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1905

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probate court with directions, the probate court shall comply with such directions in a summary manner, without notice. (4675, 4676; '01 c. 135)

Judgment of affirmance (79-267, 272, 82+635). Remand to probate court (104+535).

3880. Costs—The party prevailing on the appeal shall be entitled to costs and disbursements, to be taxed as in a civil action. If judgment be rendered against the estate, they shall be an adjudicated claim against it; and if the judgment be against a claimant against the estate, either for costs or on a counterclaim, execution may issue as in other cases. (4677)

79-377, 380, 82+669; 79-267, 272, 82+635.

3881. Judgment, execution, etc.—Whenever the order, judgment or decree appealed from is affirmed, judgment shall be rendered against the appellant and his sureties on the appeal bond, and execution may issue against him and his sureties. (4678)

CHAPTER 75

COURTS OF JUSTICES OF THE PEACE

GENERAL PROVISIONS

3882. Jurisdiction limited to county—The jurisdiction of justices of the peace is coextensive with the limits of the county in which they reside, except in the following cases:

1. Writs of attachment may be directed to the proper officer in any county for the purpose of causing an attachment of property therein.
2. Garnishee process may run into, and be served on the garnishee in, any county.

Provided, that this section shall not affect the jurisdiction of any city justice or justice of the peace under the charter of any city or village situated in two or more counties. (4955)

63-145, 65+261; 66-409, 69+220.

3883. Place of holding court—Every justice of the peace shall keep his office in the town, village, city, or ward for which he is elected; but he may issue process in any place in the county, and, in his discretion, for the convenience of parties, may make any civil or criminal process issued by him returnable, and may hold his court, at any place which he shall appoint in the town, village, or ward within his county adjoining the town or ward in which he resides, or in any village located within his town. (4956)

26-323, 3+991; 45-145, 47+650; 53-174, 54+1053.

3884. Not to hold office in saloon or with attorney—No justice of the peace shall hold his office or court in any saloon, nor in any room adjacent to a saloon, or connecting therewith by door or otherwise. Nor shall he hold his office in the same room with a practicing attorney unless such attorney is his law partner, and in that case such partner shall not appear or act as an attorney in any case before such justice. (4956, 4957)

26-25, 28, 1+43.

3885. Powers—Laws applicable—A justice of the peace may hold a court for the trial of all actions enumerated in § 3886, and hear, try, and determine the same; and for that purpose, where no special provision is otherwise made by law, such court shall have all the powers possessed by courts of record, and all laws of a general nature shall apply to such justice's court, so far as the same are applicable and not inconsistent with the provisions of this chapter; but no justice of the peace shall charge the jury. (4958)

1. **A court of limited powers**—A justice court is a court of limited and special jurisdiction and the record must affirmatively show jurisdiction both of the person and the subject matter. Neither the nature of the action nor the justice's jurisdiction thereof

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can be shown by the judgment rendered therein (14-357, 275; 11-78, 45; 8-243, 209). But where the record shows that jurisdiction has once attached silence in respect to subsequent jurisdictional steps is not fatal (72-246, 75+128).

2. Practice generally—The statutory provisions which govern the procedure in justice courts must be strictly followed (86-210, 90+383. *Contra*, 55-58, 60, 56+350). The court may lose jurisdiction by delay (86-210, 90+383. See 76-32, 78+862; 83-351, 86+350). *Justice not required to reduce the testimony to writing unless requested* (92-191, 99+640). Not required to make findings of fact (84-286, 289, 87+774). Cannot dismiss for defects in complaint without first ordering an amendment (55-69, 56+464). *Necessity of taking exceptions* (17-337, 313; 25-41; 57-108, 58+683; 81-236, 83+982).

3886. Actions within jurisdiction—Such justice shall have jurisdiction of the following actions and proceedings:

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

2. 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.

3. An action for a penalty given by statute, not exceeding one hundred dollars.

4. 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 instalments, an action may be brought for each as it becomes due.

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

6. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars. (4959)

Jurisdiction concurrent with district court (See § 90). The "sum claimed" is the same as the "amount in controversy" in the constitution (8-451, 401; 18-216, 196. See 57-187, 58+985; 33-348, 23+308; 68-437, 71+619). Jurisdiction cannot be ousted by counterclaim (18-216, 196). Amendment of complaint without objection on trial to bring case within jurisdiction (22-129). In replevin where the value of the property and the damages claimed together exceed one hundred dollars a justice is without jurisdiction (23-520). In replevin the defendant may plead that the value of the property exceeds one hundred dollars, but the mere pleading does not oust the justice of jurisdiction. The fact must be proved and determined in favor of defendant. If this is done the justice loses jurisdiction except to enter judgment of dismissal (68-437, 71+619). In such case proof that the value of the property exceeds one hundred dollars does not oust the justice of jurisdiction if the fact was not pleaded (16-51, 38; 68-437, 71+619). Where the claim alleged exceeded one hundred dollars but the demand for judgment was for one hundred dollars it was held that the justice had no jurisdiction, it appearing that plaintiff did not intend to waive the balance (89-346, 94+865). Increase beyond one hundred dollars by accrual of interest after action begun does not affect jurisdiction (69-523, 72+810). In determining the amount in controversy costs are to be disregarded (27-29, 6+407). Objection that the amount in controversy is beyond the jurisdiction of a justice is waived by appealing on questions of law and fact (25-128). An action on contract held not of an equitable nature and within jurisdiction of justice (43-41, 44+671). Subd. 2 cited (20-418, 370; 8-451, 401).

3887. Actions not within jurisdiction—The jurisdiction conferred by § 3886 does not extend, however, to a civil action:

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

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

3. Nor for an action against an executor, administrator, or guardian, as such. (4960; '95 c. 33; '97 c. 93; '99 c. 321)

Subd. 1 (38-475, 477, 38+365; 43-539, 45+1135). See cases under § 3918.

3888. Action, where brought—Actions shall in all cases be brought in the town, village, or city where the plaintiff or defendant, or one of several plaintiffs or defendants, resides, or where an attorney at law licensed to practice in courts of record, representing plaintiff in the action, resides, or at the county seat. If the defendant does not reside in the state, the action may be brought in any town, village, or city in the county in which he is found. If there be

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no justice in the proper town, the action may be brought before any justice in an adjoining town in the same county. ('95 c. 33; '97 c. 93; '99 c. 321)

3889. Docket—Contents—Every justice of the peace shall keep a docket in which he shall enter:

1. The title of all causes commenced before him.
2. The time when the process issued, the nature thereof, when returnable, and the return of the officer.
3. The time when the parties appeared before him.
4. A brief statement of the nature of the plaintiff's demand, and the amount claimed; and, if any setoff was pleaded, a similar statement thereof.
5. Every adjournment, stating at whose request, and to what time and place.
6. The time when the trial was had, and whether the same was by jury or by the justice.
7. The verdict of the jury, and when rendered.
8. The judgment, the 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.
9. The fact that an appeal was taken and allowed, and the time thereof.
10. Satisfaction of judgment, when made.
11. All questions of law raised by either party, the order made by the court thereon, any exception taken to such order, and all other matters that are material. (4961)

1. **In general**—Failure to make the required entries does not render the judgment erroneous (53-54, 54+935; 54-338, 56+47; 20-102, 86; 12-216, 137; 18-312, 281; 64-231, 66+964). Proper but not essential that justice sign docket (10-350, 277). Unauthorized entries are to be disregarded as surplusage (84-286, 87+774). Technical accuracy not required. Informalities and inaccuracies of expression will be disregarded. It is sufficient if the meaning is ascertainable and that it is conformable to law (17-41, 23; 70-179, 72+969). Effect of entry that "parties were present" (35-285, 28+506).

2. **Not required to be entered**—Evidence (18-216, 196; 30-48, 14+256; 77-510, 80+628); reasons for judgments or findings of fact (84-286, 289, 87+774); verification of pleadings (18-312, 281; 21-403, 406); affidavit for transfer (17-41, 23).

3. **Entries as evidence**—10-350, 277; 15-447, 360; 21-458, 462; 18-216, 196; 16-182, 161; 69-440, 447, 72+452.

4. **Subd. 1**—26-6, 46+445; 34-254, 25+449.

5. **Subd. 2**—11-78, 45.

6. **Subd. 3**—18-312, 281.

7. **Subd. 4**—12-216, 137; 14-357, 275; 18-312, 281; 21-403, 405.

8. **Subd. 5**—20-102, 86; 21-30; 64-231, 66+964.

9. **Subd. 7**—70-179, 72+969.

10. **Subd. 8**—Proper practice but not essential that justice sign judgment (21-458). Entry of verdict and costs held a sufficient judgment (70-179, 72+969; 70-433, 73+155). Judgment need not show filing of security bond (64-485, 67+540). Judgments to be liberally construed. Form of judgment held sufficient (69-493, 72+842. See 87-353, 92+1; 12-216, 137). Liability on bond for failure to enter judgment (64-51, 66+130). Separate entry as to fees due each person (53-54, 54+935; 54-338, 56+47; 69-440, 447, 72+452).

11. **Subd. 11**—Transfer of case (15-447, 360; 17-41, 23; 18-216, 196; 21-458; 74-402, 77+220). Exceptions (17-337, 313; 25-41; 57-108, 58+683; 81-236, 83+982).

3890. Procuring docket—Disposition of same—Every justice who shall not receive a suitable docket from his predecessor in office shall procure one at the expense of his town, and at the expiration of his term deliver the same, together with any docket received from his predecessor, to his successor in office. If at the expiration of his term no successor has been elected, he shall deposit all books, dockets, and papers pertaining to his office with the clerk of the district court of his county, who shall deliver the same to the successor of such justice when called for. (4962; '97 c. 203)

COMMENCEMENT OF ACTIONS

3891. Actions, 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. (4964)

Two modes specified exclusive (25-41, 43). Jurisdiction of the person conferred by voluntary general appearance (28-400, 10+429; 14-16, 4; 18-312, 281; 21-30; 20-102, 86. See 74-402, 404, 77+220; 35-285, 28+506). Litigating issues without objection held equivalent to "voluntary appearance and agreement" (22-129). When a party appears specially and objects to the jurisdiction of the court he does not waive his objection by proceeding to trial after his objection is overruled (66-409, 69+220; 86-210, 90+383). Action not transferred by operation of law to successor of original justice (28-400, 10+429). Insertion of true name of defendant (37-239, 33+706).

3892. Security for costs—A justice of the peace, in any action instituted before him, either before or after the process issues, may require of the plaintiff security for costs; and the person giving such security shall sign a memorandum 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. If the plaintiff refuses to give such security, the justice shall dismiss the action. (4965)

Obligation covers costs in district court. Action thereon will lie in district court (34-543, 26+909).

