

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 67 (G. S. ch. 71).

PETIT JURIES.

This mode of trial was adopted soon after the conquest of England by William, and was fully established for the trial of civil actions in the reign of Henry II.

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5047-5049. Constituted.
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CONSTITUTED.

SEC. 5047. **Defined.**— A petit jury is a body of twelve men impannelled and sworn, in a district court, to try and determine, by a true and unanimous verdict, any question or issue of fact, in any civil or criminal action or proceeding, according to law and the evidence as given them in court.

G. S. ch. 71, § 1.

SEC. 5048. **Qualifications.**— The qualifications and disabilities of petit jurors shall be the same as those prescribed by law for grand jurors.

G. S. ch. 71, § 3. 41 N. W. 460.

SEC. 5049. **Limitation.**— The provisions of this title shall not extend to the trial of any indictment for any offence where the party indicted is entitled to challenge peremptorily, or without cause shown, more than two jurors.

G. S. ch. 71, § 19.

NUMBER TO BE DRAWN.

SEC. 5050. **For each general term.**— A number of petit jurors, not less than twenty-four, shall be drawn for each general term of the district court, and no greater number shall be drawn unless the court otherwise orders; but in no case shall more than thirty-six petit jurors be drawn,* and the judge of said court may, in his discretion, by an order filed with the clerk direct that no petit juror be drawn or summoned for such term.

G. S. ch. 71, § 2, as amended 1883, ch. 26. Approved March 2d. Amendment below *.

SEC. 5051. **Same — When judge orders.**— The judge of the district court may, at least thirty days before the time for holding a general term of said court, order a number of petit jurors greater than twenty-four, and not exceeding thirty-six, to be drawn and summoned for such term; and upon such order being made and entered upon record in the office of the clerk of the court in the county where such term is to be held, such clerk shall draw and issue a venire for the number of jurors mentioned in such order.

G. S. ch. 71, § 5.

DRAWING AND SUMMONING.

SEC. 5052. **Procedure.**— The petit jurors shall be drawn and summoned at the same time and in the same manner as is by law prescribed for the drawing and summoning of grand jurors.

Provided, further, that at any time before the issuing of the venire the judge of the district court may, by his order in writing, filed with the clerk, fix a time in the term other than the first day thereof for the appearance of the petit jurors; in which case the venire shall command the sheriff to sum-

mon the persons so drawn as jurors as aforesaid to appear before the court at the time so fixed by the judge to serve as petit jurors.

Provided, that in the county of Hennepin, the petit jurors shall be summoned to appear at nine o'clock A. M. on the second Tuesday of each general term of the district court for said county, unless said court, by an order made at least fifteen days before the term, shall direct that the petit jurors be summoned to appear at an earlier day in the term.

G. S. ch. 71, § 4, as amended 1881, ch. 45; 1883, ch. 62. The proviso concerning Hennepin county is amendment of 1881, which took effect April 1st, approved February 5, 1881. The other proviso is acts 1883, approved February 17th. 32 M. 213; 36 M. 194.

SEC. 5053. Same — On trial of indictment.— When an indictment is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court may, in its discretion, wait or not, for the return of the attachment.

G. S. ch. 71, § 7.

BALLOTS.

SEC. 5054. Prepared and deposited.— At the opening of the court the clerk shall prepare separate ballots containing the names of the persons summoned as petit jurors, which shall be folded as nearly alike as possible, and so that the name cannot be seen, and be deposited in a sufficient box.

G. S. ch. 71, § 6.

SEC. 5055. How drawn.— Before the name of any juror is drawn, the box shall be closed, and shaken so as to intermingle the ballots therein; the clerk shall then, without looking at the ballots, draw them from the box through a hole in the lid, so large only as conveniently to admit the hand.

G. S. ch. 71, § 8.

SEC. 5056. How kept.— When the jury are completed, the ballots containing the names of the jurors sworn shall be laid aside, and kept apart from the ballots containing the names of the other jurors, until the jury so sworn are discharged.

