction.*—Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on the conviction, stating the particular circumstances of the offense, and the judgment rendered thereon, and shall file the same in the office of the clerk of the district court, and shall also enter the same in his docket as in civil cases.

SEC. 147 (124). *Warrant of commitment, what to set forth.*—The warrant of commitment for any constable shall set forth the particular circumstances of the offense, or it shall be void.

SEC. 148 (125). *Witness refusing to be sworn or to testify, may be committed.*—When any witness attending before a justice of the peace, in any cause, refuses to be sworn in some form prescribed by law, or to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county.

SEC. 149 (126). *Order of commitment to specify, what.*—Such order shall specify the cause for which the same is issued; and if it is for refusing to answer any question, such question shall be specified therein: and such witness shall be closely confined pursuant to such order, until he submits to be sworn, or to answer, as the case may be.

SEC. 150 (127). *Court to be adjourned, how long.*—The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

SEC. 151 (128). *Witness failing to attend, guilty of contempt—how punished*

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

ARTICLE XIII.

JURISDICTION IN CRIMINAL CASES AND PROCEEDINGS THEREIN.

SEC. 152 (130). *Jurisdiction of justices in criminal cases.*—Justices of the peace have power and jurisdiction throughout their respective counties, as follows:

First. To cause to be kept all laws made for the preservation of the peace;

Second. To cause to come before them, or any of them, persons who break the peace, and commit them to jail, or bail them, as the case may require;

Third. To arrest and cause to come before them persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior, and to keep the peace;

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

SEC. 153 (131). *Limitation of jurisdiction.*—Justices of the peace have power to hold a court subject to the provisions hereinafter contained, to hear, try, and determine all charges for offenses arising within their respective counties, where the punishment prescribed by law does not exceed a fine of one hundred dollars or imprisonment for three months.

SEC. 154 (132). *Proceedings on complaint made.*—Upon complaint made to any justice by any constable or other person that any such offense has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it appears that such offense has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to arrest the accused, and to bring him before such justice or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial.

SEC. 155 (133). *Title of action—entries in docket.*—The justice shall enter the action in his docket, in which the State of Minnesota shall be plaintiff, and the accused defendant, and he shall keep all such other entries as are required in civil actions.

SEC. 156 (134). *Time of trial.*—On the return of the warrant with the accused, the said justice shall proceed to hear, try, and determine the action within one day, unless continued for cause.

SEC. 157 (135). *Accused may give bail.*—From the time of the return of the warrant until the time of the trial the accused may give bail, with one or more sufficient sureties for his appearance at the time fixed for the trial; or in the event

of failure to do so he may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

Justice has no power to take money as security for the appearance of prisoner, Cressy *v.* Gierman, 7 Minn. 398.

SEC. 158 (136). *Charge shall be read and accused shall plead.*—The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him, and he shall be required to plead thereto, which plea the justice shall enter in his minutes; if the accused refuses to plead, the justice shall enter the fact with a plea of not guilty, in behalf of such accused, in his minutes.

SEC. 159 (137). *Proceedings on plea of not guilty.*—If the plea of the accused is not guilty, and a jury is waived by him, the said justice shall proceed to try such issue, and to determine the same according to the evidence which may be produced against, and in behalf of, such accused.

SEC. 160 (138). *Proceedings on plea of guilty.*—If the accused pleads guilty to such charge, the court shall thereupon convict him of the offense charged, and render judgment thereon.

SEC. 161 (139). *Jury to be summoned unless waived.*—After the joining of issue, and before the court proceeds to an investigation of the merits of the action, unless the accused expressly waives his right to a trial by jury, the court shall direct the sheriff or any constable of the county to make a list in writing of the names of twenty-four inhabitants of the county, qualified to serve as jurors in the district court, from which list the complainant and accused may each strike out six names.

Vide S. L. 1867, 127, as amended by S. L. 1870, 146.

