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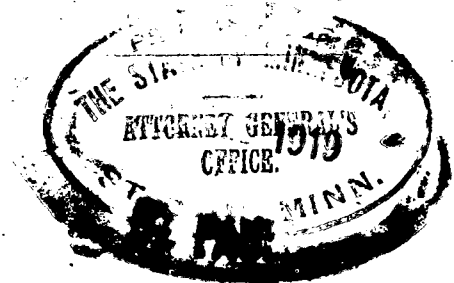
GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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8 are attached to the county of Morrison; the counties of
 9 Douglas, Pope, Stevens and Traverse are attached to the
 10 county of Stearns; the counties of Monongalia and Kandi-
 11 yóhi are attached to the county of Meeker: the counties of
 12 Chippewa, Lac qui Parle and Bigstone are attached to the
 13 county of Renville; the county of Lincoln is attached to
 14 the county of McLeod; the county of Manomin is attached
 15 to the county of Hennepin; the county of Isanti is attached
 16 to the county of Anoka; the counties of Jackson, Nobles
 17 and Rock are attached to the county of Martin; the coun-
 18 ties of Watonwan, Cottonwood, Murray, Pipestone and
 19 Redwood are attached to the county of Brown, and for such
 20 purposes, all the officers of the counties of Chisago, Saint
 21 Louis, Crow Wing, Morrison, Stearns, Meeker, Hennepin,
 22 Anoka, Renville, Martin and Brown, necessary to effect the
 23 same, shall have and exercise full jurisdiction, power and
 24 authority over and act in and for the counties respectively
 25 attached to said counties as aforesaid as fully as if they were
 26 part of the same.

CHAPTER LXV.

COURTS OF JUSTICES OF THE PEACE.

TITLE I.

JURISDICTION.

1 SECTION 1. The jurisdiction of a justice of the peace is
 2 co-extensive with the limits of the county in which he re-
 3 sides, except in the following cases:

4 *First.*—Writs of attachment may be directed to the pro-
 5 per officer in any county for the purpose of causing an at-
 6 tachment of property therein.

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

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 C. S. p. 498, Sect. 1.
 Amended.

1 SECT. 2. Every justice of the peace shall keep his office
 2 in the town, city or ward for which he is elected; but he
 3 may issue process in any place in the county.

C. S. p. 498, Sect. 3.

1 SECT. 3. No justice of the peace shall hold his office in
 2 the same room with a practicing attorney, unless such at-
 3 torney is his law partner; and in that case, such partner
 4 shall not appear or practice as an attorney, in any case tried
 5 before such justice.

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1 SECT. 4. A justice of the peace is authorized to hold a
 2 court for the trial of all actions in the next section enumer- C. S. p. 498, Sect. 4. c 59
 3 ated, and to hear, try, and determine the same; and for
 4 that purpose, where no special provision is otherwise made
 5 by law, such court is vested with all the necessary powers
 6 which are possessed by courts of record in this state; and
 7 all laws of a general nature apply to such justice's court, so
 8 far as the same are applicable, and not inconsistent with
 9 the provisions of this title.

1 SECT. 5. Such justice has jurisdiction of the following
 2 actions and proceedings:

3 *First.*—Of an action arising on contract for the recovery C. S. p. 498, Sect. 5.
 4 of money only, if the sum claimed does not exceed one hun- Amended.
 5 dred dollars.

6 *Second.*—Of an action for damages for an injury to the
 7 person or to real property, or for taking, detaining or in-
 8 juring personal property, if the damages claimed, or in re-
 9 plevin the value of the property in controversy, does not
 10 exceed one hundred dollars.

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

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

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

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

1 SECT. 6. The jurisdiction conferred by the last section
 2 does not extend, however, to a civil action: C. S. p. 498, Sect. 6.

3 *First.*—In a cause involving the title to real estate.

4 *Second.*—Nor for false imprisonment, libel, slander, ma-
 5 licious prosecution, criminal conversation, or seduction, or
 6 upon a promise to marry.

7 *Third.*—Nor for an action against an executor or admin-
 8 istrator as such.

TITLE II.

COMMENCEMENT OF ACTIONS; SERVICE AND RETURN OF PROCESS.

1 SECT. 7. Every justice of the peace shall keep a docket
 2 in which he shall enter:

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C. S. p. 498, Sect. 7;
1865—p. 50, Sect. 1,
combined.

3. *First.*—The title of all causes commenced before him.
4. *Second.*—The time when the process issued, the nature
- 5 thereof, when returnable, and the return of the officer.
6. *Third.*—The time when the parties appeared before him.
7. *Fourth.*—A brief statement of the nature of the plaintiff's
- 8 demand, and the amount claimed, and if any set-off was
- 9 pleaded, a similar statement of the set-off.
10. *Fifth.*—Every adjournment, stating at whose request,
- 11 and to what time and place.
12. *Sixth.*—The time when the trial was had, stating whether
- 13 the same was by jury or by the justice.
14. *Seventh.*—The verdict of the jury and when rendered.
15. *Eighth.*—The judgment, time of issuing execution, the
- 16 name of the officer to whom delivered, an account of the
- 17 debt, damages and costs, and the fees due to each person
- 18 separately.
19. *Ninth.*—The fact that an appeal was taken and allowed,
- 20 and the time thereof.
21. *Tenth.*—Satisfaction of judgment when made.
22. *Eleventh.*—All questions of law raised by either of the
- 23 parties to any action or proceeding, the order made by the
- 24 court thereon, any exception taken to such order by any
- 25 party, and all other matters that are material.

C. S. p. 499, Sect. 8.

1 SECT. 8. Actions may be instituted before a justice of
2 the peace, either by the voluntary appearance and agree-
3 ment of the parties, or by the usual process; when the name
4 of the defendant is not known to the plaintiff, an action may
5 be commenced against him by a fictitious name, and his true
6 name shall be inserted when discovered.

C. S. p. 499, Sect. 9.
Amended.

1 SECT. 9. Any justice of the peace in this state may in
2 all actions instituted before him, before or after the process
3 issues, require of the plaintiff security for costs; and the
4 person giving such security shall sign a memorandum in
5 writing to that effect, which such justice shall keep as a
6 part of the record in the cause, and an action may be main-
7 tained thereon before said justice to recover the costs, and
8 if the plaintiff refuses to give such security, the justice shall
9 dismiss the action.

C. S. p. 499, Sect. 10.
Amended.

1 SECT. 10. Every summons or process issued by a jus-
2 tice of the peace, shall run in the name of the state of Min-
3 nesota, be dated on the day it issues, be signed by the jus-
4 tice issuing the same, and be directed to the sheriff or any
5 constable of the proper county. It shall be entirely filled
6 up, and have no blank either in date, or otherwise, at the
7 time of its delivery to an officer to be executed; every such
8 process which is issued and delivered to an officer to be
9 executed, contrary to the provisions of this section shall be
10 void.

1 SECT. 11. In all cases not otherwise provided for, the
 2 first process is by summons, commanding the officer to
 3 summon the defendant to appear before such justice at a C. S. p. 499, Sect. 11. c 59
 4 time and place expressed in such summons, not less than
 5 six nor more than twenty days from the date thereof, to an-
 6 swer to the plaintiff in a civil action, which summons shall
 7 be served at least six days before the time of appearance
 8 therein mentioned, by reading the same to the defendant,
 9 and delivering a copy thereof to him, if requested, if such
 10 defendant can be found, and if not found, by leaving a copy
 11 thereof at his or her last usual place of abode.

1 SECT. 12. When the plaintiff or his agent makes an af-
 2 fidavit stating that the plaintiff has a just cause of action 1890—p. 193, Sect. 1. c 38
 3 against the defendant, founded upon contract expressed or
 4 implied, and that the defendant cannot be found in the state,
 5 a justice may order that service be made on the defendant by
 6 publication of the summons in the form hereinafter pre-
 7 scribed in either of the following cases :
 8 *First.*—When the defendant is a foreign corporation.
 9 *Second.*—When the defendant, being a resident of the
 10 state, has departed therefrom with intent to defraud his
 11 creditors or to evade the service of a summons, or keeps
 12 himself concealed therein with like intent.
 13 *Third.*—When the defendant is not a resident of the state
 14 but has property, real or personal, therein, and the justice
 15 has jurisdiction of the action.

1 SECT. 13. The order shall direct the publication to be
 2 made in a newspaper published in the county where the ac-
 3 tion is brought, and if there is no newspaper published in
 4 the county, in a newspaper published at the capital of the 1860—p. 196, Sect. 2.
Amended.
 5 state, not less than once a week for three weeks. In case
 6 of publication the summons shall be made returnable in not
 7 less than six nor more than twenty days from the expira-
 8 tion of the period of publication, and the justice shall direct
 9 a copy of the summons and complaint to be forthwith de-
 10 posited in the post office, directed to the defendant at his
 11 place of residence unless it is stated in the affidavit, that
 12 such residence is not known to the party making the appli-
 13 cation.