3893. Requisites of process—Every process issued by a justice shall run in the name of the state of Minnesota, be dated on the day it issues, signed by the justice issuing the same, and directed to the sheriff or any constable of the proper county. It shall be entirely filled up, and have no blank in date or otherwise, when delivered to the officer to be executed. Every process issued by a justice in a civil action shall be returnable not earlier than 9 o'clock a. m., nor later than 5 o'clock p. m., and every summons shall contain a statement of the amount claimed by the plaintiff. Process issued and delivered to the officer to be executed contrary to the provisions of this section shall be void. (4966; '95 c. 55; '99 c. 57)

Blanks in a summons when issued render it void (25-41; 31-479, 18+283). Otherwise as to copy of summons (73-121, 75+1038).

3894. Summons—Service—In all cases not otherwise provided for, the first process shall be a summons commanding the officer to summon the defendant to appear before such justice at a time and place specified therein, not less than six nor more than twenty days from the date thereof, to answer to the plaintiff in a civil action, which 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 he can be found, and, if not found, by leaving a copy thereof at his last usual place of abode, with a person of suitable age and discretion then residing therein: Provided, that no justice of the peace shall issue any summons or other process in a civil action to be served in any city having a population of two hundred thousand or over, except executions upon existing judgments, and service of such process made within any such city shall be void. (4967; '95 c. 32; '01 c. 345)

First process a summons (25-41; 53-174, 175, 54+1053). Justice to determine time for appearance of defendant (25-41). Presumption of regularity of service. Return of service held sufficient (26-154, 2+163; 64-485, 67+540). Service of summons on the eleventh of the month returnable on the seventeenth is sufficient (31-119, 16+704). Blank in copy left with defendant held not to render service void (73-121, 75+1038). Irregularity in service waived by general appearance (18-312, 281). Fact of service and not proof thereof gives jurisdiction (78-87, 80+852). Objection to jurisdiction over person held not waived by special appearance (35-285, 28+506).

3895. Service by publication—When the plaintiff or his agent shall make an affidavit stating that the plaintiff has a just cause of action against the defendant, founded upon a contract, express or implied, and that the defendant cannot be found in the state, a justice may order that service be made by three weeks' published notice of the summons, in the form hereinafter prescribed, in either of the following cases:

1. 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.

2. 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. (4968)

3896. When returnable—Mailing—In such case 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 postoffice, with postage prepaid, 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. (4969)

46-318, 48+1132.

3897. Service by private person—Every justice issuing any summons authorized by this chapter, upon being satisfied by the affidavit of the party applying therefor, his agent or attorney, that the defendant is about to depart from the state, or is about to dispose of his property with the intention of defrauding his creditors, and setting forth that he has made diligent search for an officer to serve the same, and that no qualified officer can be found in said county to serve such summons in time, may empower any suitable person not a party to the action to serve the same, by an indorsement thereon to the following effect: "At the request, cost, and risk of the plaintiff, I authorize A. B. to serve and return this summons. E. F., Justice of the Peace." And the person so empowered shall possess all the authority of a constable in relation to the service of such summons, and be subject to the same obligations. (4970)

3898. Failure to execute—False returns—If any officer, without showing good cause therefor, shall fail to execute and duly return any process to him delivered, or make a false return, he 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. (4971)

3899. Next friend for infant plaintiff—No action shall be instituted by an infant until a next friend is appointed for him. Whenever requested, the justice shall appoint some suitable person, who consents thereto in writing, named by such infant, to act as his next friend in such action, who shall be responsible for the costs therein. (4972)

Authority of next friend continues on appeal (81-302, 85+107).

3900. Guardian for infant defendant—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 his guardian in defending 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, at the request of the plaintiff, may appoint any discreet person as such guardian. The consent of such next friend or guardian shall be filed with the justice, and such guardian shall not be liable for costs. (4973)

3901. Transfer of action—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 and files an affidavit stating that the justice before whom the same is pending is a material witness for said party, 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 the justice is near of kin to either party, such justice shall transfer said action, and all papers pertaining to the same, to some other justice of the same or an adjoining election district, and, if there be no other justice in the same or adjoining district, then to the nearest justice in the same county, who may thereupon proceed to hear and determine such action or proceeding in the same manner as the justice before whom it 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. (4974; '97 c. 136)

In transferring a case the justice should make an entry in his docket stating the fact of the transfer; the name of the justice to whom the case is transferred; and the time and place when and where the parties are to appear before him. If the justice to whom the case is transferred, in the absence and without the consent of one of the parties, tries the case at some other place the judgment is void as to such party (74-402, 77+220; 15-447, 360; 17-41, 23; 21-458). An order transferring a criminal case without specifying the time for appearance before the justice to whom the case was transferred held to require an appearance forthwith (21-458). A failure to make the requisite entries in the docket is waived by a voluntary general appearance before the justice to whom the case is transferred (28-400, 10+429; 74-402, 77+220. See 62-261, 64+564). A failure to make the requisite entries cannot be cured by entries in the docket of the justice to whom the case is transferred (15-447, 360). Affidavit for transfer need not be entered verbatim or in substance in docket (17-41, 23). Party estopped from questioning sufficiency of affidavit on which he obtains transfer (62-261, 64+564). Application for transfer after a demand for a jury held too late (57-30, 58+821). Application may be made after preliminary motions have been made and determined. A party does not waive his right to a transfer by going to trial after his application is denied (3-29, 7). Transfer to person not in fact a justice. Jurisdiction to make a further order, on discovery of mistake, transferring case to another justice held lost (76-32, 78+862). Certificate on transfer of papers held sufficient (30-526, 16+420. See 21-458). Inapplicable when justice is acting under §§ 5235-5260 (37-407, 34+737). Transfer under 1897 c. 151 (93-199, 101+72). Cited (26-25, 28, 1+43).

3902. Time for appearance—The parties are entitled to one hour after the time for appearance mentioned in the summons in which to appear, 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 proceeding. In such case he may postpone the time for appearance until the close of such trial or proceeding. (4975)

Inapplicable to proceedings under chapter 76 (22-37). Presumption on appeal that justice waited requisite time (72-246, 75+128).

3903. Failure to appear—Offer of judgment—If either party fails to appear within one hour after the time specified for the return of the process, or 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 a defendant who has appeared may, before answering the complaint, offer to allow judgment to be taken against him for the sum or property in said offer specified, with costs. If the offer is accepted, the justice shall thereupon enter judgment accordingly. If refused, 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 made subsequent to such offer, but must pay the defendant's costs and disbursements made and expended subsequently thereto. (4976)

Plaintiff must prove his claim though defendant does not appear (72-116, 118, 75+13). Offer of judgment (78-520, 81+520).

PLEADINGS AND TRIAL

3904. Time to plead—Adjournment on return day—The pleadings in justices' courts shall 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. (4977)

Without the consent of all the parties and the justice pleadings cannot be received after one week from the return day. Mere consent to an adjournment over a week is not a consent that pleadings may be filed at such time (8-243, 209; 14-110, 42; 22-130; 48-221, 50+1037. See 66-287, 290, 68+1077). But loss of jurisdiction by an adjournment for more than a week without pleadings may be waived by the parties (48-221, 50+1037). With the consent of the justice parties are at full liberty to agree to adjournments for any length of time or as to the time when pleadings shall be filed (66-287, 290, 68+1077; 72-100, 75+114). An adjournment may be had by consent on the return day though no issue is joined and no answer interposed (22-130; 25-111). When the complaint is filed on the return day and the defendant, omitting to plead, consents to an adjournment beyond a week the pleadings are closed and his right to answer is gone (22-130). Frac-

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tions of a day are disregarded in computing the time (38-389, 37+946). When the defendant does not appear on the return day the justice may adjourn the case for the convenience of the plaintiff in proving his claim (27-528, 8+767). Cited (42-35, 36, 43+687; 82-69, 84+648).

3905. Pleadings—Name and contents—The pleadings in justice's court are:

1. The complaint, stating the cause of action.
2. The answer, stating the grounds of defence.
3. When the answer sets up a counterclaim by way of setoff, the reply.

(4978)

3906. Oral or in writing—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. (4979)

Presumption on appeal that there were proper pleadings (8-258, 225). Pleadings whether oral or written to be construed with great liberality (38-389, 37+946; 42-13, 43+486; 68-169, 70+1078; 69-433, 435, 72+458; 32-465, 21+557; 79-311, 82+585). Complaint for services held sufficient (32-465, 21+557). Failure of justice to file not jurisdictional (18-216, 196).

3907. Complaint—The complaint shall state in a plain and direct manner the facts constituting the cause of action. (4980)

3908. Answer—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 defence, or a counterclaim upon which an action might be brought by the defendant against the plaintiff in a justice court. (4981)

Counterclaim cannot oust justice of jurisdiction (18-216, 196).

3909. Reply—When the answer contains a counterclaim, the plaintiff may reply, denying any of the material allegations relating thereto. (4982)

Unauthorized reply when no counterclaim pleaded may be taken as an admission (46-531, 49+300. See § 3913).

3910. Denial of knowledge or information—A statement in the 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. (4983)

3911. Accounts and instruments—Inspection by adverse party—When a cause of action or counterclaim arises upon an account or instrument for the payment of money only, it shall be 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 adverse party for inspection, with liberty to copy the same, and, if not so exhibited, may prohibit its afterward being given in evidence. (4984)

Account held a sufficient complaint (17-469, 447). Account held to remedy defect in complaint (21-329). Instrument held "for the payment of money." Statement of amount due on instrument held sufficient (69-433, 72+458). Failure to file held not a ground for reversal of judgment (34-295, 25+628).

3912. Pleadings verified—Every complaint, answer, or reply shall be verified by the oath of the party pleading, or, if he be not present, by the oath of his agent or attorney to the effect that he believes it to be true. The verification shall be oral or in writing, in conformity with the pleading verified. (4985)

Waiver of verification (1-225, 186; 21-403; 25-111). Presumption on appeal that oral complaint was verified (21-403). An unverified pleading is a nullity and may be disregarded (25-111). Docket need not contain verification (18-312, 281).

3913. Admission by failure to deny—Proof on default—Every material allegation in the complaint, or relating to a counterclaim in the 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. (4986)

Nothing but a counterclaim is admitted by failure to reply (5-455, 368; 1-225, 186). Plaintiff must prove his claim though defendant fails to appear and answer (72-116, 118, 75+13). Failure to reply to an unverified answer not an admission (25-111).

3914. 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 defence. If the court deems the objection well founded, it shall order the pleading to be amended, and, if the party refuses to amend, the defective pleading shall be disregarded. (4987)

Justice cannot dismiss for defects in complaint without first ordering an amendment (55-69, 56+464). Defective complaint held cured by verdict (27-498, 8+593). Cited (38-389, 37+946).