SEC. 162 (140, AS AMENDED BY ACT OF MARCH 7, 1870). *Names of jurors, how obtained.*—In case the complainant or the accused neglects to strike out such names, the justice shall direct some suitable disinterested person to strike out the names for either or both of the parties so neglecting; and upon such names being stricken out, the justice shall issue a venire, directed to the sheriff or any constable of the county, requiring him to summon the twelve persons whose names remain upon such list, to appear before such justice, at the time and place to be named herein, as a jury for the trial of such offence.

S. L. 1870, 146. Trial by six men against defendant's request unconstitutional, State *v.* Everett, 14 Minn. 439.

SEC. 163 (141). *Duty of officer.*—The officer to whom such venire is delivered, shall summon such jury personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with such venire to the justice within the time therein specified.

SEC. 164 (142). *Deficiency of jurors supplied.*—If any of the jurors named in such venire fail to attend in pursuance thereof, or if there is any legal objection to any that appear, the justice shall supply the deficiency by directing the sheriff, or any constable who may be present and disinterested, to summon any of the bystanders or others who are competent, and against whom no cause of challenge appears, to act as jurors in the action.

SEC. 165 (143). *New jury summoned, when.*—If the officer to whom the venire is delivered, fails to return the same, as thereby required, or if the jury fail to agree, and are discharged by the justice, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had as herein pre-

scribed in respect to the first jury, unless the accused consents to be tried by the justice; in which case the justice shall proceed to the trial of the issue, as if no jury had been demanded.

SEC. 166 (144). *Challenge of jurors.*—In all trials for criminal offenses before a justice, either party may challenge any juror for cause.

SEC. 167 (145). *Trial to be public—jurors to be kept in charge of sworn officer until verdict or discharge.*—After the jury are sworn, they shall sit together and hear the evidence and allegations in the action, which shall be delivered in public, and in the presence of the accused; and after hearing the same, the jury shall be kept together in some convenient place, until they agree on a verdict or are discharged by the justice; and a sheriff or constable shall be sworn to take charge of the jury in like manner as upon trial in justices' courts in civil proceedings.

SEC. 168. (146). *Verdict.*—When the jurors have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it in his docket.

SEC. 169 (147). *Judgment and punishment.*—Whenever the accused is tried under the preceding provisions of this title, and found guilty either by the justice or by a jury, or is convicted of the charge made against him on a plea of guilty, the justice shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require.

SEC. 170 (148). *Acquittal, complainant to pay costs, when.*—Whenever the accused, tried under the preceding provisions of this title, either by the justice or by a jury, is acquitted, he shall be immediately discharged; and if the justice before whom the trial is had certifies in his docket that the complaint was willful and malicious, and without probable cause, he shall enter a judgment against the complainant for the costs that have accrued to the court and sheriff, or constable, and jury, in the proceedings had upon such complaint, and execution may issue therefor.

SEC. 171 (149, AS AMENDED BY ACT OF MARCH 6, 1871). *Parties on conviction may appeal on giving sureties.*—The person charged with and convicted by any such justice of any such offense may appeal from the judgment of such justice to the district court: *provided*, that no appeal shall be allowed in any case unless the following requisites are complied with within ten days after such conviction, viz.:

First. The person so appealing shall enter into a recognizance with one or more sufficient sureties to be approved by such justice, conditioned to appear before the district court on the first day of the general term thereof, next to be holden in and for the same county, and abide the judgment of said court therein, and in the meantime to keep the peace and be of good behavior.

Second. The party appealing shall serve a notice upon the county attorney of the county, or in case of his absence from the county, or in case there is no county attorney, on the clerk of the district court of said county, specifying generally the grounds of his appeal as follows, to wit: That the appeal is taken upon questions of law alone, or upon questions of fact alone, or upon questions of law and fact.