1 SECT. 14. Every justice issuing any process authorized
 2 by this title, upon being satisfied that such process will not C. S. p. 500, Sect. 17. c 59
 3 be executed, for want of an officer to be had in time to ex-
 4 cute the same, may empower any suitable person, not a
 5 party to the action, to execute the same, by an indorsement
 6 on the process to the following effect: "At the request and
 7 risk of the plaintiff, I authorize A. B. to execute and return
 8 this writ. E. F., justice of the peace;" and the person so

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9 empowered shall thereupon possess all the authority of a
10 constable in relation to the execution of such process, and
11 be subject to the same obligations.

259 C. S. p. 500, Sect. 18.
1 SECT. 15. If any officer without showing good cause
2 therefor, fails to execute any process to him delivered, and
3 make due return thereof, or makes false return, such offi-
4 cer, for every such offense, shall pay to the party injured,
5 ten dollars, and all damages such party may have sustained
6 by reason thereof, to be recovered in a civil action.

C. S. p. 500, Sect. 20.
1 SECT. 16. No action shall be instituted by an infant
2 plaintiff until a next friend for such infant is appointed.
3 Whenever requested, the justice shall appoint some suitable
4 person, who consents thereto in writing, to be named by
5 such plaintiff, to act as his next friend in such action, who
6 shall be responsible for the costs therein.

C. S. p. 500, Sect. 22.
1 SECT. 17. After the service and return of process against
2 an infant defendant, the action shall not be further prose-
3 cuted until a guardian for such defendant is appointed. Up-
4 on the request of such defendant, the justice shall appoint
5 some person, who consents thereto in writing, to be guar-
6 dian of the defendant in defense of the action; and if the
7 defendant does not appear on the return day of the process,
8 or if he neglects or refuses to nominate such guardian, the
9 justice may at the request of the plaintiff, appoint any dis-
10 creet person as such guardian; the consent of such guardian
11 or next friend shall be filed with the justice, and the guar-
12 dian for the defendant, shall not be liable for any cost in
13 the action.

C. S. p. 500, Sect. 79.
Amended.
1 SECT. 18. If, on the return of the process, or at any
2 time before the trial commences in any action or proceeding,
3 civil or criminal, either party, his agent or attorney makes
4 affidavit that the justice before whom the same is pending
5 is a material witness for said defendant, without whose tes-
6 timony he cannot safely proceed to trial; or that from pre-
7 judice, bias, or other cause, he believes such justice will
8 not decide impartially in the matter; or if it is proven that
9 the justice is near of kin to the plaintiff, the justice shall
10 transfer said action, and all papers appertaining to the same,
11 to some other justice of the same or an adjoining election
12 district, who may thereupon proceed to hear and determine
13 the same in the same manner as the justice before whom
14 the said action or proceeding was commenced might have
15 done, but no cause or proceeding shall be removed more
16 than once, and no justice is required to transfer any civil
17 action until all his costs in the same are paid.

1 SECT. 19. The parties are entitled to one hour in which
 2 to make their appearance after the time mentioned in the C. S. p. 501, Sect. 23. *c 59*
 3 summons for appearance; but are not bound to remain long-
 4 er than that time, unless both parties appear, and the jus-
 5 tice being present, is actually engaged in the trial of another
 6 action, or of a special proceeding; in such case he may post-
 7 pone the time of appearance until the close of the trial.

1 SECT. 20. If either party fails to appear within one
 2 hour after the time specified for the return of the process, C. S. p. 506, Sect. 63.
 3 or after the hour to which the cause is adjourned, the jus- Amended.
 4 tice shall dismiss the action, or proceed to hear the evidence
 5 of the party present, and render judgment thereon.

TITLE III.

PLEADINGS AND TRIAL.

1 SECT. 21. The pleadings in justices' courts shall take
 2 place at the time mentioned in the summons for the ap- C. S. p. 501, Sect. 24.
 3 pearance of the parties, or at such time thereafter as the Amended.
 4 justice may appoint, not exceeding one week, unless both
 5 parties consent to a longer time.

1 SECT. 22. The pleadings in justices' court are:
 2 *First.*—The complaint stating the cause of action.
 3 *Second.*—The answer stating the grounds of defense. C. S. p. 501, Sect. 25.
 4 *Third.*—When the answer sets up a counter claim by
 5 way of a set-off, the reply.

1 SECT. 23. The pleadings may be oral, or in writing;
 2 if oral, the substance of them shall be entered by the jus- C. S. p. 501, Sect. 26.
 3 tice in his docket; if in writing, they shall be filed in his Amended.
 4 office, and a reference to them made in his docket.

1 SECT. 24. The complaint shall state in a plain and di- C. S. p. 501, Sect. 27.
 2 rect manner the facts constituting the cause of action.

1 SECT. 25. The answer shall contain a denial of all the
 2 material facts stated in the complaint which the defendant C. S. p. 501, Sect. 28.
 3 believes to be untrue, and also a statement in a plain and
 4 direct manner of any other facts constituting a defense or
 5 counter claim, by way of set-off, upon which an action
 6 might be brought by the defendant against the plaintiff in a
 7 justices' court.

1 SECT. 26. When the answer contains a counter claim,
 2 the plaintiff may reply, denying any of the material allega- C. S. p. 501, Sect. 29.
 3 tions relating thereto.

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C. S. p. 501, Sect. 30. 1 SECT. 27. A statement in an answer or reply that the
2 party has not sufficient knowledge or information in respect
3 to a particular allegation in the previous pleading of the ad-
4 verse party to form a belief, is equivalent to a denial.

C. S. p. 501, Sect. 31. 1 SECT. 28. When the cause of action or counter claim
2 arises upon an account or instrument for the payment
3 of money only, it is sufficient for the party to deliver the
4 account or instrument to the court; and to state that there
5 is due to him thereon from the adverse party, a specified
6 sum which he claims to recover, or set off; the court may
7 at the time of pleading, require that such writing or ac-
8 count be exhibited to the inspection of the adverse party,
9 with liberty to copy the same; or if not so exhibited, may
10 prohibit its being afterwards given in evidence.

C. S. p. 501, Sect. 32. 1 SECT. 29. Every complaint, answer or reply shall be
2 verified by the oath of the party pleading; or if he is not
3 present, by the oath of his agent or attorney, to the effect
4 that he believes it to be true; the verification shall be oral
5 or in writing, in conformity with the pleadings verified.

C. S. p. 501, Sect. 33. 1 SECT. 30. Every material allegation in a complaint, or
2 relating to a counter claim in an answer, not denied by the
3 pleading of the adverse party, shall, on the trial, be taken
4 to be true, except that when a defendant who has not been
5 served with a copy of the complaint with the summons,
6 fails to appear and answer, the plaintiff cannot recover
7 without proving his case.

C. S. p. 502, Sect. 34. 1 SECT. 31. Either party may object to a pleading of his
2 adversary, or to any part thereof, that it is not sufficiently
3 explicit to enable him to understand it, or that it contains
4 no cause of action or defense. If the court deems the ob-
5 jection well founded, it shall order the pleadings to be
6 amended, and if the party refuses to amend, the defective
7 pleading shall be disregarded.

C. S. p. 502, Sect. 35. 1 SECT. 32. A variance between the evidence and the al-
2 legations in the pleadings shall be disregarded as immate-
3 rial, unless the court is satisfied that the adverse party is
4 prejudiced thereby.

C. S. p. 503, Sect. 36. Amended. 1 SECT. 33. The pleadings may be amended at any time
2 before the trial, or during the trial, to supply any deficiency
3 or omission in the allegations, necessary to support the ac-
4 tion or defense. If the amendment is made after the issue,
5 and it appears to the satisfaction of the court, that an ad-
6 journment is necessary to the adverse party, in consequence
7 of such amendment, an adjournment may be granted.

1 SECT. 34. When the pleadings are closed, the justice
 2 on the application of either party upon oath may adjourn C. S. p. 502, Sect. 37. c 59
 3 the case for any time not exceeding thirty days; and upon Amended.
 4 an adjournment, all costs for the travel, attendance of wit-
 5 nesses, serving of subpoenas, &c., shall be taxed in the
 6 same manner as if no actual trial had been had, upon the
 7 day originally fixed for the trial of the action, and may be
 8 required to be paid as a condition of such adjournment in
 9 the discretion of the justice.

1 SECT. 35. If it appears on the trial of any action before
 2 a justice of the peace, from the evidence of either party,
 3 that the title to real estate is involved, which title is disput- C. S. p. 502, Sect. 38.
 4 ed by the other party, the justice shall immediately make
 5 an entry thereof, in his docket, and cease all further pro-
 6 ceedings in the cause, and shall certify and return to the
 7 district court of the county, a transcript of all the entries
 8 made in his docket relating to the case, together with all
 9 the process and other papers relating to the action, in the
 10 same manner, and within the same time as upon an appeal;
 11 and thereupon the district court shall proceed in the cause
 12 to final judgment and execution, the same as if the action
 13 had been originally commenced therein.

1 SECT. 36. Every adjournment after the first, shall be
 2 for such reasonable time as will enable the party to procure C. S. p. 502, Sect. 39.
 3 such absent testimony or witness, as is necessary and ma-
 4 terial, which the party applying for the adjournment has
 5 not been able to procure by the use of proper diligence.