3915. 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. (4988)

30-308, 311, 15+252; 89-280, 283, 94+871.

3916. Amendment—The pleadings may be amended at any time before or during the trial, to supply any deficiency or omission in the allegations necessary to support the action or defence. 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 thereof, an adjournment may be granted. (4989)

Account filed treated as an amendment (21-329).

3917. Adjournment when pleadings closed—When the pleadings are closed, the justice, on the application of either party, shall adjourn the cause for not exceeding one week, or, upon application on oath, for any further time not exceeding thirty days. (4990)

When the pleadings are closed, whether on the return day or on an adjourned day, either party is entitled as of right to an adjournment not exceeding one week (81-236, 83+982; 82-69, 84+648; 90-325, 96+792; 64-231, 66+964; 22-130). No showing necessary (22-130; 64-231, 66+964). When the complaint is filed on the return day and the defendant, omitting to plead, consents to an adjournment beyond the week the pleadings are closed and his right to answer is gone (22-130). There must be some issue to be tried before a party is entitled to an adjournment as of right. A sham plea held not to make an issue (68-30, 70+775). After ordering an adjournment justice cannot change date to which adjournment was made in the absence of the parties (3-317, 223). Failure of justice to state in his docket at whose request adjournment is made not fatal (64-231, 66+964).

3918. Title to real estate—Case certified—If it appears on the trial of any action, 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 all other proceedings in the case shall cease. He shall certify and return to the district court a transcript of all the entries made in his docket relating to the case, together with all process and other papers relating to the action, in the same manner and within the same time as upon appeal; and thereupon the district court shall proceed in the cause the same as if the action had been originally commenced therein. (4991)

Justice cannot certify until it appears from the evidence on the trial that title to realty is in issue. It is not enough that the pleadings make such an issue (94-410, 103+15; 8-387, 344; 9-40, 28; 18-66, 51; 25-183; 28-267, 275, 9+772; 29-187, 12+529; 36-173, 30+457; 37-211, 34+20. See 30-27, 14+56; 31-392, 18+101). Title is not involved if it is not disputed (36-173, 30+457). There must be a real issue necessarily involved in the determination of the action (9-40, 28; 49-198, 51+819). Title is not ordinarily involved in unlawful detainer proceedings against a tenant (31-430, 433, 18+151; 45-26, 47+397). Mode of raising objection in district court to improper certification. Return of justice on certification held to give district court jurisdiction (24-324). An improper certification ousts both courts of jurisdiction and the district court has no authority to remand the case to the justice for trial. The only order the district court can make is one of dismissal (94-410, 103+15). Inapplicable to criminal actions (33-23, 21+847).

3919. Adjournment subsequent to first—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. (4992)

Showing necessary (1-100, 78; 5-280, 221). Objection to an adjournment during course of trial held waived by failure to except and by appearing and proceeding with the trial at the time to which it was adjourned (57-108, 58+683).

3920. When demands may be set off—Demands may be set off in the following cases:

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

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

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

4. It must exist at the time the action is commenced, and then belong to the defendant.

5. It can only be allowed in actions founded upon demands which could themselves be the subject of setoff.

6. If there are several defendants, the demand set off must be due to all of them jointly.

7. 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 setoff of a demand against the plaintiff shall be allowed, except as hereinafter specified.

8. If the action is founded upon a contract other than a negotiable promissory note or bill of exchange which has been assigned to the plaintiff, a demand against such plaintiff or any assignor of such contract existing at the time of the 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's assignor while the contract belonged to him.

9. If the plaintiff is trustee for another, or if the action is in the name of a plaintiff who has no real interest in the contract upon which it is founded, so much of the 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 be set off in an action brought by those beneficially interested. (4993, 4995)

6-420, 284; 36-300, 30+890.

3921. Setoffs against assignees—If the action is upon a negotiable promissory note or bill of exchange assigned to the plaintiff after it became due, a setoff 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 such assignor while the note or bill belonged to him. (4994)

31-33, 37, 16+426.

3922. Judgment on setoff—If the amount of the setoff established is less than the plaintiff's demand, plaintiff shall have judgment for the residue only. If it equals or exceeds such demand, defendant shall have judgment for his costs and for any balance found due him: Provided, that no such judgment shall be given against the plaintiff for a balance due from any other person. (4997, 4998)

TRIAL BY JURY

3923. Demand for jury—After issue is joined in any civil action in justice court, and before the commencement of the trial thereof, either party, on first

paying to the justice the jury fees in advance for one day's attendance, may demand that the action be tried by a jury. (5010; '99 c. 299)

Prepayment of jurors' fees (53-232, 54+1118).

3924. Jury, how chosen—Upon such demand being made, the justice shall direct the sheriff or any constable of the county to make a list in writing of the names of twenty-four persons qualified to serve as jurors in the district court, from which each party, commencing with the party demanding such jury, may strike alternately six names; and in case of the absence of either party, or his refusal to strike, the justice shall strike for him: Provided, that upon consent of both parties, entered on the record, a jury of six may be ordered by the justice, in which case a list of eighteen names shall be made, from which each party may strike six. (5010, 5011)

3925. Venire—The justice shall issue a venire requiring the officer to summon the persons whose names remain on such list to appear at a time and place mentioned therein to make a jury for the trial of said action, and if, in his opinion, the jurors cannot appear forthwith, he shall adjourn the cause for such reasonable time as he deems proper to enable the officer to summon the jurors, and for them to appear. (5011, 5012)

3926. Talesmen—If any juror shall not attend at the time, or if legal objections are raised to any who appear, the officer shall summon talesmen to supply the deficiency. (5012)

42-46, 47, 43+904.

3927. Jury sworn and kept together—The jury shall take the oath required by law, and, after the cause is submitted to them, shall be kept together in some convenient place, under the charge of the proper officer sworn for that purpose, until they agree upon a verdict, or are discharged by the justice. (5012)

Oath to officer held waived (23-138). Presumption of regularity in proceedings (16-329, 291). Justice should not enter jury room while jury are deliberating (31-504, 18+449).

3928. Verdict—Judgment—When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter the same in his docket, and render judgment according thereto. (5013)

See § 3889 Note 10.

3929. Failure to agree—Whenever the justice shall be satisfied that a jury, 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 on the evidence already before him, or that a new trial be had before him. (5014)

Discharge held proper (53-232, 54+1118). Power to issue new venire held lost by delay (86-210, 90+383).

3930. Failure to appear—Punishment—Every person who, being duly summoned as a juror, shall fail to appear or render a reasonable excuse for such failure, or who shall refuse to serve, shall be subject to a fine of not more than ten dollars. (5015)

3931. Challenges—Either party may challenge any juror for cause, and have him sworn to answer questions concerning the same, and may prove such cause by other evidence. Such challenge shall be decided by the justice.

3932. Trial without jury—When the trial is before the justice without a jury, he shall hear the proofs and allegations of the parties, and, after the case has been submitted, shall permit no further evidence to be given, or suffer any communication from either party or from any other person in relation to such action, except in the presence of both parties, or on due notice thereof served upon the absent party, until he has rendered judgment.

JUDGMENTS

3933. By confession—A justice may enter a judgment by confession of the defendant in any case when the debt or damage does not exceed one hundred dollars, upon compliance with the following requisites, viz.:

1. The defendant shall personally appear before the justice.
2. The confession shall be in writing, signed by the defendant, and verified by his oath, and filed with the justice.
3. 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 justly due or to become due.
4. 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. (5019, 5020)

72-116, 118, 75+13.

3934. Same—Costs—Judgment roll—The statement and affidavit shall be filed with the justice, who shall indorse upon it the time of filing, and enter in his docket a judgment for the amount confessed, with one dollar costs. The statement and affidavit, with the judgment indorsed thereon, thereupon constitute the judgment roll. (5021)

3935. Time of entry—In cases where the action is dismissed, or the plaintiff withdraws his action or is nonsuited, or where judgment is confessed, and 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. (5022)

“Forthwith” means within a reasonable time (55-58, 56+350). Parties may waive immediate entry (50-360, 52+958). Three day limitation absolute. Judgment entered thereafter void (56-75, 57+324; 86-210, 90+383). Failure of defendant to appear not a confession of judgment. Plaintiff must prove his claim and justice has three days in which to enter judgment (72-116, 75+13). Justice not required to make findings of fact or to enter reasons for judgment in docket (84-286, 289, 87+774). Need not enter order for judgment. Form of judgment held sufficient (91-282, 98+94).

3936. For costs on dismissal—Whenever an action is dismissed, 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. (5023)

3937. Mutual judgments set off—If there are mutual justices' judgments between the same parties, upon which the time for appeal has expired, and on which there is no existing execution, on the application of either party, and reasonable notice given to the adverse party, one judgment may be set off against the other by the justice who rendered the judgment against which the setoff is proposed. (5016)

3938. Setoff when before different justices—If the judgment proposed as a setoff was rendered before another justice, the party proposing such setoff shall produce before the justice a transcript of such judgment, accompanied by a certificate of the justice rendering the same 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 setoff against the judgment to which it is offered as such. 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 setoff. (5017)

3939. Duty of justice—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. If the justice allows the transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment to which it is allowed as a setoff. If he refuses such transcript as a setoff, he shall so certify on the same, and return it to the party who offered it. (5018)

3940. Bond for restitution—Where the summons is served by publication, or by leaving a copy thereof at the last usual place of abode of the defendant, before judgment is rendered the plaintiff shall cause to be filed with the justice a bond, with sufficient sureties, to be approved by the justice, in double the amount of the judgment claimed, conditioned that if the defendant, within six months from the rendition of the judgment, shall appear and be admitted to defend the action, the plaintiff will abide the order of the court therein, and will refund all sums collected upon such judgment, and make restitution of all property received in virtue thereof, if ordered by the court, and pay all costs and damages that may be adjudged against him. (5024)

15-241, 187; 64-485, 488, 67+540; 69-440, 72+452.

3941. Opening default—At any time within six months from the rendition of the judgment as provided in § 3940, the defendant shall be permitted to appear and defend such action upon complying with the following conditions:

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

2. He shall file a bond with said justice, with sureties 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.

3. He shall file a verified answer. If such answer contains a good defence to any cause of action stated in the complaint, the justice shall order the judgment reopened, and like proceedings shall thereafter be had therein as in other civil causes in justice's court. (5025)

15-241, 187.

3942. Transcript—Docketing in district court—Every justice who has rendered judgment for more than ten dollars, exclusive of costs, or who has the custody, by virtue of his office, of the docket of a former justice in which any such judgment appears, on demand and payment of his fees, shall give to the person in whose favor such judgment was rendered a certified transcript thereof. Upon filing such transcript with the clerk of the district court of the county, such clerk shall forthwith enter such judgment in the district court judgment docket, and note thereon the time of such filing. (5026)

Exemplified copy of such transcript and docket entry competent to prove judgment (32-544, 21+836; 50-310, 52+864). Transcript must be literal copy of the judgment of the justice and not a mere abstract thereof. Defect in this regard renders judgment voidable but not void (69-493, 72+842).