S. L. 1871, 133. Tierney *v.* Dodge, 9 Minn. 166.

SEC. 172 (150, AS AMENDED BY ACT OF MARCH 6, 1871). *Justice to allow appeal, when—trial in district court.*—Upon a compliance with the foregoing provisions, the justice shall allow the appeal and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal. The justice shall thereupon make a

return of all the proceedings had before him, and cause the complaint, warrant, recognizance, original notice of appeal, with proof of service thereof, and return, and all other papers relating to said cause and filed with him, to be filed in the district court of the same county, on or before the first day of the general term thereof next to be holden in and for said county. And the complainant and witnesses may also be required to enter into recognizances with or without sureties in the discretion of the justice, to appear at said district court at the time last aforesaid, and to abide the order of the court therein. Upon an appeal on questions of law alone, the cause shall be tried in the district court upon the return of the justice; on an appeal taken upon questions of fact alone, or upon questions of both law and fact, the cause shall be tried in the same manner as if commenced in the district court.

SEC. 173 (151). *Costs on taking appeal and after conviction.*—The appellant shall not be required to advance any fees in claiming his appeal, or in prosecuting the same; but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of his sentence, to pay the whole or any part of the costs of prosecution in both courts.

SEC. 174 (152). *Proceedings when appellant fails to prosecute appeal.*—If the appellant fails to enter and prosecute his appeal, he shall be defaulted on his recognizance, and the district court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court, and if he is not then in custody, process may be issued to bring him into court to receive sentence.

SEC. 175 (153). *Judgment in district court in certain cases.*—If the judgment of the justice is affirmed, or upon any trial in the district court the defendant is convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties.

District court may affirm judgment below on writ of certiorari with costs in both courts, Baker *v.* United States, 1 Minn. 207; Tierney *v.* Dodge, 9 Minn. 166.

SEC. 176 (154). *Person in contempt, how proceeded against.*—In case any person summoned to appear before a justice, pursuant to the provisions of this title, as a juror or witness, fails to appear, or if any witness appearing refuses to be sworn or to testify, he is liable to the same penalties, and may be proceeded against in the same manner, as provided by law in respect to jurors and witnesses in justices' courts in civil actions.

SEC. 177 (155). *Justice to make certificate of conviction.*—Whenever any conviction is had before a justice, he shall make a certificate of such conviction under his hand, in which it shall be sufficient briefly to state the offense charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

SEC. 178 (156). *Shall file certificate with clerk of district court.*—Within twenty days after such conviction, the said justice shall cause such certificate to be filed in the office of the clerk of the district court of the county in which the conviction was had.

SEC. 179 (157). *Assaults, etc., how prosecuted.*—No assault, battery, or affray is indictable, but all such offenses shall be prosecuted and determined in a summary manner, by complaint made before a justice of the peace, and on conviction thereof the offender may be punished by fine not less than five dollars nor more than one hundred dollars.

SEC. 180 (158). *Justice to issue warrant of his own motion, when.*—If any justice of the peace has any knowledge that any of the offenses mentioned in the last section are about to be committed, he shall issue his warrant and proceed as is directed when complaint has been made; and if any such offense is committed, threatened, or attempted in his presence, he shall immediately arrest the offender, or cause it to be done, and for this purpose no warrant or process is necessary; but the justice may summon to his assistance any sheriff, coroner, or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice or any of his assistants in the performance of their duty; and any person who, when summoned to aid in arresting and securing an offender, refuses to give such assistance, shall forfeit five dollars to the use of the county.

SEC. 181 (159). *Proceedings on breach of recognizance.*—In case of the breach of any recognizance entered into in a criminal case, the same shall be certified and returned to the district court, to be proceeded in according to law.

SEC. 182 (160). *Justice shall certify cause to district court, when.*—If, in the progress of any trial before a justice, under the provisions of this title, it appears to the justice that he has not final jurisdiction in the case before him, and that the accused ought to be put upon his trial for an offense cognizable before the district court, the justice shall immediately stop all further proceedings before him and proceed as in other criminal cases cognizable before the district court.

SEC. 183 (161). *Justice to summon necessary witnesses.*—In all cases arising under this title the justice shall summon the injured party, and all others whose testimony is deemed material, as witnesses at the trial, and enforce their attendance by attachment, if necessary.

SEC. 184 (162). *Judgment on conviction, how entered.*—In all cases of conviction under the provisions of this title, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county: *provided*, that no justice shall commit a defendant under the provisions of this section for a longer period than three months.