TITLE IV.

SET-OFFS.

1 SECT. 37. Counter claims may be set-off in the follow-
 2 ing cases: C. S. p. 503, Sect. 44.
 3 *First.*—A demand arising upon a judgment, or contract,
 4 express, or implied, and if it is founded upon a bond or
 5 other contract having a penalty, the sum equitably due by
 6 virtue of the condition, only shall be set-off;
 7 *Second.*—It must be due to him in his own right, either
 8 as the original creditor or payee, or as the assignee and
 9 owner of the demand;
 10 *Third.*—It must be for real estate sold, or for personal
 11 property sold, or for money paid, or services done; or if
 12 it is not such a demand, the amount must be liquidated, or
 13 be capable of being liquidated by calculation;
 14 *Fourth.*—It must exist at the time of the commencement
 15 of the action, and then belong to the defendant;

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

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

20 *Seventh.*—It must be a demand existing against the plain-
21 tiff, unless the action is brought in the name of a plaintiff
22 who has no real interest in the contract upon which the ac-
23 tion is founded, in which case no set-off of a demand against
24 the plaintiff shall be allowed except as hereinafter specified;

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

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1 SECT. 38. If the action is upon a negotiable promissory
2 note, or bill of exchange which has been assigned to the
3 plaintiff, after it becomes due, a set-off to the amount of the
4 plaintiff's demand may be made of a demand existing
5 against any person who has assigned or transferred such note
6 or bill after it become due, if the demand is such as might
7 have been set-off against the assignor, while the note or bill
8 belonged to him.

C. S. p. 503, Sect. 45.

1 SECT. 39. If the plaintiff is a trustee for any other, or
2 if the action is in the name of the plaintiff who has no real
3 interest in the contract upon which the action is founded, so
4 much of a demand existing against those whom the plaintiff
5 represents, or for whose benefit the action is brought may
6 be set-off as will satisfy the plaintiff's demand, if the same
7 might have been set-off in an action brought by those bene-
8 ficially interested.

C. S. p. 504, Sect. 46.

1 SECT. 40. To entitle a defendant to set-off a counter
2 claim, he shall specifically and clearly allege the same in
3 his answer, stating the particular items of such counter
4 claim.

C. S. p. 504, Sect. 47.
Amended.

1 SECT. 41. If the amount of the counter claim duly es-
2 tablished is equal to the plaintiff's demand, judgment shall
3 be entered for the defendant for his costs; if it is less than
4 the plaintiff's demand, the plaintiff shall have judgment for
5 the residue only.

C. S. p. 504, Sect. 48.

1 SECT. 42. If a balance is found due from the plaintiff
2 to the defendant, judgment shall be rendered for the defend-

C. S. p. 504, Sect. 49.

3 ant for the amount thereof; but no such judgment shall be
 4 rendered against the plaintiff where the contract which is
 5 the subject of the action, has been assigned before the com-
 6 mencement of such action, nor for any balance due from
 7 any other person than the plaintiff.

TITLE V.

WITNESSES AND DEPOSITIONS.

1 SECT. 43. A subpoena may be served by any person by
 2 reading it to the witness or by delivering a copy thereof to
 3 him. C. S. p. 504, Sect. 50. c 59

1 SECT. 44. Whenever it appears to the satisfaction of the
 2 justice by proof made before him that any person duly sub-
 3 pœnaed to appear before him in an action has failed without
 4 just cause to attend as a witness in conformity to such
 5 subpoena, and the party in whose behalf such subpoena was
 6 issued or his agent, makes oath that the testimony of such
 7 witness is material, the justice has power to issue an attach-
 8 ment to compel the attendance of such witness; but no at-
 9 tachment shall issue against a witness unless his mileage
 10 and one day's attendance has been tendered or paid in ad-
 11 vance. C. S. p. 504, Sect. 51.

1 SECT. 45. Every such attachment shall be executed by
 2 arresting the party named therein and taking him before
 3 the justice issuing the warrant, and the fees for issuing and
 4 serving the same, shall be paid by such person, unless he
 5 shows reasonable cause to the satisfaction of the justice, for
 6 his omission to attend, in which case the party procuring
 7 such attachment, shall pay all costs accruing thereon. C. S. p. 504, Sect. 52.
 Amended.

1 SECT. 46. Every person subpoenaed as aforesaid, and
 2 neglecting to appear, is also liable to the party in whose be-
 3 half he was subpoenaed, for damages which such party has
 4 sustained by his non-appearance; *Provided*, That said wit-
 5 ness had one day's attendance and mileage tendered or paid
 6 him in advance. C. S. p. 504, Sect. 53.

1 SECT. 47. Either party in any civil action pending be-
 2 fore a justice, may, upon notice, cause the deposition of
 3 any witness therein, to be taken by any judge or justice of
 4 the peace, of any county in this state where the said wit-
 5 ness may be. C. S. p. 504, Sect. 54.

1 SECT. 48. The deposition shall be taken, certified, and
 2 returned, according to the law concerning depositions. C. S. p. 505, Sect. 55.

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C. S. p. 505, Sect. 50.

1 SECT. 49. The justice shall allow every deposition, ta-
 2 ken, certified, and returned according to the provisions of
 3 this title, to be read on the trial of the cause in which it is
 4 taken, in all cases where the same testimony, if given ver-
 5 bally in court, could have been received; but no such de-
 6 positions shall be read on the trial, unless it appears to the
 7 justice that the witness whose deposition is offered:

8 *First.*—Is dead, or resides out of the county.

9 *Second.*—Is unable, or cannot easily attend before the
 10 justice on account of sickness, age, or other bodily in-
 11 firmity.

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

C. S. p. 505, Sect. 57.

1 SECT. 50. Whenever an issue of fact is joined in any ac-
 2 tion before a justice, and it appears on the application of ei-
 3 ther party, that any witness not residing within the state
 4 where such action is pending, is material in the prosecution
 5 or defense of such action, the justice may award a commis-
 6 sion to one or more competent persons, authorizing them or
 7 any of them to examine such witness on oath, upon the in-
 8 terrogatories, settled and approved by the justice, or by the
 9 written agreement or assent of the parties annexed to such
 10 commission, to take and certify the depositions of such
 11 witness, and to return the same according to the directions
 12 given, with such commission, in which commission both par-
 13 ties may unite.

C. S. p. 505, Sect. 58.

1 SECT. 51. Such commission may be granted at the in-
 2 stance of either party by such justice at any time, upon
 3 proof that due notice of application for such commission
 4 was served on the adverse party at least two days before the
 5 time of making such application; and whenever the defend-
 6 ant neglects to appear or plead in such action, and the plain-
 7 tiff makes application for a commission to take the depo-
 8 sition of a material witness, the justice may award a com-
 9 mission without notice to one or more competent persons,
 10 to examine such witness on oath, upon interrogatories pro-
 11 posed by the plaintiff to be settled by the justice, and cer-
 12 tify the depositions, and return the same according to the
 13 directions given in such commission.

C. S. p. 505, Sect. 59.

1 SECT. 52. The commission shall be executed and re-
 2 turned to the justice as is prescribed by statute when a
 3 commission issues out of a court of record, and the deposi-
 4 tion and testimony taken in pursuance thereof, shall be
 5 received on the trial, as testimony in the cause, with
 6 the like effect as if such witness was personally examined
 7 at such trial.

1 SECT. 53. Whenever such commission is issued by any
 2 justice, the action may be adjourned for not more than
 3 ninety days, unless by consent and agreement of the partise
 4 to such action.

C. S. p. 505, Sect. 61.

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TITLE VI.

TRIAL BY JURY.

1 SECT. 54. In all civil actions before a justice in which
 2 either party demands a trial by jury, such jury shall be em-
 3 panned by said justice in the manner following, to wit :
 4 The justice shall direct the sheriff, or any constable of the
 5 county, to make a list in writing of the names of twenty-
 6 four inhabitants of the county, qualified to serve as jurors in
 7 the district court.

C. S. p. 507, Sect. 68.
Amended.

1 SECT. 55. The parties may each strike out six names ;
 2 in case of the refusal or neglect of either party so to strike
 3 out such names, the justice shall strike out the names for
 4 either or both ; and upon such names being stricken out,
 5 the justice shall issue a venire directed to the sheriff or any
 6 constable of the county, directing him to summon the
 7 twelve persons whose names remain upon such list, to appear
 8 before such court at the time and place named therein, as a
 9 jury for the trial of such action.

C. S. p. 508, Sect. 64,
in part.

1 SECT. 56. If, in the opinion of the justice, the jurors
 2 above required cannot appear forthwith for the trial of the
 3 cause, the justice shall adjourn the same for such reason-
 4 able time as he deems proper, to enable the officer to sum-
 5 mon the said jurors, and for them to appear. And if any
 6 of said jurors shall not attend at the time, or in case there
 7 are legal objections raised to any of those who appear, the
 8 officer shall summon a sufficient number of talesmen to sup-
 9 ply the deficiency. The jury so selected shall take the oath
 10 required by law, and after the cause is submitted to them,
 11 they shall be kept together in some convenient place until
 12 they all agree upon a verdict, or are discharged by the jus-
 13 tice, for which purpose an officer shall be sworn to take
 14 charge of them.