3943. Effect of filing transcript—Execution—From the time of filing the transcript thereof, every such judgment shall become a lien on the real estate of the defendant to the same extent as a judgment of the district court, shall be equally under its control, and execution shall issue thereon in the same manner and with like effect as upon a judgment of such court, and upon filing with the clerk of the district court of any other county a transcript of the original docket of the justice's judgment in the district court of the county in which it was rendered, such judgment shall be docketed therein, and thereupon become a lien upon the real property of the judgment debtor in such county in the same manner as in the case of filing transcripts of judgments in 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 personal property whereon to levy the same, which shall appear by the certificate of the justice filed with the clerk of the court. (5027)

Execution from district court presumed valid (32-544, 21+836).

3944. Execution, on what levied—In cases where the summons was served by publication, any execution issued out of a district or justice court shall be enforced only against property seized or attached by virtue of attachment or garnishee process issued in the action. (5028)

3945. Presumption in favor of judgment—Whenever a judgment rendered by a justice of the peace has remained undisturbed for a period of not less than two years, the jurisdiction of the justice over the parties and subject matter of the action at the time of rendering the same shall be presumed, when it appears from the docket or a 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 had acquired such jurisdiction. (5029)

A mere rule of evidence (51-181, 183, 53+460). Presumption conclusive on collateral attack. Inapplicable to direct attack (69-440, 72+452). The judgment of a justice of the peace is no more subject to collateral attack for error or irregularity than the judgment of a court of record (16-329, 291; 27-528, 8+767; 64-485, 67+540. See 45-145, 47+650).

EXECUTION

3946. Stay, when granted—Execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, and for the following periods of time, to be calculated from the day of the judgment, but a longer period may be agreed upon:

1. If the judgment be for a sum not exceeding ten dollars, exclusive of costs, one month.
2. If it be for a sum above ten dollars and not exceeding twenty-five dollars, two months.
3. If it be for a sum above twenty-five dollars and not exceeding fifty dollars, three months.
4. If it be for any sum above fifty dollars, six months. (5038)

3947. Recognizance—No such judgment shall be stayed unless the party applying therefor, within ten days after the judgment is rendered, shall file with the justice a recognizance to the adverse party, in double the amount of the judgment, including costs, executed by one or more responsible persons, not parties thereto, who shall justify, approved by the justice, conditioned for the payment of the judgment and costs, with interest at the rate of six per cent. per annum, and authorizing the justice to issue execution for such amount in default of payment. (5038)

3948. Form of recognizance—The recognizance may be in the following form:

We, A. B. and C. D., acknowledge ourselves indebted to in the sum of dollars, to be levied and collected of our several goods and chattels, if default be made in the conditions following:

Whereas, obtained judgment before, a justice of the peace of the county of, on the day of, 19...., against: Now, if such judgment, costs, and interest shall be paid at the expiration of months from the time it was rendered, this recognizance shall be void.

Dated (Signed)

Taken and acknowledged before me the date aforesaid.

.....
Justice of the Peace.
(5040)

3949. Execution at end of stay—If at the expiration of the stay the judgment be not paid, execution shall issue against both principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount, if any, was collected from the bail, and the time when the same was received. (5039, 5041)

3950. Execution, when issued—Upon every judgment rendered by a justice, except when stayed as aforesaid, execution shall be issued by such justice, or his successor in office, or any other justice lawfully having custody of the docket containing such judgment, in the manner hereinafter prescribed, at

any time upon demand after the expiration of the time allowed by law for appeal. (4963, 5030)

Irregularity in reissuing old execution held not to invalidate sale thereunder (32-259, 20+187).

3951. What to contain—The execution shall command the officer to levy upon the personal property of the person against whom the same shall be granted, except such as is exempt by law, to satisfy the debt or damages, with interest and costs, and to pay the money to the justice within thirty days. (5031)

Misrecital of date of judgment held not to invalidate sale (32-259, 20+187).

3952. Entries in docket—Indorsement—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 indorse thereon the time of its reception by him. (5032)

3953. Renewal—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. 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, and an entry of such renewal shall be made in the docket of the justice. (5033)

3954. Execution after filing transcript—If an execution shall not have been issued prior to the filing of a transcript of the judgment in the district court, the justice may issue an execution upon such judgment after the filing of such transcript, and, on the return thereof unsatisfied in whole or in part, shall, on demand of the judgment creditor, deliver to him a certified transcript of the entries in his docket relating to the issue and return of such execution, the amount collected thereon, and the costs accrued since the entry of judgment. Upon filing such transcript with the clerk of the court, he shall make a note of the facts in the docket where such judgment is entered, and thereafter execution may issue out of the district court for the amount of such judgment unsatisfied, with interest and accrued costs. (5033)

3955. Indorsement—Notice of sale—The officer, after taking property into his custody by virtue of the execution, shall indorse thereon the time of the taking, and a description thereof, and shall also, without delay, give at least ten days' posted notice in the election district where the property is to be sold, containing a description of the property, and the time and place when and where the same will be exposed for sale. (5034)

3956. Sale—Return—At the time and place so appointed, the officer shall expose the property to sale at public vendue to the highest bidder, and he shall in all cases return the execution, and have the money before the justice at the time of making such return. (5035)

3957. Officer not to purchase—No officer shall directly or indirectly purchase any property at any sale made by him upon execution. (5036)

3958. Receipt of money tendered—Every officer holding an execution shall receive and indorse thereon all money tendered to him in payment thereof, and shall give the person paying the same a receipt therefor, specifying on what account the same was paid. (5037)

REPLEVIN

3959. Affidavit—When the object of the action is to recover the possession of personal property, the plaintiff, or some other person, shall, before the writ is issued, make and file with the justice an affidavit stating 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. (5042, 5043)

Filing affidavit jurisdictional. Affidavit must state value (16-51, 38). Affidavit in language of statute as to exemption sufficient (32-492, 21+737). Cited as to right of action for exempt property (43-337, 338, 45+609).

3960. Bond—The plaintiff shall also execute a bond to the defendant, to be approved by the justice, in an amount at least double the value of the property sought, as appears by the affidavit filed, conditioned that he will appear on 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 proceedings, and an action may be maintained thereon to recover the amount of any judgment rendered, on dismissal of the action for want of jurisdiction or any other cause, or for failure to abide by any such judgment, or to return the property when ordered by the court upon such dismissal. (5044)

Omission of name of surety in body of bond not fatal (64-231, 66+964). Liability on bond (6-412, 277).

3961. Writ—When returnable—Upon the approval and filing of such bond by the justice, he shall issue a writ, directed to the sheriff or any constable of the county in which the action is brought, commanding him to take the property described therein and deliver the same to the plaintiff, and to summon the defendant to appear and answer the same on the return day of the writ. Such writ shall be returnable not less than six nor more than twelve days from its date, and served not less than six days prior to the return day thereof. (5045; '95 c. 78)

Issuance of writ compulsory (16-51, 38). Service of writ gives jurisdiction over person of defendant (31-429, 18+148; 64-5, 6, 65+959). Property delivered to plaintiff (27-304, 306, 7+261). Defects in writ waived by answering without objection (31-429, 18+148).

3962. Taking property—Service of writ—The officer receiving such writ shall forthwith take possession of the property mentioned therein, 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, and also serve the writ upon the defendant, if he can be found, in the same manner as a summons in justice court. (5046)

3963. Return of property to defendant—Bond—The defendant, or any one or more of several defendants, may require the return of the property at any time within two days after the service of the writ, upon executing to the plaintiff a bond in the same amount as the bond of the plaintiff, with sufficient sureties, approved by the justice, conditioned that the property shall be delivered to the plaintiff, if delivery be adjudged, and for the payment by such defendant of all damages and costs adjudged against him in the action. Upon the approval of such bond, the officer shall deliver the property to the defendant. If such return of the property is not required, the same shall be delivered to the plaintiff. (5278; '97 c. 32)

3964. Officer's return—Claimant made codefendant—Immediately after the delivery of the property to the party entitled thereto, the officer shall return the writ, and state fully in his return in what manner he served and executed the same. If a third party claims the property, he shall be made a codefendant. (5046, 5047)

3965. Judgment for return to defendant—Effect—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 the return of the property, and the 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. (5050)

27-304, 306, 7+261; 68-303, 304, 71+273.

3966. Judgment for defendant—If the plaintiff fails to establish his right to the property, or the action is dismissed, the defendant shall recover such damages and costs as under the circumstances he shows himself entitled to, and, in addition thereto, if the property has been taken from his possession, may have judgment for the return thereof or its value. (5049)

Judgment must be in alternative. May be corrected in this regard on appeal (14-460, 343; 27-304, 306, 7+261. See 83-351, 354, 86+350). Defendant's damages for detention not a counterclaim (36-300, 301, 30+890).

3967. Judgment for plaintiff—Execution—If the property be not obtained, plaintiff, if he establishes his right thereto, shall recover the value of that right. Whether obtained or not, he shall recover the damages and costs he has sustained in consequence of the illegal detention or taking or withholding thereof, and upon entry of any such judgment the justice, at the expiration of ten days thereafter, if no appeal be taken, shall issue execution for the costs and damages awarded to such plaintiff, together with the amount due plaintiff as the value of the property not obtained, and to which plaintiff is entitled. (5048)

If plaintiff recovers, but has not obtained possession of the property, judgment should be in the alternative for the return of the property or its value. Proper judgment may be ordered on appeal (83-351, 86+350). Cited (31-429, 18+148).

ATTACHMENT

3968. When allowed—A creditor may proceed against the property of his debtor by attachment, at the commencement or during the pendency of an action, in the cases, upon the conditions, and in the manner provided in this subdivision. (5051; '99 c. 80)

3969. Affidavit—Requisites—Before a writ of attachment shall be issued, the plaintiff or some person in his behalf shall make and file with the justice an affidavit stating that the defendant 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 setoffs, and that the same is due upon contract, express or implied, or upon a judgment or decree of some court, and containing a further statement that the affiant has good reason to believe that the defendant—

1. Is a foreign corporation, or is a domestic corporation, and that all of its officers upon whom a summons may be served are non-residents of the state, or cannot be found therein;
2. Is a non-resident of this state;
3. Has absconded or is about to abscond from the state;
4. Has removed or is about to remove any of his property out of the state, with intent to defraud his creditors;
5. Resides in another county and more than one hundred miles from the residence of the justice;
6. Contracted the debt under fraudulent representations;
7. So conceals himself that the summons cannot be served upon him; or
8. Has fraudulently conveyed or disposed of, or is about to fraudulently convey or dispose of, any of his property or effects, so as to hinder, delay, or defraud his creditors. (5052; '99 c. 80)

Affidavit in language of statute sufficient (3-29, 7). Attachment may issue in actions on contract in which damages are unliquidated. Affidavit in substantial conformity with statute held sufficient (50-381, 52+964). Affidavit by agent. Recital of agency held sufficient (54-338, 56+47). Fact of agency need not appear from affidavit if it appears from the files and records in the action (66-287, 68+1077). Effect of false affidavit (74-302, 77+144).