G. S. ch. 71, § 9.

SEC. 5057. To be returned to box.— After the jury are so discharged, the ballots containing their names shall be again folded and returned to the box; and so on, as often as a trial is had.

G. S. ch. 71, § 10.

SEC. 5058. Same.— If a juror is absent when his name is drawn, or is set aside, or excused from serving on the trial, the ballot containing his name shall be folded and returned to the box as soon as the jury is sworn.

G. S. ch. 71, § 11.

TALESMEN.

SEC. 5059. When.— When, by reason of challenge or otherwise, a sufficient number of jurors duly drawn and summoned, cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the by-standers, or from the county at large, to complete the panel.

G. S. ch. 71, § 12.

SEC. 5060. By whom.— The jurors so returned from the by-standers, shall be returned by the sheriff or his deputy, or by a coroner, or by any disinterested person appointed therefor by the court.

G. S. ch. 71, § 13.

SEC. 5061. Qualifications.— The persons so returned shall be such as are qualified and liable to be drawn as jurors, according to the provisions of law.

G. S. ch. 71, § 14.

STRUCK JURIES.

SEC. 5062. **When and how.**— Whenever a struck jury is deemed necessary, by either party, for the trial of the issue in any action or proceeding in the district court, or brought there by appeal or otherwise, such party may file with the clerk of the court, a demand in writing for such jury, whereupon such clerk shall forthwith deliver a certified copy of such demand to the sheriff of the county, who shall give to both parties four days' notice of the time of striking the same. At the time designated, said sheriff shall attend at his office, and in the presence of the parties, or their attorneys, or such of them as attend for that purpose, shall select from the number of persons qualified to serve as jurors within the county, forty such persons as he shall think most indifferent between the parties, and best qualified to try such issue; and then the party requiring such jury, his agent or attorney, shall first strike off one of the names, and the opposite party, his agent or attorney, another, and so on alternately, until each have struck out twelve. If either party shall not attend in person, or by attorney, the sheriff shall strike for the party not attending. When each party has stricken out twelve names, as aforesaid, the sheriff shall make a fair copy of the names of the remaining sixteen persons, and certify the same under his hand to be the list of jurors struck for the trial of such cause or proceeding, and shall deliver the same to the clerk, who shall thereupon issue and deliver to the sheriff or other officer, a venire facias, with the names in said list contained, annexed thereto; and such sheriff or other officer, shall summon the persons named, according to the command of such writ; and upon the trial of the cause, the jury so struck shall be called as they stand upon the panel, and the first twelve of them who shall appear, and are not challenged for cause, or set aside by the court, shall be the jury, and shall be sworn to try the issue joined in said cause or proceeding: *provided*, that if a sufficient number does not appear for the trial of said cause, the court shall cause talesmen to be called as in other cases.

G. S. ch. 71, § 15. 22 M. 378; 36 M. 194.

SEC. 5063. **Same — When sheriff interested.**— If the said sheriff is interested in the cause or proceeding, or related to either of the parties, or does not stand indifferent between them, the judge of the said court may name some judicious and disinterested person to strike the jury, and to do and perform all things required to be done by such sheriff, relating to the striking of the same; but in no case shall it be necessary to strike such jury more than six days previous to the term of the court at which the action or proceeding is to be tried, and three days' service of the venire shall be held sufficient.

G. S. ch. 71, § 16. 22 M. 378.

SEC. 5064. **Fees of.**— The party requiring such struck jury, shall pay the fees for striking the same, and the legal fees for mileage and attendance, for each juror so attending, and shall not have any allowance therefor in the taxation of costs.

G. S. ch. 71, § 17.

SEC. 5065. **Continuance.**— A jury struck for a trial of any issue at a particular term of the court, may be continued with the continuance of the cause, and summoned as jurors at a subsequent term, provided both parties consent thereto, but not otherwise.

G. S. ch. 71, § 18.