C. S. p. 506, Sect. 64,
in part. Amended.

1 SECT. 57. When the jurors have agreed on their ver-
 2 dict, they shall deliver the same to the justice, who shall
 3 give judgment thereupon, and award execution.

C. S. p. 507, Sect. 64,
in part.

1 SECT. 58. Whenever a justice is satisfied that a jury
 2 sworn in any action before him, after having been out a

C. S. p. 507, Sect. 65.

3 reasonable time, cannot agree on their verdict, he may
4 discharge them and issue a new venire, unless the par-
5 ties consent that the justice may render judgment.

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C. S. p. 507, Sect. 66.

1 SECT. 59. Every person who is duly summoned as a
2 juror and does not appear, nor render a reasonable excuse
3 for his default, is subject to a fine not exceeding ten
4 dollars.

TITLE VII.

JUDGMENTS.

C. S. p. 508, Sect. 70.

1 SECT. 60. If there are mutual justices' judgments be-
2 tween the same parties, upon which the time for appealing
3 has expired, on which there is no existing execution, one
4 judgment, on the application of either party, and reason-
5 able notice given to the adverse party, may be set-off against
6 the other, by the justice before whom the judgment against
7 which the set off is proposed was rendered.

C. S. p. 508, Sect. 71.

1 SECT. 61. If the judgment proposed as a set-off, was
2 rendered before another justice, the party proposing such
3 set-off shall produce before the justice, a transcript of such
4 judgment, upon which there is a certificate of the justice
5 rendering the judgment, that it is unsatisfied in whole or in
6 part, and that there is no appeal or existing execution
7 thereon, and that such transcript was obtained for the pur-
8 pose of being a set-off against the judgment to which it is
9 offered as a set-off. The justice granting such transcript,
10 shall make an entry thereof in his docket, and all further
11 proceedings on such judgment shall be stayed, unless such
12 transcript is returned with the proper justices' certificate
13 thereon, that it has not been allowed in set-off.

C. S. p. 508, Sect. 72.

1 SECT. 62. If any justice shall set-off one judgment
2 against another, he shall make an entry thereof in his dock-
3 et, and execution shall issue only for the balance due after
4 such set-off. If a justice allows a transcript of a judgment
5 rendered by another justice to be set-off, he shall file such
6 transcript among the papers relating to the judgment in
7 which it is allowed in set-off; if he refuses such transcript
8 as a set-off, he shall so certify on the transcript, and return
9 the same to the party who offered it.

C. S. p. 508, Sect. 73.
Amended.

1 SECT. 63. Any justice may enter a judgment by con-
2 fession of the defendant in any case when the debt or dam-
3 ages does not exceed one hundred dollars.

1 SECT. 64. No confession shall be taken, or judgment
2 rendered thereon, unless the following requisites are com-
3 plied with:

C. S. p. 508, Sect. 74.

c 59

4 *First.*—The defendant shall personally appear before the
5 justice.

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

9 *Third.*—If it is for money due, or to become due, the
10 confession shall state concisely the facts out of which it
11 arose, and show that the sum confessed therefor is honestly
12 due, or to become due. If it is for the purpose of securing
13 a contingent liability, it shall state concisely the facts con-
14 stituting the liability, and show that the sum confessed
15 therefor does not exceed the same.

1 SECT. 65. The statement and affidavit shall be filed with
2 the justice, who shall indorse upon it the time of filing,
3 and enter upon his judgment book a judgment for the
4 amount confessed, with one dollar costs. The statement
5 and affidavit, with the judgment indorsed, thereupon be-
6 come the judgment roll.

C. S. p. 508, Sect. 75.

1 SECT. 66. In cases where the plaintiff is non-suited, or
2 withdraws his action, or where judgment is confessed, and
3 in all cases where a verdict is rendered, the justice shall
4 forthwith render judgment, and enter the same in his doc-
5 ket. In all other cases, he shall render judgment, and en-
6 ter the same in his docket within three days after the action
7 is submitted to him for decision.

C. S. p. 509, Sect. 80.
Amended.

1 SECT. 67. Whenever an action is dismissed for any
2 cause, judgment shall be rendered for costs, and execution
3 may issue to enforce such judgment, in the same manner
4 and with the same effect as in other cases.

C. S. p. 520, Sect.
167. Amended.

1 SECT. 68. Before judgment is rendered in an action
2 where the service of the summons is by publication, the
3 plaintiff shall file with the justice a bond with surety to be
4 approved by the justice in double the amount of the judg-
5 ment, conditioned, that if the defendant within one year
6 from the rendition of the judgment appears and disproves
7 the debt, or damages, or any part thereof, the plaintiff will
8 refund the whole or any part thereof which may be found
9 not justly due him on a review of the case.

New.

1 SECT. 69. The defendant or his representative may be
2 allowed to appear and defend any judgment obtained as
3 provided in the preceding section, within one year after the
4 rendition of such judgment or such time as may be just, in

1860—p. 197, Sect. 6.

c 38

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5 like manner as judgments are re-opened and defended in ac-
6 tion; originally commenced in the district court.

1 SECT. 70. Every justice on demand of any person in
2 whose favor he has rendered judgment for more than ten
3 dollars exclusive of costs, shall give to such person a cer-
4 tified transcript of such judgment; and the clerk of the dis-
5 trict court of the county in which the judgment was ren-
6 dered, shall upon the production of any such transcript, file
7 the same in his office, and forthwith enter such judgment in
8 the docket of the district court judgments, and shall note
9 therein the time of filing such transcript; and every justice
10 having the custody, by virtue of his office, of the docket of
11 any former justice shall give a transcript of any judgment
12 therein appearing, with like effect as if such judgment had
13 been rendered before him.

c 23
1865—p. 61, Sect. 1.
Amended.

1 SECT. 71. Every such judgment from the time of filing
2 the transcript thereof shall become a lien on the real estate
3 of the defendant in the county, to the same extent as a
4 judgment of the district court of the same county, shall be
5 equally under the control of the district court, and be car-
6 ried into execution in the same manner and with like effect
7 as the judgment of such district court; and upon filing with
8 the clerk of the district court of any other county, a tran-
9 script of the original docket of a justice's judgment in the
10 district court of the county where it was rendered, the same
11 shall be therein docketed, and thereupon become a lien up-
12 on the real property in such county, in the same manner as
13 provided upon the filing of transcripts of judgments in the
14 district court; but no execution shall be issued thereon out
15 of any district court, until an execution has been issued by
16 the justice, and returned that the defendant has no goods
17 or chattels whereon to levy the same, which shall appear
18 by a certificate from the justice, filed with the clerk of the
19 district court.

e 37
1861—p. 148, Sect. 1.

1 SECT. 72. Every judgment, when a transcript thereof
2 is filed in the clerk's office of any district court shall become
3 a lien upon the real estate of the defendant as in other cases,
4 but in cases where the service of the summons, was by pub-
5 lication, any execution issued out of the district or justice
6 court, shall be enforced only against the real estate upon
7 which such judgment is a lien, or in case any property, mo-
8 ney, effects or credits of the defendant have been seized or
9 attached by virtue of any writ of attachment or garnishee
10 process issued in the action, then upon the property, money,
11 effects or credits, seized, attached or held by virtue of such
12 process.

New.

TITLE VIII.

EXECUTIONS, AND PROCEEDINGS THEREON.

1 SECT. 73. Upon every judgment rendered by a justice,
 2 execution shall be issued by such justice, in the manner C. S. p. 511, Sect. 89.
 3 hereinafter prescribed, at any time on demand, after the Amended. c 59
 4 expiration of the period allowed by law for taking an ap-
 5 peal from said judgment.

1 SECT. 74. The execution shall command the officer to
 2 levy the debt or damages, together with the interest there- C. S. p. 511, Sect. 90.
 3 on and the costs, upon the goods and chattels of the person Amended.
 4 against whom the execution is granted, except such articles
 5 as are exempt by law, from execution, and to pay the money
 6 within thirty days from date, to the justice who issued the
 7 execution.

1 SECT. 75. Before any execution is delivered, the jus- C. S. p. 511, Sect. 91.
 2 tice shall state in his docket, and also on the back of the exe-
 3 cution, the amount of the debt or damages and costs sepa-
 4 rately, and the officer receiving such execution, shall indorse
 5 thereon the time of the reception of the same.

1 SECT. 76. If any execution is not satisfied, it may, at C. S. p. 511, Sect. 92.
 2 the request of the plaintiff, be renewed from time to time,
 3 by the justice issuing the same, by an indorsement to that
 4 effect, dated and signed by him; if any part of such execu-
 5 tion has been satisfied, the indorsement of renewal shall ex-
 6 press the sum due on the execution; every such indorse-
 7 ment shall renew the execution in full force, in all respects
 8 for thirty days, and no longer. An entry of such renewal
 9 shall be made in the docket of the justice.