3970. Writ, when returnable—In the first five cases mentioned in § 3969, the writ shall be returnable in three days. In all other cases it shall be returnable as an ordinary summons. (5053)

3-29, 7.

3971. Bond—Before issuing the writ, the justice shall require a bond on the part of the plaintiff, conditioned that, if he fails to recover judgment, the

plaintiff will pay all costs that may be adjudged against him, and all damages that the defendant may sustain by reason of the attachment, not exceeding one hundred dollars. (5054)

3972. Writ, how executed—The officer shall execute the writ by attaching the personal property of the defendant not exempt by law, and by serving upon him, in the manner required in the case of a summons, a copy of the writ, with a certified inventory of the property attached, and shall make due return of his doings thereunder. (5055; '95 c. 34)

Failure to serve copy of inventory not fatal (66-287, 68+1077).

3973. Where defendant resides in another county—Whenever it shall appear from the return of the officer that he has attached property in his county, but that the defendant cannot be found therein, and it shall be made to appear by affidavit that defendant resides in another county in this state, the action shall be continued for a period not exceeding twenty days, and the summons shall be served in the same manner as a district court summons. (5056)

78-87, 80+852.

3974. Service by publication—Whenever it shall appear by the return of the officer upon a writ of attachment that he has attached property thereunder, and it shall further appear to the satisfaction of the justice from said return or the affidavit for attachment filed in the action that the defendant is a non-resident, or cannot be found in the state, or that he keeps himself concealed therein to avoid the service of legal process, the justice may order that service of the summons be made by publication, as in this chapter prescribed. Upon making such order, the justice shall adjourn the action to the time when such summons is made returnable. (5056-5058)

46-318, 48+1132.

3975. Forthcoming bond—Whenever property of the defendant is attached, the defendant, or any other person in his behalf, may obtain possession thereof by giving a 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; and the property of the defendant attached in the possession of any other person may be retained by such person upon giving bond with like sureties and conditions. (5059, 5060)

Obligors on bond cannot question levy or want of sureties (21-434).

3976. Perishable property—When property 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, is seized on attachment, the justice may order the same to be sold by the officer in the same manner and upon the same notice as is required in the case of goods sold on 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, had it remained unsold. (5061)

3977. Compensation of officer—The justice may allow the officer having charge of property seized on attachment reasonable compensation for his trouble and expense in keeping the same. (5062)

3978. Procedure—Like pleadings and proceedings shall be had, as far as practicable, in actions begun by attachment, and actions founded on contract commenced by summons. (5063)

3979. Dissolution—An attachment 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 sufficient surety, approved by the justice, in double the amount claimed in the writ or complaint, conditioned that, if judgment is rendered against him, he will pay the same, with costs and interest. On such dissolution the property attached shall be released, and the action proceed as if commenced by summons only. (5064, 5065)

37-296, 33+855.

3980. Sale on execution—When judgment is rendered in an action begun by attachment, 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 chapter. (5066)

APPEALS

3981. May be taken, when—Any person aggrieved by any judgment rendered by a justice of the peace, 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 in any case where 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: Provided, that an appeal on 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; and provided, further, that this subdivision shall not apply to actions of forcible entry and detainer. (5067)

Defendant may appeal on questions of law and fact where the amount claimed exceeds thirty dollars although the recovery against him is less than fifteen dollars (11-164, 104; 46-259, 48+917). Costs not considered in determining whether judgment exceeds fifteen dollars (1-289, 223). Right of plaintiff to appeal unaffected by counterclaim (30-206, 14+897). If city is in two counties appeal lies to district court in either county (63-145, 65+261). Objection to unauthorized appeal waived by appearance in district court (53-508, 55+597).

3982. Requisites—No appeal shall be allowed unless the following requisites are complied with within ten days after judgment is rendered:

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

2. 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 sufficient surety, to be approved by the justice, conditioned that the appellant shall prosecute his appeal with effect, and abide the order of the court therein.

3. 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 appeal generally, as follows: That the appeal is taken upon questions of law alone, or upon questions of both law and fact. Such notice shall be served by delivering a copy thereof to the person upon whom service is made, or by leaving a copy at his residence; 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.

4. The party appealing shall pay to the justice his fees for making the return, if demanded by him. (5068)

1. **Affidavit**—Jurisdictional (11-72, 42; 22-551; 49-353, 51+1103; 79-311, 82+585). If one is in fact filed with the justice it may be carried to the district court by a supplementary return (11-72, 42). It need not be made before the justice who tried the case and it is not invalid because of a mistake in the date of the judgment (15-447, 360). It must appear on its face to have been made before a proper officer (22-551); but if it appears on its face that the person subscribing the jurat was a proper officer to take the affidavit it is sufficient although the official designation be not affixed to such subscription (33-380, 23+547). All appellants in a joint judgment must join in the affidavit (79-311, 82+585). An affidavit purporting to be made before a notary public is a nullity without the notarial seal. A defective affidavit cannot be amended after the statutory time for appealing has expired (81-225, 83+835).

2. **Bond**—See cases under § 3989.

3. **Notice of appeal**—It is a jurisdictional prerequisite to the allowance of an appeal that the original notice of appeal and proof of service thereof be filed with the justice within the prescribed time and the return must include these papers to give the district court jurisdiction (69-505, 72+797; 23-4; 15-196, 151; 27-332, 7+360; 34-97, 24+341; 49-353, 51+1103; 84-102, 86+876). If they were in fact properly filed but not included in the original return they may be carried to the district court by a supplementary return (69-505, 72+797; 15-447, 360). In an early case it was held that service of notice cannot be waived (15-196, 151), but such is probably not now the law (See 53-508, 55+597; 74-302, 77+144). A notice signed by a party's attorney as such is good although neither the party nor his attorney appeared in the justice court (80-438, 83+383). The notice

must be in writing and properly signed (15-196, 151). A notice which wholly fails to show by what justice or in what county the judgment was rendered is a nullity (27-332, 7+360). An error in the date of the judgment is immaterial (15-447, 360). The notice must state specifically the grounds upon which the appeal is taken, whether upon questions of law or upon questions of law and fact (84-102, 86+876; 94-405, 103+11). Docket entries certified to the district court are not conclusive as against jurisdictional facts contained in the notice itself (84-102, 86+876). An affidavit of service is to be liberally construed (45-293, 47+810). Proof of service on the "wife" of a party without showing that it was at his residence is insufficient (49-353, 51+1103). A notice served on a county attorney need not designate him as such (55-329, 56+1068). Proof of service of a notice by the admission of an agent who did not act or appear for the party on the trial and whose authority is not shown is insufficient (34-97, 24+341). A defective notice or proof of service cannot be aided by extrinsic evidence or amended after the statutory time has expired (27-332, 7+360; 23-4; 49-353, 51+1103; 34-97, 24+341; 66-471, 69+334; 81-225, 83+835). An admission of service is a sufficient proof of service (15-447, 360). Proof of service on "Empey & Empey" is not proof of service on E. E. Empey (66-471, 69+334).

3983. Allowance—Effect—Upon compliance with the foregoing provisions, the justice shall allow the appeal, and make an entry of such allowance in his docket. The allowance of the appeal shall suspend further proceedings before the justice. (5069)

See § 3985 Note 4.

3984. Return—Evidence, when included—Within twenty days after filing the notice of appeal, and before the first day of the next general term of the district court, the justice shall file in the office of the clerk of such court a transcript of all the entries made in his docket, together with all process and other papers relating to the action and filed with the justice; and upon the filing of such 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 therein, except as in this chapter otherwise provided. Upon an appeal upon questions of law alone, the justice, upon the request of either party, shall return to the district court, as a part of his return on the appeal, a transcript of all the evidence given upon the trial. (5070)

The return must show affirmatively compliance with every jurisdictional prerequisite to an appeal; otherwise the district court will not acquire jurisdiction and must dismiss the appeal or compel a return (11-72, 42; 69-505, 72+797; 22-551; 49-353, 51+1103; 79-311, 82+585; 81-225, 83+835; 84-102, 86+876). The return cannot be disputed or supplemented by affidavits (46-23, 48+443. See 74-402, 77+220). Upon the filing of the return the district court becomes possessed of the action (69-346, 72+568; 19-464, 406; 27-498, 8+593). Upon an appeal on questions of law the justice is not required to return the evidence unless requested and unless it affirmatively appears from the return that such a request was made or that all the evidence is returned without request it will be presumed that sufficient competent evidence was introduced under the issues to support the judgment (24-95; 29-262, 13+47; 69-433, 72+458; 34-295, 25+628). If all the evidence is returned it will be considered by the district court although no request was made for its return by the appellant (31-119, 16+704). The certificate of the justice that the return contains all the evidence must be positive and certain (12-216, 137; 31-119, 16+704; 53-504, 507, 55+628; 69-433, 72+458; 77-510, 80+628; 46-23, 48+443; 77-233, 82+311). A further or supplementary return may be ordered (46-23, 48+443; 53-51, 54+935; 54-338, 56+47; 11-72, 42; 15-447, 360; 69-505, 72+797; 25-41, 47; 21-500; 84-102, 86+876). A return is to be construed as a whole (15-196, 151). The return must show jurisdiction both of the person and of the subject matter (14-357, 275; 15-196, 151). It need not show the county of the court (18-216, 196). Docket entries certified are not conclusive as against jurisdictional facts contained in the notice itself. A certificate that all papers have been returned will be presumed to refer to the only notice found in the files so returned, and, if its identity is questioned, the burden is on the party who denies it to secure an amended return, if necessary to determine the question (84-102, 86+876). In dismissing an appeal for want of a return the court cannot enter a judgment of affirmance under 1895 c. 24 (66-432, 69+222).