SEC. 185 (163). *Witnesses summoned once need not be summoned again on adjournment of cause, but shall be verbally notified.*—When a trial under the provisions of this title is continued by the justice, it shall not be necessary for the justice to summon any witness who may be present to appear at the continuance, but the justice shall verbally notify such witnesses as either party may require, to attend before him to testify in the cause on the day set for trial.

SEC. 186 (164). *Security may be required of complainant.*—The justice may require of the complainant to give security for costs, and if he refuses, the justice may dismiss the complaint.

SEC. 187 (165). *Fines to be paid over to county treasurer by justice.*—All fines imposed by a justice, if paid before the accused is committed, shall be received by the justice, and by him paid over to the county treasurer within thirty days after the receipt thereof.

SEC. 188 (166). *When accused is committed, fine to be paid to sheriff.*—If the accused is committed, payment of any fine imposed upon him shall be made to the sheriff of the county, who shall, within thirty days after the receipt thereof, pay over the same to the county treasurer.

SEC. 189 (ACT OF MARCH 1, 1872). *Process in criminal cases by county officers.*—All warrants issued by city justices for the violation of any general laws of this state, shall run to the sheriff or any constable of the county or to the chief of police or any policeman of the city, but no chief of police or policeman or marshall, where he goes outside of the county to make an arrest, shall receive any fees therefor unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy, or a constable to make the arrest, might endanger an escape.

S. L. 1872, 136.

ARTICLE XIV.

OF FORMS IN JUSTICES' COURTS.

IN CIVIL ACTIONS.

SEC. 190 (129). *Forms in proceedings before justices of the peace.*—The following or equivalent forms shall be used by justices of the peace in proceedings to be had under the provisions of this chapter, to wit:

Form of Summons.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

You are hereby commanded to summon , if he shall be found in your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the day of , 18 , at o'clock in the noon, at in said county, to answer to in a civil action; and have you then and there this writ.

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

J. P., *justice of the peace.*

Form of Summons in case of Publication.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To defendant:

You are hereby summoned to be and appear before the undersigned, one of the justices of the peace in and for said county, on the day of , 18 , at o'clock in the noon, at my office, in the of , in said county, to answer to in a civil action. Should you fail to appear at the time and place aforesaid, judgment will be rendered against you upon the evidence adduced by said , for such sum as he shall show himself entitled to.

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

A. B., *justice of the peace.*

Form of Execution.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

Whereas, judgment against for the sum of lawful money of the United States, and for costs of suit, was recovered the day of , before me, at the suit of ; these are therefore to command you to levy distress on the goods and chattels of the said (excepting such as the law exempts), and make sale thereof according to law in such case made and provided, to the amount of the said sum, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said for said and costs. Hereof fail not, under penalty of the law.

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

J. P., *justice of the peace.*

Form of Writ of Attachment.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

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

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

J. P., *justice of the peace.*

Form of Writ of Replevin.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

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

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

J. P., *justice of the peace.*

Form of Subpœna.

State of Minnesota, } ss.
County of }

The State of Minnesota,

You are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, at , on the day of , at o'clock, in the noon of said day, to give evidence in a certain cause then and there to be tried, between , plaintiff, and , defendant, on the part of the

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

J. P., *justice of the peace.*

Form of Venire for a Jury.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

You are hereby commanded to summon to be and appear before the undersigned, one of the justices of the peace in and for said county, on the day of , at o'clock in the noon of said day, in the town of , to make a jury for the trial of a civil action between , plaintiff, and , defendant, and have you then and there this writ.

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

J. P., *justice of the peace.*

Form of Warrant for Contempt.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

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

Dated this day of , A.D. 18 .

J. P., *justice of the peace.*

Form of Record of Conviction for Contempt.

State of Minnesota, } ss.
County of }

The State of Minnesota,

Whereas, on the day of , A.D. 18 , while we, the undersigned, one of the justices of the peace of the said county, was engaged in the trial of a

cause between C. D., plaintiff, and E. F., defendant, in said county, according to the statute in such case made and provided, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly) and whereas, the said A. B. was thereupon required, by the undersigned, to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas, the said A. B. did not show any cause against the said charge: be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of a criminal contempt aforesaid, before the undersigned, and is adjudged by the undersigned, to pay a fine of dollars, or to be imprisoned in the common jail of said county for the term of two days, or until he is discharged from imprisonment according to law.