1 SECT. 77. The officer after taking goods and chattels C. S. p. 511, Sect. 93.
 2 into his custody by virtue of an execution, shall without
 3 delay give public notice, by at least three advertisements,
 4 posted in three public places in the election district where
 5 the property is to be sold, of the time and place when and
 6 where the same will be exposed for sale. Such notice shall
 7 describe the goods and chattels taken, and be posted at least
 8 ten days before the day of sale.

1 SECT. 78. At the time so appointed, the officer shall ex- C. S. p. 511, Sect. 94.
 2 pose the goods and chattels to sale at public vendue to the
 3 highest bidder. The officer shall in all cases return the
 4 execution, and have the money before the justice at the
 5 time of making such return.

1 SECT. 79. No officer shall, directly or indirectly, pur-

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c. s. p. 511, Sect. 95. 2 chase any goods and chattels at any sale made by him upon
3 execution.

c. s. p. 511, Sect. 97. 1 SECT. 80. The officer who holds an execution, shall re-
2 ceive all money tendered to him in payment thereof, and
3 indorse the same on the execution, and give the person pay-
4 ing the same a receipt therefor, in which shall be specified
5 on what account the same was paid.

TITLE IX.

REPLEVIN.

c. s. p. 512, Sect. 98. 1 SECT. 81. When the object of the action is to recover
2 the possession of personal property, the plaintiff or some
3 other person shall, before any writ is issued, make an affi-
4 davit, and file the same with the justice.

c. s. p. 512, Sect. 99. 1 SECT. 82. Such affidavit shall state that the property (des-
2 cribing it) is wrongfully detained by the defendant, that the
3 plaintiff is entitled to the immediate possession thereof, that it
4 was not taken from him by any process legally and properly is-
5 sued against him, or if so taken, that it was exempt from
6 seizure on such process; it shall also state the value of the
7 property according to the best knowledge and belief of the
8 affiant.

c. s. p. 512, Sect. 100. Amended. 1 SECT. 83. The plaintiff shall also execute a bond to the
2 defendant with sureties, to be approved by the justice, in a
3 penalty at least double the value of the property sought,
4 conditioned that he will appear at the return day of the
5 writ and prosecute his action to judgment, and return the
6 property to the defendant, if a return thereof is ordered by
7 the court, and also pay all costs and damages that may be
8 adjudged against him; the bond shall be filed with the jus-
9 tice for the use of any person injured by the proceeding,
10 and an action may be maintained on such bond to recover
11 the amount of any judgment rendered on dismissal of the
12 action for want of jurisdiction or other cause, or for failure
13 to abide by any such judgment, or to return the property
14 when ordered by the court upon such dismissal.

c. s. p. 512, Sect. 101. 1 SECT. 84. The justice shall thereupon issue a writ, di-
2 rected to the sheriff or any constable of the county, com-
3 manding him to take the property therein described and de-
4 liver the same to the plaintiff, and summon the defendant
5 to appear and answer the same on the return day mentioned
6 in the writ.

1 SECT. 85. In obedience to such writ, the officer shall
 2 forthwith take possession of the property mentioned in the C. S. p. 512, Sect.
 3 writ, if the same is in the possession of the defendant or his 102. c 59
 4 agent, for which purpose he may break open any dwelling
 5 house or other enclosure, having first demanded entrance,
 6 and exhibited his authority if required.

1 SECT. 86. If a third person claims the property, he shall C. S. p. 512, Sect.
 2 be made a co-defendant. 103.

1 SECT. 87. If the property sought is not obtained, the
 2 plaintiff, if he establishes his right thereto, shall recover the C. S. p. 512, Sect.
 3 value of that right; whether obtained or not, he shall recov- 104. Amended.
 4 er the damages he has sustained in consequence of the ille-
 5 gal detention, or taking and withholding thereof.

1 SECT. 88. If the plaintiff fails to establish his right to
 2 the property, the defendant shall recover such damages, as C. S. p. 512, Sect.
 3 under the circumstances he shows himself entitled to; and 105.
 4 in addition thereto may have judgment for the return of the
 5 property, or the value thereof, if the same has been taken
 6 out of his possession, or delivered to the plaintiff.

1 SECT. 89. If the property has been delivered to the
 2 plaintiff, and the action is dismissed before answer, or the
 3 defendant in his answer claims a return thereof, the defen- New.
 4 dant shall have judgment for a return of the property, and
 5 damages, if any, for the detention or taking and withhold-
 6 ing thereof, but such judgment shall not be a bar to another
 7 action for the same property or any part thereof.

TITLE X.

PROCEEDINGS BY ATTACHMENT.

1 SECT. 90. Any creditor is entitled to proceed by at-
 2 tachment in a justice's court, against the property of his C. S. p. 513, Sect.
 3 debtor, in the cases, upon the conditions, and in the manner 106.
 4 provided in this title.

1 SECT. 91. Before a writ of attachment is issued, the
 2 plaintiff, or some person in his behalf, shall make and file C. S. p. 513, Sect.
 3 with the justice, an affidavit stating that the defendant is in- 107.
 4 debted to the plaintiff, in a sum exceeding five dollars; and
 5 specifying the amount of such indebtedness, as near as may
 6 be, over and above all legal set-offs, and that the same is
 7 due upon contract, express or implied, or upon judgment
 8 or decree of some court, and containing a further statement
 9 that the affiant has good reason to believe either:

10 *First.*—That the defendant is a non-resident corporation ;
11 or

12 *Second.*—That the defendant is not a resident of this
13 state, and has not resided therein for three months imme-
14 diately preceding the time of making such affidavit ;

15 *Third.*—That the defendant has absconded, or is about
16 to abscond from the state ;

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

20 *Fifth.*—That the defendant resides in any other county,
21 and more than one hundred miles from the residence of the
22 justice ;

23 *Sixth.*—That the defendant contracted the debt under
24 fraudulent representations ;

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

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

c59 C. S. p. 513, Sect.
106.
1 SECT. 92. In the first five cases mentioned in the pre-
2 ceding section, the writ of attachment shall be returnable in
3 three days ; but in all other cases, it shall be returnable as
4 an ordinary summons.

c85 1860—p. 272, Sect. 1.
1 SECT. 93. Before issuing a writ of attachment, the jus-
2 tice shall require a bond on the part of the plaintiff, with
3 sufficient surety, conditioned that if the plaintiff fails to re-
4 cover judgment, the plaintiff will pay all costs that may be
5 adjudged against him, and all damages which the defendant
6 may sustain by reason of the attachment, not exceeding the
7 sum of one hundred dollars.

c59 C. S. p. 513, Sect.
110. Amended.
1 SECT. 94. The writ of attachment shall be returnable
2 as an ordinary summons, and the officer shall execute the
3 same by summoning the defendant, if to be found within the
4 county, and by attaching the goods and chattels, moneys
5 and credits, of the defendant, not exempt by law. In case
6 the defendant cannot be found in the state, he may be sum-
7 moned by the publication of the summons, as in other
8 cases.

C. S. p. 514, Sect.
111.
1 SECT. 95. When property of the defendant is act-
2 ually seized on attachment, the defendant, or any other
3 person for him, may obtain possession thereof, by giving
4 bond with sureties, to the satisfaction of the officer execut-
5 ing the writ, in double the value of the property attached,
6 conditioned that the same shall be forthcoming, when and

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7 where the justice shall direct, and shall abide the judgment
8 of the justice.

1 SECT. 96. When property of the defendant, found in the
2 hands or possession of any other person than the defendant,
3 is attached, such person may retain the possession thereof, C. S. p. 515, Sect. 121. c 59
4 by giving bond with sureties, to the satisfaction of the offi-
5 cer executing the writ, in double the value of the property
6 attached, conditioned that the same shall be forthcoming
7 when and where the justice shall direct, and shall abide the
8 judgment of the justice.

1 SECT. 97. When property is seized on attachment, C. S. p. 514, Sect. 112.
2 which is likely to perish or depreciate in value before the
3 probable end of the action, or the keeping of which would
4 be attended with much loss or expense, the justice may or-
5 der the same to be sold by the officer, in the same manner
6 and on the same notice, as goods are required to be sold on
7 an execution; and the proceeds of such sale shall remain in
8 the hands of the officer, subject to be disposed of as the
9 property would have been if seized upon in specie.

1 SECT. 98. When property is seized on attachment, the C. S. p. 515, Sect. 113.
2 justice may allow to the officer having charge thereof,
3 such compensation for his trouble and expense in keeping
4 and maintaining the same, as is reasonable and just.

1 SECT. 99. Like pleadings and proceedings shall be had C. S. p. 515, Sect. 118.
2 as far as practicable, in actions commenced by attachment,
3 and actions founded on contracts and commenced by sum-
4 mons.

1 SECT. 100. Attachments may be dissolved, on motion, C. S. p. 515, Sect. 119.
2 at any time before final judgment, if the defendant appears
3 and pleads to the action and gives bond to the plaintiff,
4 with good and sufficient surety to be approved by the jus-
5 tice, in double the amount of property, effects, and credits
6 attached, conditioned that if judgment is rendered against
7 him, he will pay the amount thereof, with costs and inter-
8 est thereon.