3985. Appeals, how tried—Judgment—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 upon questions of law and fact, the action shall be tried in the district court in the same manner as though originally commenced therein. (5071; '95 c. 24)

1. Appeals on questions of law and fact—An appeal on questions of law and fact carries the case to the district court for a trial de novo upon the merits irrespective of errors or irregularities occurring in the course of the trial in the justice court or in the

judgment rendered therein (3-106, 58; 14-214, 153; 18-216, 196; 25-41; 31-479, 18+283; 36-532, 32+749; 38-376, 37+947; 40-388, 42+83; 51-252, 53+546; 74-302, 77+144). By taking such an appeal a party waives all objection to the jurisdiction of the court over his person (31-479, 18+283; 74-302, 77+144), and objection that the justice was without jurisdiction because of the amount in controversy (25-128). The district court may allow an amendment of the complaint increasing the amount of plaintiff's claim beyond the jurisdiction of a justice (40-388, 42+83), or an amendment of the answer setting up a new defence (14-214, 153). If the plaintiff amends his complaint in the district court the defendant has a strict right to answer it (80-438, 83+383). Where a defendant who defaults in the justice court appeals to the district court he is not entitled to answer in the latter court as a matter of course. He must show facts tending to excuse his default. If any fair excuse is offered the discretion of the court is to be liberally exercised in allowing such an application (28-38, 8+903; 36-532, 32+749; 80-438, 83+383). Where before the justice judgment is for one defendant and against the other and the latter appeals the trial in the district court proceeds against both defendants and judgment may be rendered against both (3-106, 58). The trial in the district court is of the issues made by the pleadings in the justice court unless other pleadings are ordered or allowed (1-17, 1; 45-184, 47+717).

2. **Appeals on questions of law alone**—On an appeal upon questions of law alone the district court does not act strictly as an appellate court to "review the determination of the justice court"; it tries the issues presented by the record and renders the proper judgment (14-460, 343; 25-41). Such an appeal brings before the district court for review all errors of law, jurisdictional or otherwise, apparent on the return of the justice and properly excepted to when an exception is necessary (25-41; 14-142, 110). The appeal is to be determined solely upon the return of the justice and the court cannot relieve a party from an admission made of record upon a trial in the justice court (86-6, 89+1125). The district court may affirm, or reverse, or modify the judgment of the justice and in case of a reversal, it may, in a proper case, determine the merits, and render judgment thereon for the appellant (14-460, 343; 25-41; 68-166, 70+1083; 27-304, 7+261; 27-29, 6+407; 53-54, 54+935; 30-308, 15+252; 21-458; 83-351, 86+350; 83-7, 85+719; 84-286, 87+774). Where a justice in his decision excludes a material issue under the pleadings from his consideration, on appeal the district court is authorized to pass upon the question so excluded upon the evidence as if it was an original issue in the district court (84-286, 87+774). The statute makes no provision for remanding a cause to the justice and ordering a retrial, in case of a reversal. A simple reversal, not determining the merits, has the same effect as a judgment of dismissal. It annuls all the proceedings before the justice and leaves the party to proceed de novo as though no action had been commenced; and in rendering such a judgment the court may and ought to restore the parties to the situation they were in before the action was commenced (27-304, 7+261; 40-382, 42+85). A case is never remanded to the justice for a retrial. An appeal properly perfected operates to supersede the judgment of the justice whether it is upon questions of law alone or upon questions of law and fact (21-458; 27-304, 7+261). When all the evidence is returned the appellant may raise, as a question of law, the point that there is no evidence to justify the judgment; but in such a case the court can go no further than to determine whether there is any evidence reasonably tending to support the judgment and cannot consider the question of the preponderance of the evidence (38-415, 38+100; 41-291, 43+9; 83-351, 86+350; 84-286, 87+774). The district court will consider the sufficiency of the evidence if all the evidence is included in the return although it was included without request (31-119, 16+704; 53-504, 55+628). If the return does not contain all the evidence or any request for its return the sufficiency of the evidence will not be considered but it will be presumed that sufficient competent evidence was introduced under the issues to support the judgment (24-95; 29-262, 13+47; 69-433, 72+458; 34-295, 25+628). A judgment cannot be reversed merely because the justice, having been requested to do so, has not returned all the evidence. The party's remedy in such a case is by proceedings to compel a full return (53-51, 54+935). By appealing on questions of law alone a party does not waive objection to the jurisdiction of the court over his person (25-41; 74-302, 77+144). After the district court has rendered its decision it may reconsider and modify it (53-54, 54+935). Where the return fails to specify the items of the costs taxed the judgment will not be reversed or modified on that account, unless it appears that items not taxable have been erroneously included. The remedy is an amended return (54-338, 56+47). The pleadings will be construed with great liberality when objection is made to them for the first time on appeal (25-111; 68-169, 70+1078). A judgment will not be reversed for any mere defect in the return (15-447, 360). Dismissing an appeal instead of affirming the judgment where the respondent is entitled to affirmance is immaterial error (43-160, 45+4). Failure to file a note sued on is not a ground for reversal (34-295, 25+628). Admissions in an unauthorized reply in the justice court may be treated in the district court as formal admissions on the trial (46-531, 49+300). Under existing statutes the scope of the review in the district court is not limited to objections raised and passed upon in the justice court (81-236, 83+982; 84-286, 87+774). Formerly the rule was otherwise (See 12-326, 216; 18-216, 196). But it is still necessary to except to rulings of a justice as to the admission of evidence, the competency of witnesses, and

to all other rulings made during the course of the trial, in order to review them on appeal on questions of law alone (81-236, 83+982; 17-337, 313).

3. Presumptions on appeal—Where a justice has acquired jurisdiction the same presumption as to regularity is indulged in favor of his proceedings as those of a court of record (16-329, 291; 12-216, 137; 21-403; 64-485, 67+540; 72-246, 75+128; 16-51, 38; 54-338, 56+47; 64-231, 234, 66+964; 21-30, 31; 25-370, 372). After judgment every reasonable intendment is to be indulged in favor of the validity and regularity of justice court proceedings (68-169, 70+1078; 21-500; 84-102, 86+876; 12-216, 137). Docket entries presumed valid (21-500). Presumption that oral complaint was verified (21-403). Presumption as to sufficiency of evidence (See Note 2). The presumption is that the justice did his duty and taxed only such costs as were legally taxable (54-338, 56+47). A certificate attached to a return is presumed to refer to the papers returned (84-102, 86+876).

4. Status of case after appeal—When an appeal from a judgment of a justice of the peace is properly taken and a return thereto is made the whole proceedings before the justice become mere *lis pendens* in the district court (1-179, 153; 19-239, 198. See 83-351, 86+350). The district court becomes "possessed of" the action and subsequent proceedings are not jurisdictional (69-346, 72+568).

5. Dismissal of action—On appeal the plaintiff may dismiss his action as if it had originated in the district court (1-179, 153).

3986. Entry on calendar—Effect of omission—The appellant shall cause an entry of the appeal to be made by the clerk of the district court upon the calendar for trial, on or before the second day of the term, unless otherwise ordered by said court, and the plaintiff in the justice court shall be the plaintiff in such district court. 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 a succeeding term, and the judgment of the court below shall be affirmed, with interest and the costs of both courts: Provided, that it shall not be necessary for either party to notice the appeal for trial, or file a note of issue. (5072)

The right of an appellant to enter his appeal terminates with the second day of the term and does not continue until the respondent has exercised his right under the last clause of the section to have the judgment of the justice affirmed and entered against the appellant (69-351, 72+569). The omission of the appellant to cause the entry does not affect the jurisdiction of the district court. The court may relieve the appellant from the consequences of his omission and try the cause on its merits (69-346, 72+568; 69-351, 72+569). Where such relief has been improvidently granted the court may subsequently vacate its order and restore the respondent to the right to enter the judgment of the justice against the appellant (69-351, 72+569). The setting aside of a judgment entered on motion of appellee for failure to place the appeal on the calendar is discretionary with the district court and its action will not be reversed on appeal except for abuse of discretion (80-22, 82+1084). An appeal on questions of law alone may be brought on for hearing at any time (53-232, 54+1118), and at any place in the district. An appeal may be placed on the calendar although thirty days have not elapsed since its allowance (27-498, 8+593). Cited (17-188, 162; 66-432, 69+222; 78-33, 80+783).

3987. Allowance compelled, when—If a justice shall fail to allow an appeal 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 therein. (5074)

3988. Return or amendment compelled, when—Upon an appeal being made and allowed, the district court may by attachment compel a return by the justice of the proceedings in the action, and of the papers required by him to be returned, and, whenever satisfied that the return of the justice is essentially erroneous or defective, may, in like manner, compel him to amend the same. (5073, 5075)

15-447, 360. See cases under § 3984.

3989. Defective bond—No appeal allowed by a justice shall be dismissed on account of there being no bond, or of the bond given being defective or insufficient, if the appellant, before the motion to dismiss is determined, shall execute a sufficient bond, approved by the judge of the district court, and pay all costs incurred by reason of such default or omission. (5076)

15-447, 360; 23-4, 5; 59-107, 60+1083; 79-249, 82+578. See 46-237, 48+1022; 30-532, 16+411; 35-51, 26+906; 35-468, 29+72; 93-422, 101+048.

3990. Appeal to be tried, when—All appeals allowed thirty days before the first day of the term of the district court held next after the appeal is allowed shall be determined at such term, unless continued for cause. (5077)

27-498, 501, 8+593; 53-232, 235, 54+1118.

3991. Judgment, when affirmed—Against sureties—In all cases of appeal from a justice court, the district court shall have power to affirm the judgment upon a dismissal of the appeal for any cause, or upon any default of the appellant to appear and prosecute his appeal; and in all cases, if the judgment is against the appellant, the same shall be rendered against him and his sureties in the bond. (5078; '95 c. 24)

8-258, 225; 28-38, 8+903; 28-40, 8+903; 44-510, 512, 47+160; 66-432, 69+222; 66-470, 69+215; 81-228, 230, 83+836.