Dated this day of A.D. 18 .

J. P., *justice of the peace.*

IN CRIMINAL ACTIONS.

SEC. 191 (167). The following forms may be used in criminal actions:

Form of Warrant.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or constable of said county:

Whereas, has this day complained in writing to me, on oath, that did on the day of , A.D. 18 , at in said county (here insert the complaint whatever it may be), and prayed that the said might be arrested and dealt with according to law; now therefore, you are commanded forthwith to apprehend the said and bring him before me, to be dealt with according to law.

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

J. P., *justice of the peace.*

Form of Certificate of Conviction.

State of Minnesota, } ss.
County of }

At a justice's court held at my office in said county, before me, , a justice of the peace in and for said county, for the trial of for the offense hereinafter stated, the said of, etc., was convicted of having, on the day of , A.D. 18 ., at in said county (here state the offense as in the warrant), and upon such conviction, the said court did adjudge and determine that the said should pay a fine of dollars, (and if imprisonment be allowed add) and be imprisoned in the common jail of the county days (if the fine be paid, add), and the said fine has been paid to me.

Given under my hand this day of A.D. 18 .

J. P., *justice of the peace.*

Form of Execution.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county, for the trial of , for the offense hereinafter stated, the said of, etc., was convicted of having, on the day of , A.D., 18 , in said county (here state the offense in the warrant), and upon conviction, the said court did adjudge and determine that the said should pay a fine of dollars; and whereas, the said fine has not been paid by the said , these are therefore to command you to levy distress on the goods and chattels (etc., as in execution against the goods in civil cases).

Form of Order to bring up Prisoner.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the keeper of the common jail of said county:

The undersigned, one of the justices of the peace in and for said county, sitting at a court for the trial of , now in your custody in the common jail of said county, doth hereby order and direct you to bring the said forthwith before me, at my office in said county, together with the warrant by which he was committed to your custody, in order that he may be tried.

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

J. P., *justice of the peace.*

Form of Commitment upon Sentence.

State of Minnesota, } ss.
County of }

The State of Minnesota,

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

Whereas, at a justice's court held at my office in said county for the trial of , for the offense hereinafter stated, the said of, etc., was convicted of having, on the day of , A.D. 18 , in the said county (here state the offense as in the warrant); and upon conviction the said court did adjudge and determine, that the said , should be imprisoned in the common county jail of said county for days; therefor, you, the said constable, are commanded forthwith to convey and deliver the said to the said keeper; and you the said keeper are hereby commanded to receive the said into your custody, in the said jail, and him there safely keep until the expiration of said days, or until he shall be thence discharged by due course of law.

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

J. P., *justice of the peace.*

Form of Commitment, after Arrest and before Trial.

State of Minnesota, } ss.
County of }

The State of Minnesota,

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

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

Given under my hand this day of A.D. 18 .

J. P., *justice of the peace.*

Form of Commitment where Justice on the Trial shall find that he has not Jurisdiction of the Case.

State of Minnesota, } ss.
County of }

The State of Minnesota,

To the sheriff or any constable of said county:

Whereas, of, etc., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of , with having, on the day of , A.D. 18 , in said county, committed the offense of (here state the offense charged in the warrant), and in the progress of the trial on said charge, it appearing to the said justice that the said had been guilty of the offense of (here state the new offense found on the trial), committed at the time and place aforesaid, of which offense the said justice has not final jurisdiction; and whereas, after examination had in due form of law, touching the said charge and offense last aforesaid, the said justice did adjudge that the said offense had been committed, and that there was probable cause to believe the said to be guilty thereof; and whereas, the said has not offered sufficient bail for his appearance to answer for said offense, you are therefore commanded forthwith to take the said , and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody, in said jail, until he shall be thence discharged according to law.

Given under my hand this day of A.D. 18 .

J. P., *justice of the peace.*