1 SECT. 101. When any attachment is dissolved, the pro- C. S. p. 515, Sect. 120.
2 perty and effects attached shall be released, and the action
3 proceed as if it had been commenced by a summons only.

1 SECT. 102. When judgment is rendered in any attach- C. S. p. 515, Sect. 122.
2 ment case, execution may issue thereon, and the property
3 attached may be sold in the same manner as in other cases,
4 except as otherwise provided in this title.

TITLE XI.

APPEALS.

1 SECT. 103. Any person aggrieved by any judgment ren-
 2 dered by any justice, when the judgment exceeds fifteen dol-
 3 lars, or in an action of replevin, when the value of the pro-
 4 perty as sworn to in the affidavit exceeds fifteen dollars, or
 5 when the amount claimed in the complaint exceeds thirty
 6 dollars, may appeal by himself or agent to the district court
 7 of the county where the same was rendered, but this does
 8 not apply to an action of forcible entry and detainer; *Pro-*
 9 *vided*, That an appeal upon questions of law as herein pro-
 10 vided, may be taken in any action without reference to the
 11 amount in controversy, or the amount of the judgment.

c 59
 c 22
 C. S. p. 517, Sect.
 136, in part; 1865—
 p. 60, last clause of
 Sect. 3, combined.

1 SECT. 104. No appeal shall be allowed in any case un-
 2 less the following requisites are complied with, within ten
 3 days after judgment rendered, viz :

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

7 *Second*.—A bond shall be executed by the party appeal-
 8 ing, his agent or attorney, to the adverse party in a sum suf-
 9 ficient to secure such judgment and costs of appeal, with one
 10 or more sureties, to be approved by the justice, conditioned
 11 that the appellant shall prosecute his appeal with effect and
 12 abide the order of the court therein.

13 *Third*.—The party appealing shall serve a notice upon
 14 the opposite party, his agent or attorney, who appeared
 15 for him on the trial, specifying the ground of the appeal,
 16 generally as follows: That the appeal is taken upon ques-
 17 tions of law alone, or, upon questions of fact alone, or, up-
 18 on questions of both law and fact. Said notice shall be
 19 served by delivering a copy thereof to the person upon
 20 whom service is made, or by leaving a copy at the residence
 21 of such person, and the original notice with proof of service
 22 thereof, shall be filed with the justice who rendered the
 23 judgment appealed from, within ten days after such service
 24 is made.

c 59
 c 22
 C. S. p. 517, Sect.
 137. Amended.

1 SECT. 105. Upon a compliance with the foregoing pro-
 2 visions, the justice shall allow the appeal, and make an en-
 3 try of such allowance in his docket; and all further pro-
 4 ceedings on the judgment before the justice shall be suspen-
 5 ded by the allowance of the appeal.

C. S. p. 517, Sect.
 139.

1 SECT. 106. On or before the first day of the term of the
 2 district court next after the appeal is allowed, the justice
 3 shall file in the office of the clerk of said court, a transcript

4 of all the entries made in his docket, together with all the
 5 process and other papers relating to the action and filed
 6 with the justice; and upon the filing of his return the dis-
 7 trict court shall become possessed of the action, and shall
 8 proceed therein in the same manner as near as may be as in
 9 actions originally commenced in that court, except as here-
 10 in otherwise provided.

1 SECT. 107. Upon an appeal upon questions of law alone,
 2 the action shall be tried in the district court, upon the re-
 3 turn of the justice. Upon an appeal taken upon questions
 4 of fact alone, the action shall be tried in the same manner
 5 as actions originally commenced in the district court. Up-
 6 on an appeal upon questions of both law and fact, the ac-
 7 tion shall be tried in the same manner as if originally com-
 8 menced in the district court; *Provided*, That no question
 9 of law shall be tried or raised in the district court, except
 10 those tried or raised in the court below, and to which an
 11 exception was taken to the order made thereon by the jus-
 12 tice, except objections to the jurisdiction of the court, and
 13 that the complaint or answer does not state facts sufficient
 14 to constitute a cause of action or defense.

1865—D. 60, Sect. 3,
 in part.

c 22

1 SECT. 108. The appellant shall cause an entry of the ap-
 2 peal to be made by the clerk of the court on or before the
 3 second day of the term, unless otherwise ordered by the
 4 court, and the plaintiff in the court below shall be the plain-
 5 tiff in the court above; *Provided*, That if the appellant fails
 6 or neglects to enter the appeal as aforesaid, the appellee
 7 may have the same entered at any time during that or some
 8 succeeding term, and the judgment of the court below shall
 9 be entered against the appellant for the same, with interest
 10 and the costs of both courts.

C. S. p. 518, Sect.
 141.

c 59

1 SECT. 109. Upon an appeal being made and allowed,
 2 the district court may, by attachment, compel a return by
 3 a justice of the proceedings in the action, and of the papers
 4 required of him to be returned.

C. S. p. 518, Sect.
 142.

1 SECT. 110. If a justice fails to allow an appeal in a
 2 cause, when the same ought to have been allowed, the dis-
 3 trict court, on such fact satisfactorily appearing, may, by at-
 4 tachment, compel him to allow the same, and to return his
 5 proceedings in the action, together with all papers required
 6 to be returned by him.

C. S. p. 518, Sect.
 143.

1 SECT. 111. Whenever the court is satisfied that the
 2 return of the justice is substantially erroneous or defect-
 3 ive, the court may, by attachment, compel him to amend
 4 the same.

C. S. p. 518, Sect.
 144.

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C. S. p. 518, Sect.
145.

1 SECT. 112. No appeal allowed by a justice shall be dis-
2 missed on account of their being no bond, or that the bond
3 given is defective; if the appellant will before the motion to
4 dismiss is determined, execute such bond as he ought to
5 have executed before the allowance of the appeal, and pay
6 all costs that shall be incurred by reason of such default or
7 omission.

C. S. p. 518, Sect.
146.

1 SECT. 113. All appeals allowed, thirty days before the
2 first day of the term of the district court next after the ap-
3 peal allowed, shall be determined at such term, unless con-
4 tinued for cause.

C. S. p. 518, Sect.
147. Amended.

1 SECT. 114. In all cases of appeal from a justice's
2 court, the district court has power to affirm the judgment of
3 the justice upon any default of the appellant to appear and
4 prosecute his appeal; and in all cases if the judgment is
5 against the appellant, such judgment shall be rendered
6 against him and his sureties in the bond.

C. S. p. 518, Sect.
148.

1 SECT. 115. If upon an execution issued upon such judg-
2 ment, the principal shall not pay the amount thereof, and
3 the officer cannot find sufficient property of said principal
4 to satisfy the same, such execution shall be enforced against
5 the sureties, and the officer shall specify on his return, by
6 whom the money was paid, and the time thereof.

C. S. p. 518, Sect.
149.

1 SECT. 116. After the return of an execution satisfied in
2 whole or in part out of the property of the surety, such
3 surety is entitled to a judgment on motion against the prin-
4 cipal for the amount so paid by him, together with interest
5 from the time of payment; such motion shall be made with-
6 in one year after the return day of the execution, and the
7 return of the officer is evidence upon the hearing of such
8 motion of the facts therein stated.

C. S. p. 518, Sect.
150. Amended.

1 SECT. 117. No appeal shall be allowed by any justice,
2 until the appellant pays all costs which have accrued in the
3 justice's court, including his fees for the return.

1 SECT. 118. Whenever an appeal is taken after any jus-
2 tice has gone out of office, from a judgment rendered by
3 him while in office, such person shall make return to such ap-
4 peal, in like manner and with like effect as if such appeal
5 had been taken while he was in office.

TITLE XII.

PROCEEDINGS FOR CONTEMPTS BEFORE JUSTICES OF THE PEACE.

1 SECT. 119. In the following cases a justice may punish
2 for contempt:

3 *First.*—Persons guilty of disorderly, contemptuous and C. S. p. 519, Sect.
4 insolent behavior towards such justice, whilst engaged in 151. 259
5 the trial of an action, or in rendering judgment, or in any
6 judicial proceedings, which tends to interrupt such pro-
7 ceedings, or to impair the respect due to his authority;

8 *Second.*—Persons guilty of any breach of the peace, noise,
9 or disturbance, tending to interrupt the official proceedings
10 of such justice;

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

1 SECT. 120. Punishment for contempt may be by fine C. S. p. 519, Sect.
2 not exceeding twenty dollars, or by imprisonment in the 152.
3 county jail, not exceeding two days.

1 SECT. 121. No person shall be punished for contempt
2 before a justice of the peace, until an opportunity is given C. S. p. 519, Sect.
3 him to be heard in his defense; and for that purpose the 153.
4 justice may issue his warrant to bring the offender before
5 him.

1 SECT. 122. If the offender is present he may be sum- C. S. p. 519, Sect.
2 marily arraigned by the justice, and proceeded against in 154.
3 the same manner as if a warrant had been previously issued,
4 and the offender arrested thereon.

1 SECT. 123. Upon the conviction of any person for con- C. S. p. 519, Sect.
2 tempt, the justice shall make up a record of the proceed- 156.
3 ings on the conviction, stating the particular circumstances
4 of the offense, and the judgment rendered thereon, and
5 shall file the same in the office of the clerk of the district
6 court, and shall also enter the same in his docket as in
7 civil cases.