3992. Enforcement against sureties—If upon an execution issued upon such judgment the principal shall not pay the amount thereof, and the officer cannot find sufficient property of said principal to satisfy the same, it shall be enforced against the sureties, and the officer shall specify in his return by whom the money was paid, and the time of payment. (5079)

3993. Rights of surety paying—After a return of the execution satisfied in whole or in part out of the property of the surety, such surety is entitled to a judgment against the principal, on motion, for the amount so paid by him, 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 shall be evidence of the facts therein stated on the hearing of such motion. (5080)

3994. Return—Justice out of office—Whenever an appeal shall be taken from a judgment after the justice who rendered it has gone out of office, he shall make return of such appeal in like manner and with like effect as if the appeal had been taken while he held such office. (5081)

CONTEMPTS

3995. Proceedings—Punishment—No person shall be punished for contempt before a justice of the peace until given an opportunity to be heard in his defence. If present, the offender may be summarily arraigned without a warrant. If not, the justice may issue his warrant to bring such offender before him. Punishment for a contempt may be by fine not exceeding twenty dollars, or imprisonment in the county jail not exceeding two days. (5083-5085)

3996. Record of conviction, where filed—Commitment—Upon a conviction for contempt, the justice shall make up a record of the proceeding, stating the particular circumstances of the offence, and the judgment rendered thereon, and shall enter the same in his docket as in civil cases, and file the same with the clerk of the district court. Every warrant of commitment for contempt shall set forth the particular circumstances of the offence, or it shall be void. (5086, 5087)

3997. Disobedient witness—When any witness attending before a justice of the peace in any cause shall refuse to be sworn in some form prescribed by law, or to answer any proper question, such justice may, by order, commit him to the county jail. Such order shall specify the cause for which the same is issued, and, if for refusing to answer a 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. The justice shall thereupon adjourn such cause, upon the request of the party, for such time as shall be reasonable, or until the witness shall testify therein. (5088-5090)

FORMS IN CIVIL ACTIONS

3998. Schedule of forms—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:

SUMMONS

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of said county:

You are hereby commanded to summon, the defendant herein, 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, 19...., at o'clock m., at my office in the in said county, to answer the complaint of, plaintiff, in a civil action, wherein the plaintiff claims the sum of dollars, with interest thereon from the..... day of, 19...., at the rate of per cent. per annum; and have you then and there this writ.

Given under my hand and dated this day of, 19....
.....
Justice of the Peace.

SUMMONS FOR PUBLICATION

State of Minnesota, }
County of..... } ss.

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, 19...., at o'clock m., at my office in the of, in said county, to answer to the complaint of, plaintiff, in a civil action, wherein the plaintiff claims the sum of dollars. Should you fail to appear at the time and place aforesaid, judgment will be rendered against you, upon the evidence adduced by said plaintiff, for such sum as he shall show himself entitled to.

Given under my hand and dated this day of, 19....
.....
Justice of the Peace.

EXECUTION

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of said county:

Whereas, judgment against for the sum of dollars and cents, lawful money of the United States, and for dollars and cents, costs of suit, was recorded the day of, 19...., before....., at the suit of

These are, therefore, to command you to levy distress on the personal property 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 judgment, interest, and costs. Hereof fail not, under penalty of the law.

Given under my hand this day of, 19....
.....
Justice of the Peace.

WRIT OF ATTACHMENT

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of said county:

You are hereby commanded to attach the personal property of, or so much thereof as shall be sufficient to satisfy the sum of, with interest and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the personal property so

attached may be subject to further proceeding thereon, as the law requires; and also to summon the said, defendant, if to be found, to be and appear at my office in the, in said county, on the day of, 19...., at o'clock m., to answer to the complaint of, plaintiff, in a civil action, wherein the plaintiff claims the sum of dollars, with interest thereon from the day of, 19...., at the rate of per cent. per annum; and have you then and there this writ.

Given under my hand and dated this day of, 19....

Justice of the Peace.

WRIT OF REPLEVIN

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of said county:

Whereas,, of said county, complains that has taken and does unjustly detain the following described personal property, of the value of dollars, to wit:

Therefore you are commanded that you cause the same property to be replevied without delay, and if within two days after the service of this writ the said shall require a return of the property, and shall execute to the plaintiff a good and sufficient bond, duly approved by me, according to the statute in such case made and provided, that you deliver the said property to him, but, if said bond is not given at the expiration of the two days, that you cause the said goods and chattels to be delivered to the said, and also that you summon the said to be and appear before me, one of the justices of the peace in and for said county, on the day of, 19...., at o'clock m., at my office in the in said county, to answer complaint of

Given under my hand this day of, 19....

Justice of the Peace.

SUBPOENA

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to

You are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, at my office in the, on the day of, 19...., at o'clock m., 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, 19....

Justice of the Peace.

VENIRE

State of Minnesota, }
County of..... } ss.

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, 19...., at o'clock m., at my office in the, in said county, 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, 19....

Justice of the Peace.

WARRANT FOR CONTEMPT

State of Minnesota, }
County of..... } ss.

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....., 19...., before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this.....day of....., 19....

.....,
Justice of the Peace.

RECORD OF CONVICTION FOR CONTEMPT

State of Minnesota, }
County of..... } ss.

Whereas, on the.....day of....., 19...., while 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....., 19....

.....,
Justice of the Peace.
(5092)

CRIMINAL PROCEEDINGS

07 3999 - 234

3999. Jurisdiction—Justices of the peace have power and jurisdiction throughout their respective counties as follows:

1. To cause to be kept all laws for the preservation of the peace.
2. 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.
3. To arrest and cause to come before them persons who attempt to break the peace, persons who keep or who frequent houses of ill fame, and common prostitutes, and compel them to give security for their good behavior and to keep the peace.
4. To cause to come before them persons who are charged with committing any criminal offence, and commit them to jail or bail them, as the case may require:

Provided, however, that no justice of the peace shall have jurisdiction of offences committed in any city or village wherein a municipal court is organized and existing; but all such offences otherwise cognizable by justices and those arising under the charter, ordinances or by-laws of the city or village shall be examined or tried by such municipal court, except within one-half mile of the outer limits of the state fair grounds. (5093)

See 1905 c. 104

4000. Same—To try and determine—Justices have power to hold a court, subject to the provisions hereinafter contained, to hear, try, and determine all charges for offences 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. (5094)

25-370, 372; 27-16, 6+380; 40-63, 65, 41+363; 58-431, 59+1038. See 16-474, 426; 42-147, 43+845; 47-270, 50+226; 50-128, 52+387, 531.

4001. Complaint—Warrant—Upon complaint made to any justice that any such offence 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 offence has been committed, the justice shall issue, his warrant, reciting the substance of the complaint, and require the officer to whom it is directed forthwith to arrest the accused and 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. (5095)

When a written complaint showing an offence is presented to a justice and sworn to before him it is a sufficient examination of the complainant under the statute (33-480, 24+321). Jurisdiction held not lost by proof on the trial that the complainant had no knowledge of the commission of the offence except upon information and belief (26-6, 46+445). Sufficiency of warrant (19-108, 78; 21-47). Duty of constable to make complaint (16-408, 365). Complaint for obstructing public highway (27-16, 6+380). Duty of constable to execute warrant. Fees (37-491, 35+364). Cited (92-171, 174, 99+800).

4002. 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 make all such other entries as are required in civil actions. (5096)

Not required to enter the testimony (30-48, 14+256). Error in title of action held immaterial (26-6, 46+445; 34-254, 25+449). Entries as evidence (10-350, 277; 16-182, 161). Justice need not sign docket (10-350, 277). Entries presumptively true (21-500). See § 3889.

4003. Action, when tried—On the return of the warrant with the accused, the justice shall proceed to hear, try, and determine the action within one day, unless continued for cause. (5097)

4004. Bail—Commitment—From the time of the return of the warrant until the conclusion of the trial, the accused may give bail, with sufficient surety, for his appearance at the time fixed for the trial, and from time to time thereafter until discharged by law, or, in the event of failure to do so, he may be committed to jail for safe-keeping, by order of the justice, or left in the custody of the officer. (5098)

4005. Form of recognizance—The following form of recognizance may be used in all courts not of record, upon the adjournment of any criminal action, proceeding, or examination:

We, A. B. and C. D. and E. F., hereby give bail in the sum of..... dollars for the appearance of said A. B. upon the.....day of....., 19...., at.....m. of that day, before G. H., a justice of the peace of said county, at his office in the.....of....., in said county, to answer (the criminal prosecution, examination, or proceeding) for (state offence), and from time to time thereafter until discharged by law.

Dated this.....day of....., 19....

.....
.....
.....

Taken and acknowledged before me the date aforesaid.

.....
Justice of the Peace.

4006. Arraignment—Plea—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 docket. If the accused refuses to plead, the justice shall enter the fact in his docket, with a plea of not guilty in his behalf. (5099)

4007. On plea of guilty—If the accused pleads guilty to such charge, the court shall thereupon convict him of the offence charged, and render judgment thereon. (5101)

4008. Plea of not guilty—If the plea is not guilty, and a jury is waived by the accused, the justice shall proceed to try such issue, and determine the same according to the evidence produced against and in behalf of the accused. (5100)

53-142, 146, 54+1068.

4009. Jury—List of names—After the joining of issue, unless the accused expressly waives his right to a trial by jury, the court, before proceeding to an investigation of the merits of the action, 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. (5102)

4010. Striking names—Venire—From such list the complainant and accused may each strike six names, and, if either party refuses so to strike, the justice shall direct some suitable, disinterested person to strike such names for either or both of the parties so neglecting. When such names are stricken from the list, 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 to appear before such justice at a time and place to be named therein, as a jury for the trial of such cause. (5102, 5103)

4011. Jury, how summoned—The officer to whom such venire is delivered shall summon such jury personally. He 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. (5104)

4012. Deficiency, how supplied—If any such jurors fail to attend, or if there is legal objection to any that appear, the justice shall direct the sheriff or any constable who may be present and disinterested to summon bystanders or others who are competent, and against whom no cause of challenge appears, to supply the deficiency. Either party may challenge any juror for cause. (5105, 5107)

4013. New jury, 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 prescribed in respect to the first jury, unless the accused consents to be tried by the justice without a jury, in which case the issue shall be tried by the justice the same as if a jury had been waived. (5106)

4014. Trial by jury—After being sworn the jury shall sit together and hear the allegations and evidence in the case, which shall be given 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 court, and a sheriff or constable shall be sworn to take charge of them in like manner as upon jury trials in justices' courts in civil causes. (5108)

Presence of accused may be waived (21-47. See 25-370).

4015. Verdict—When the jury have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter it in his docket. (5109)

Presumption that verdict was rendered publicly (25-370).

4016. Judgment on conviction—Whenever the accused is tried under the preceding provisions of this subdivision and found guilty, or is convicted 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. (5110)

4017. Acquittal—Judgment for costs—If the accused be acquitted, he shall be immediately discharged; and if the justice before whom the trial is had

shall certify in his docket that the complaint was wilful and malicious, and without probable cause, he shall enter judgment against the complainant for all costs that shall have accrued in the proceedings had upon the complaint. The complainant may stay such judgment for thirty days by giving a bond to the state, with sufficient sureties, conditioned to pay the same at the expiration of such time; but, if the complainant shall neglect to pay such judgment or give such bond, execution may issue as in other cases. The defendant in such judgment may appeal therefrom as in civil cases tried before a justice, and the cause shall be tried by the appellate court on the records and evidence in the case duly certified and returned by the justice. (5111)

Entry as to malice, etc. as evidence (30-516, 16+407). Judgment against complainant does not defeat officer's fees (50-232, 52+650). Reinstatement after dismissal unauthorized (33-381, 23+545).