1 SECT. 124. The warrant of commitment for any consta- C. S. p. 519, Sect.
2 ble, shall set forth the particular circumstances of the of- 157.
3 fense, or it shall be void.

1 SECT. 125. When any witness attending before a jus- C. S. p. 520, Sect.
2 tice of the peace, in any cause, refuses to be sworn in some 159.
3 form prescribed by law, or to answer any pertinent or
4 proper question, such justice may, by order, commit such
5 witness to the jail of the county.

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C. S. p. 520, Sect. 160.

1 SECT. 126. Such order shall specify the cause for which
2 the same is issued; and if it is for refusing to answer any
3 question, such question shall be specified therein; and such
4 witness shall be closely confined pursuant to such order,
5 until he submits to be sworn, or to answer, as the case
6 may be.

C. S. p. 520, Sect. 161.

1 SECT. 127. The justice shall thereupon adjourn such
2 case, at the request of the party, for such time as shall be
3 reasonable, or until such witness shall testify in the case.

C. S. p. 520, Sect. 162.

1 SECT. 128. If any person duly subpoenaed, and obliged
2 to attend as a witness, fails to do so, he shall be considered
3 guilty of a contempt, and shall be fined all the costs for his
4 apprehension, unless he shows reasonable cause to the sat-
5 isfaction of the justice, for his omission to attend; in which
6 case the party requiring such appearance, shall pay the costs
7 thereof.

TITLE XIII.

FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

1 SECT. 129. The following, or equivalent forms shall be
2 used by justices of the peace, in proceedings to be had un-
3 der the provisions of this chapter, to wit:

Form of warrant.

C. S. p. 522, Sect. 178. Amended.

4 State of Minnesota, } ss.
5 County of }
6 The State of Minnesota,
7 To the sheriff or any constable of said county:
8 You are hereby commanded to take the body of ,
9 if he be found within your county, and bring
10 forthwith before the undersigned, one of the justices of the
11 peace, in and for said county, at , to answer to,
12 , in a civil action; and you are hereby
13 commanded to give due notice thereof to said plaintiff; and
14 have you then and there this writ.
15 Given under my hand, this day of , A. D. 18 .
16 J. P., justice of the peace.

Form of summons.

17 State of Minnesota, } ss.
18 County of }
19 The State of Minnesota,
20 To the sheriff or any constable of said county:
21 You are hereby commanded to summon , if he

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22 shall be found in your county, to be and appear before the
23 undersigned, one of the justices of the peace in and for said
24 county, on the day of , 18 , at o'clock in
25 the noon, at , in said county, to answer to
26 in a civil action; and have you then and there
27 this writ.

28 Given under my hand, this day of , A. D. 18 .
29 J. P., justice of the peace.

C. S. p. 522, Sect.
178. Amended.

c 59

Form of Summons in case of Publication.

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

The State of Minnesota,

32 To defendant:

33 You are hereby summoned and commanded to be and
34 appear before the undersigned, one of the justices of the
35 peace in and for said county on the day of , 18 ,
36 at o'clock, in the noon, at my office, in the
37 of in said county, to answer to in a civil ac-
38 tion. Should you fail to appear at the time and place afore-
39 said, judgment will be rendered against you upon the evi-
40 dence adduced by said , for such sum as he shall
41 show himself entitled to.

42 Given under my hand, this day of , 18 .
43 A. B., justice of the peace.

Form of execution.

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

The State of Minnesota,

47 To the sheriff or any constable of said county:

48 Whereas, judgment against for the sum of law-
49 ful money of the United States, and for costs of suit,
50 was recovered the day of , before me, at the suit
51 of ; these are therefore to command you to levy dis-
52 tress on the goods and chattels of the said , (except-
53 ing such as the law exempts,) and make sale thereof, ac-
54 cording to law in such case made and provided, to the
55 amount of the said sum, together with twenty-five cents for
56 this execution, and the same return to me within thirty
57 days, to be rendered to the said for said and
58 costs. Hereof fail not, under penalty of the law.

59 Given under my hand this day of , A. D. 18 .
60 J. P., justice of the peace.

Form of a writ of attachment.

62 State of Minnesota, }
 63 County of } ss.
 64 The State of Minnesota,
 65 To the sheriff or any constable of said county :
 66 You are hereby commanded to attach the goods and chat-
 67 tels, moneys, effects, and credits of , or so much
 68 thereof, as shall be sufficient to satisfy the sum of , with
 69 interest and costs of suit, in whosoever hands or possession
 70 the same may be found in your county, and so provide that
 71 the goods and chattels so attached, may be subject to fur-
 72 ther proceedings thereon, as the law requires ; and also to
 73 summon the said , if to be found, to be and appear
 74 at my office in said county, on the day of , A. D.
 75 18 , at o'clock in the noon, to answer to ,
 76 in a civil action to his damage one hundred dollars or under.
 77 Given under my hand at , this day of ,
 78 A. D. 18 .
 79 J. P., justice of the peace.

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C. S. D. 522, Sect. 178. Amended.

Form of a writ of replevin.

80 State of Minnesota, }
 81 County of } ss.
 82 The State of Minnesota,
 83 To the sheriff or any constable of said county :
 84 Whereas, A. B. complains that C. D. has taken and does
 85 unjustly detain (or does unjustly detain, as the case may
 86 be, particularly describing the goods and chattels to be re-
 87 plevied, and the value thereof,) therefore, you are com-
 88 manded that you cause the same goods and chattels to be
 89 replevied without delay ; and if the said A. B. shall give
 90 security as required by law, that you cause the said goods
 91 and chattels to be delivered to the said A. B., and also that
 92 you summon the said C. D. to be and appear before me,
 93 one of the justices of the peace in and for said county, on
 94 the day of , A. D. 18 , at o'clock in the
 95 noon, at , in said county, to answer complaint
 96 of
 97 Given under my hand, this day of , A. D. 18 .
 98 J. P., justice of the peace.

Form of subpoena.

99 State of Minnesota, }
 100 County of } ss.
 101 The State of Minnesota.
 102 You are hereby required to appear before the under-
 103 signed, one of the justices of the peace in and for the said

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104 county, at , on the day of , at o'clock, in
 105 the noon of said day, to give evidence in a certain cause
 106 then and there to be tried, between , plaintiff, and
 107 , defendant, on the part of the
 108 Given under my hand, this day of, A. D. 18 .
 109 J. P., justice of the peace.

Form of a venire for a jury.

110 State of Minnesota, }
 111 County of } ss.
 112 The State of Minnesota.
 113 To the sheriff or any constable of said county :
 114 You are hereby commanded to summon to be and
 115 appear before the undersigned, one of the justices of the
 116 peace, in and for said county, on the day of ,
 117 at o'clock in the noon of said day, in the town
 118 of , to make a jury for the trial of a civil action be-
 119 tween , plaintiff, and , defendant, and have
 120 you then and there this writ.
 121 Given under my hand, this day of , A. D. 18 .
 122 J. P., justice of the peace.

C. S. p. 522, Sect.
 178. Amended.

c59

Form of warrant for contempt.

123 State of Minnesota, }
 124 County of } ss.
 125 The State of Minnesota.
 126 To the sheriff or any constable of said county :
 127 You are hereby commanded to apprehend A. B., and
 128 bring him before J. P., one of the justices of the peace of
 129 said county, at his office in said county, to show cause why
 130 he, the said A. B., should not be convicted of a criminal
 131 contempt, alleged to have been committed on the
 132 day of , A. D. 18 , before the said justice while en-
 133 gaged as a justice of the peace in judicial proceedings.
 134 Dated this day of , A. D. 18 .
 135 J. P., justice of the peace.

Form of record of conviction for contempt.

136 State of Minnesota, }
 137 County of } ss.
 138 The State of Minnesota.
 139 Whereas, on the day of , A. D. 18 , while
 140 we, the undersigned, one of the justices of the peace of
 141 the said county, was engaged in the trial of a cause be-
 142 C. D., plaintiff, and E. F., defendant, in said county, ac-
 143 cording to the statute in such case made and provided, A.
 144 B., of the said county, did interrupt the said proceedings,

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5 reduce the complaint to writing, and cause the same to be
 6 subscribed by the complainant; and if it appears that such
 7 offense has been committed, the said justice shall issue his
 8 warrant, reciting the substance of the complaint, and re-
 9 quiring the officer to whom it is directed, forthwith to ar-
 10 rest the accused, and to bring him before such justice
 11 or some other justice of the same county, to be dealt with
 12 according to law; and in the same warrant, may require
 13 the officer to summon such witnesses as shall be named
 24 therein, to appear and give evidence at the trial.

1 • SECT. 133. The justice shall enter the action in his
 2 docket, in which the State of Minnesota shall be plaintiff,
 3 and the accused defendant, and he shall keep all such other
 4 entries as are required in civil actions. C. S. p. 524, Sect. 182. c59

1 SECT. 134. On the return of the warrant with the accus-
 2 ed, the said justice shall proceed to hear, try, and deter-
 3 mine the action within one day, unless continued for cause. C. S. p. 524, Sect. 183.