4018. Appeal—Requisites—Any person convicted of a criminal offence by a justice may appeal to the district court upon complying with the following requisites within ten days thereafter:

1. The person so appealing shall enter into a recognizance, with sufficient surety, to be approved by the justice, conditioned to appear before the district court on the first day of the general term thereof next to be held 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.

2. He shall serve a notice upon the county attorney, or, in case there be no county attorney, or he is absent from the county, on the clerk of the district court, specifying the grounds of his appeal as follows, viz.: That the appeal is taken upon questions of law alone, or upon questions of law and fact. (5112)

Certiorari held not to lie after time to appeal (16-55, 43). Cited (21-458, 461).

4019. Allowance of appeal—Upon compliance with the provisions of § 4018, 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 such allowance. If the defendant has been committed to jail, the justice shall thereupon cause his certificate that an appeal has been perfected to be served upon the keeper of such jail, who shall forthwith release defendant from custody. The justice shall thereupon make a return of all the proceedings had before him, and cause the complaint, warrant, recognizance, notice of appeal, with proof of service thereof, and all other papers relating to such cause 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 held therein; and the complainant and witnesses may also be required to enter into a recognizance, with or without sureties, in the discretion of the justice, to appear at such term of court and abide the order of the court therein. (5113; '01 c. 24)

30-48, 50, 14+256.

4020. How tried—Upon an appeal on questions of law alone, the cause shall be tried in the district court upon the return of the justice. Upon an appeal on questions of law and fact, the cause shall be tried in the same manner as if commenced in the district court. Upon an appeal on questions of law alone, the justice, upon the request of either party, shall return to the district court a certified transcript of all the evidence offered or received upon the trial, which shall be filed with the clerk as a part of the return of the justice. (5113; '01 c. 24)

The appeal supersedes the judgment of the justice and the district court may render such judgment as the law of the case requires (21-458; 77-405, 80+355. See 69-349, 72+564). Failure of justice to return evidence when not requested to preserve it not a ground for reversal (92-191, 193, 99+640). Prior to 1883 c. 61 no provision for returning the evidence (30-48, 14+256). If the appeal is on questions of law and fact the trial proceeds de novo as if commenced in the district court (13-520, 488). Irregularity in delivering return of justice to jury held waived (29-357, 13+153). Docket entries presumed true (21-500).

4021. Conviction on appeal—Costs—The appellant shall not be required to advance any fees in claiming or prosecuting his appeal, but, if convicted in

4018
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105-M - 164
117-NW 227
117-NW 503

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the district court, or if sentenced for failing to prosecute his appeal, may be required, as a part of the sentence, to pay the whole or any part of the costs of prosecution in both courts. (5114)

21-458, 461.

4022. Failure to prosecute—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 offence whereof he was convicted, in like manner as if the conviction had been in that court; and, if he is not then in custody, process may be issued to bring him into court to receive sentence. (5115)

4023. Judgment against defendant and sureties—If the judgment of the justice is affirmed, or upon trial in the district court defendant is convicted and a fine assessed, judgment for said fine and costs in both courts may be rendered against defendant and his sureties. (5116)

1-207, 181; 19-327, 282; 21-458, 461; 25-370, 372; 83-456, 460, 86+457.

4024. Juror or witness in contempt—Every person summoned to appear before a justice, pursuant to the provisions of this subdivision, as a juror or witness, who shall fail to appear, and every witness appearing who refuses to be sworn or to testify, 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 civil causes in justice's court. (5117)

4025. Certificate of conviction—Every justice, within twenty days after any conviction had before him, shall make and cause to be filed with the clerk of the district court of his county a certificate, under his hand, briefly stating therein the offence charged, the conviction and judgment, and the amount of any fine collected. (5118, 5119; '03 c. 263)

4026. Report to county attorney—Every such justice, within ten days after the conclusion of any criminal case prosecuted before him, shall make a report thereof to the county attorney, briefly stating in such report the title of the cause, the nature of the accusation, the result of the trial, and, if defendant is convicted, the nature and extent of the punishment, whether defendant was under the influence of intoxicating liquor when the offence was committed, the amount of costs paid or incurred by the state, and the amount of fines and costs, stated separately, paid by defendant. (806)

4027. Breach of peace—If the justice has knowledge that any person is about to commit an assault or engage in an affray, he shall issue his warrant, and thereupon proceed in the same manner as if a complaint had been made; and if any such offence is committed, threatened, or attempted in his presence, he shall immediately cause the offender to be arrested, for which purpose he may summon to his assistance all persons present, whose duty it shall be to aid him in preserving the peace and arresting and securing the offender. Any person so summoned who refuses his assistance shall forfeit five dollars to the use of the county. (5121)

4028. Breach of recognizance—In case of the breach of any recognizance given in a criminal case in justice court, the same shall be certified and returned to the district court, to be proceeded in according to law. (5122)

4029. Want of final jurisdiction—Proceedings—If, in the progress of any trial under the provisions of this chapter, it appears to the justice that he has not final jurisdiction in the case, and that the accused should be held to answer for the offence before the district court, the justice shall stop all further proceedings in the trial, and proceed as in other criminal cases cognizable before the district court. (5123)

That is, he shall proceed as provided by §§ 5235-5260 (33-23, 21+847).

4030. Witnesses—Justice to summon—In all cases arising under this subdivision 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. (5124)

4031. Judgment on conviction—Commitment—Execution—In all cases of conviction under this subdivision the justice shall enter judgment for the fine and costs against 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 this section for more than three months. (5125)

Commitment may be issued at any time while the judgment stands unexecuted except during the period of an appeal (31-44, 16+461). Judgment may include costs (25-370, 372).

4032. Attendance of witnesses on continuance—Whenever the trial of a cause is continued, the justice shall verbally notify the witnesses present to appear at the time to which the same is continued and testify therein, and no other notice or summons shall be necessary. (5126)

4033. Security for costs—The justice may require that the complainant give security for costs, and, if he refuses, may dismiss the complaint. (5127)

4034. Fines—How collected and paid over—All fines imposed by a justice, paid before the defendant is committed, shall be received by the justice. After commitment, payment thereof shall be made to the sheriff. In either case the officer receiving such fine shall pay the same over to the county treasurer within twenty days after he receives it. Any justice or other officer receiving any such fine who shall fail to pay the same to the county treasurer within the time aforesaid shall be guilty of a misdemeanor. (5128, 5129; '03 c. 263)

FORMS IN CRIMINAL PROCEEDINGS

4035. Schedule of forms—The following forms may be used under this subdivision:

WARRANT

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of said county:

Whereas, has this day complained in writing to me, on oath, that did, on the day of, 19...., 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, 19....
J. P., Justice of the Peace.

CERTIFICATE OF CONVICTION

State of Minnesota, }
County of..... } ss.

At a justice's court held at my office, in said county, before me,, a justice of the peace in and for said county, for the trial of for the offence hereinafter stated, the said was convicted of having, on the day of, 19...., at, in said county (here state the offence as in the warrant); and, upon such conviction, the said court did adjudge and determine that the said should pay a fine of dollars (and, if imprisonment be adjudged, add), and be imprisoned in the county jail of the county of, days (if the fine be paid, add), and the said fine has been paid to me.

Given under my hand this day of, 19....
J. P., Justice of the Peace.

EXECUTION

State of Minnesota, }
County of..... } ss.

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 offence hereinafter stated, the said.....
 was convicted of having, on the.....day of....., 19.....,
 in said county (here state the offence as in the warrant), and, upon conviction,
 the said court did adjudge and determine that the said.....
 should pay a fine of.....dollars and costs; and, whereas, the said
 fine and costs have not been paid by the said....., these are therefore
 to command you to levy distress on the personal property (etc., as in execution
 against such property in civil cases).

J. P., Justice of the Peace.

COMMITMENT ON SENTENCE

State of Minnesota, }
 County of } ss.

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 offence hereinafter stated, the said.....
 was convicted of having on the.....day of....., 19.....,
 in the said county (here state the offence as in the warrant), and, upon
 conviction, the said court did adjudge and determine that the said.....
 should be imprisoned in the common jail of said county for.....
 days. Therefore 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....., 19....

J. P., Justice of the Peace.

COMMITMENT AFTER ARREST AND BEFORE TRIAL

State of Minnesota, }
 County of } ss.

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 oath of
with having on the.....day of....., 19.....,
 at....., in said county (here state the offence as in the warrant);
 and, the said.....not having given bail to appear and answer for
 the said offence, therefore you, the said constable, are commanded 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....., 19....

J. P., Justice of the Peace.

ORDER TO BRING UP PRISONER

State of Minnesota, }
 County of } ss.

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 as a court for the trial of....., now in your custody in the
 common jail of said county, do hereby order you to bring the said.....
 forthwith before me at my office in the.....of....., 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....., 19....

J. P., Justice of the Peace.

COMMITMENT WHERE JUSTICE, ON THE TRIAL, FINDS HE HAS NOT JURISDICTION

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of said county:

Whereas,, of....., 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....., 19...., at....., in said county, committed the offence of (here state the offence charged in the warrant), and, in the progress of the trial on said charge, it appearing to the said justice that there is probable cause to believe that said.....had been guilty of the offence of (here state the new offence found on the trial), committed at the time and place aforesaid, of which offence the said justice has not final jurisdiction; and whereas, after examination had, in due form of law, touching the said charge and offence last aforesaid, the said justice did adjudge that the said offence had been committed, and that there was probable cause to believe the said..... to be guilty thereof; and whereas the said.....has not offered sufficient bail for his appearance to answer for said offence, you are therefore commanded forthwith to take the said....., and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody in said jail until he shall be thence discharged according to law.

Given under my hand this.....day of....., 19....

J. P., Justice of the Peace.

(5130)

CHAPTER 76

FORCIBLE ENTRY AND UNLAWFUL DETAINER

4036. Forcible entry—Penalty—No person shall make entry into lands or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force, but only in a peaceable manner. If any person does to the contrary, he shall be punished by fine. (6108)

19-174, 137; 66-416, 418, 69+218; 72-446, 75+701; 85-90, 88+426.

4037. Forcible entry or detainer—Restitution—When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or, having peaceably entered, unlawfully and forcibly detains the same, he shall be fined, and the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (6109, 6116; '97 c. 241)

4038. Tenant, etc., holding over—Removal—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage by advertisement, and expiration of the time for redemption, or after termination of the time for which they are demised or let to him, or to the person under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (6118)

1. Election of remedies—53-483, 487, 55+630.

2. Nature and object of action—8-524, 467; 14-170, 131; 25-183; 28-267, 273, 9+772; 28-388, 389, 10+417; 53-483, 486, 55+630; 67-449, 451, 70+567; 81-445, 450, 84+454; 62-370, 64+911.

3. Jurisdiction—Original jurisdiction limited to justice and municipal courts (53-483, 55+630).

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