1 SECT. 135. From the time of the return of the warrant,
 2 until the time of the trial, the accused may give bail, with
 3 one or more sufficient sureties for his appearance at the
 4 time fixed for the trial; or in the event of failure to do so he
 5 may be committed to jail for safe keeping, by order of said
 6 justice, or left in the custody of the arresting officer. C. S. p. 524, Sect. 184.

1 SECT. 136. The charge made against the accused, as
 2 stated in the warrant of arrest, shall be distinctly read to
 3 him, and he shall be required to plead thereto, which plea
 4 the justice shall enter in his minutes; if the accused refuses
 5 to plead the justice shall enter the fact with a plea of not
 6 guilty, in behalf of such accused, in his minutes. C. S. p. 524, Sect. 185.

1 SECT. 137. If the plea of the accused is not guilty, and
 2 a jury is waived by him, the said justice shall proceed to
 3 try such issue, and to determine the same according to the
 4 evidence which may be produced against, and in behalf of
 5 such accused. C. S. p. 524, Sect. 186.

1 SECT. 138. If the accused pleads guilty to such charge,
 2 the court shall thereupon convict him of the offense charged
 3 and render judgment thereon. C. S. p. 524, Sect. 187.

1 SECT. 139. After the joining of issue, and before the
 2 court proceeds to an investigation of the merits of the ac-
 3 tion unless the accused expressly waives his right to a trial
 4 by jury, the court shall direct the sheriff or any constable
 5 of the county, to make a list in writing of the names of
 6 twenty-four inhabitants of the county, qualified to serve as C. S. p. 524, Sect. 188.

7 jurors in the district court, from which list the complain-
8 ant and accused may each strike out six names.

c 57
C. S. p. 524, Sect.
180.

1 SECT. 140. In case the complainant or the accused neg-
2 lects to strike out such names, the justice shall direct some
3 suitable disinterested person to strike out the names for
4 either or both of the parties so neglecting; and upon such
5 names being stricken out, the justice shall issue a venire,
6 directed to the sheriff or any constable of the county, re-
7 quiring him to summon the six persons whose names remain
8 upon such list, to appear before such justice, at the time
9 and place to be named herein, as a jury for the trial of such
10 offense.

C. S. p. 525, Sect.
180.

1 SECT. 141. The officer to whom such venire is deliver-
2 ed, shall summon such jury personally, and shall make a
3 list of the persons summoned, which he shall certify and an-
4 nex to the venire, and return the same with such venire to
5 the justice within the time therein specified.

C. S. p. 525, Sect.
191.

1 SECT. 142. If any of the jurors named in such venire
2 fail to attend in pursuance thereof, or if there is any legal
3 objection to any that appear, the justice shall supply the
4 deficiency by directing the sheriff, or any constable who may
5 be present and disinterested, to summon any of the bystan-
6 ders or others who are competent, and against whom no
7 cause of challenge appears, to act as jurors in the action.

C. S. p. 525, Sect.
192.

1 SECT. 143. If the officer to whom the venire is deliver-
2 ed, fails to return the same, as thereby required, or if the
3 jury fail to agree, and are discharged by the justice, a new
4 jury shall be selected and summoned in the same manner,
5 and the same proceedings shall thereupon be had as herein
6 prescribed, in respect to the first jury, unless the accused
7 consents to be tried by the justice; in which case the jus-
8 tice shall proceed to the trial of the issue, as if no jury had
9 been demanded.

C. S. p. 525, Sect.
193.

1 SECT. 144. In all trials for criminal offenses before a
2 justice, either party may challenge any juror for cause.

C. S. p. 525, Sect.
195.

1 SECT. 145. After the jury are sworn, they shall sit to-
2 gether and hear the evidence and allegations in the action,
3 which shall be delivered in public, and in the presence of
4 the accused; and after hearing the same, the jury shall be
5 kept together in some convenient place, until they agree on
6 a verdict or are discharged by the justice; and a sheriff or
7 constable shall be sworn to take charge of the jury in like
8 manner as upon trial in justices' courts in civil proceedings.

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1 SECT. 146. When the jurors have agreed on their ver- C. S. p. 525, Sect.
 2 dict, they shall deliver the same to the justice publicly, who 196.
 3 shall enter it in his docket. c 59

1 SECT. 147. Whenever the accused is tried under the
 2 preceding provisions of this title, and found guilty either by C. S. p. 525, Sect.
 3 the justice or by a jury, or is convicted of the charge 197.
 4 made against him on a plea of guilty, the justice shall ren-
 5 der judgment thereon, and inflict such punishment, either
 6 by fine or imprisonment, or both, as the nature of the case
 7 may require.

1 SECT. 148. Whenever the accused, tried under the pre- C. S. p. 525, Sect.
 2 ceding provisions of this title, either by the justice or by a 198. Amended.
 3 jury, is acquitted, he shall be immediately discharged; and
 4 if the justice before whom the trial is had, certifies in his
 5 docket that the complaint was wilful and malicious, and
 6 without probable cause, he shall enter a judgment against
 7 the complainant for the costs that have accrued to the court
 8 and sheriff, or constable, and jury, in the proceedings had
 9 upon such complaint, and execution may issue therefor.

1 SECT. 149. The person charged with and convicted by
 2 any such justice of any such offense, may appeal from the
 3 judgment of such justice to the district court: *provided*, C. S. p. 526, Sect.
 4 said person shall within twenty-four hours enter into a re- 199. Amended.
 5 cognizance, with one or more sufficient sureties, condition-
 6 ed to appear before said court and abide the judgment of
 7 the court therein; and in the mean time to keep the peace
 8 and be of good behavior; and the justice from whose judg-
 9 ment an appeal is taken, shall make a special return of the
 10 proceedings had before him, and cause the warrant and re-
 11 turn, together with the recognizance to be filed in said dis-
 12 trict court, on or before the first day of the term thereof
 13 next to be holden for said county; and the complainant and
 14 witnesses may also be required to enter into recognizances,
 15 with or without sureties, in the discretion of the justice,
 16 to appear at said district court at the time last aforesaid,
 17 and to abide the order of the court therein.

1 SECT. 150. The party appealing shall, within ten days
 2 after such conviction, serve a notice upon the county attor-
 3 ney of the county, specifying generally the grounds of his 1865—p. 50, Sects. 2
 4 appeal as follows, to-wit: That the appeal is taken upon & 3, combined &
 5 questions of law alone; or, upon questions of fact alone; or, amended.
 6 upon questions of law and fact. If upon questions of law
 7 alone, the cause shall be tried in the district court upon the
 8 return of the justice. If upon questions of fact alone the
 9 cause shall be tried in the same manner as if originally com-
 10 menced in the district court. If upon questions of fact c 22

11 and law, it shall be tried in the same manner as if com-
 12 menced in the district court; *Provided*, That no question of
 13 law shall be raised or tried in the district court, unless the
 14 same was raised in the court below and duly excepted to,
 15 except objections to the jurisdiction of the court or that the
 16 complaint does not state facts constituting a public offense.

c115 C. S. p. 777, Sect. 3.
 Amended.

1 SECT. 151. The appellant shall not be required to ad-
 2 vance any fees in claiming his appeal, nor in prosecuting
 3 the same; but if convicted in the district court, or if sen-
 4 tenced for failing to prosecute his appeal, he may be re-
 5 quired, as a part of his sentence, to pay the whole or any
 6 part of the costs of prosecution, in both courts.

C. S. p. 777, Sect. 4.

1 SECT. 152. If the appellant fails to enter and prosecute
 2 his appeal, he shall be defaulted on his recognizance, and
 3 the district court may award sentence against him for the
 4 offense whereof he was convicted, in like manner as if he
 5 had been convicted thereof in that court, and if he is not
 6 then in custody, process may be issued to bring him into
 7 court to receive sentence.

c59 C. S. p. 527, Sect.
 212.

1 SECT. 153. If the judgment of the justice is affirmed,
 2 or upon any trial in the district court, the defendant is con-
 3 victed, and any fine assessed, judgment shall be rendered
 4 for such fine and costs in both courts against the defendant
 5 and his sureties.

C. S. p. 526, Sect.
 202.

1 SECT. 154. In case any person summoned to appear be-
 2 fore a justice pursuant to the provisions of this title, as a
 3 juror or witness, fails to appear, or if any witness appear-
 4 ing refuses to be sworn or to testify, he is liable to the same
 5 penalties, and may be proceeded against in the same man-
 6 ner as provided by law in respect to jurors and witnesses
 7 in justices' courts in civil actions.

C. S. p. 526, Sect.
 203.

1 SECT. 155. Whenever any conviction is had before a
 2 justice, he shall make a certificate of such conviction under
 3 his hand, in which it shall be sufficient, briefly to state the
 4 offense charged, and the conviction and judgment thereon,
 5 and if any fine has been collected, the amount thereof.

C. S. p. 526, Sect.
 203.

1 SECT. 156. Within twenty days after such conviction,
 2 the said justice shall cause such certificate to be filed in the
 3 office of the clerk of the district court of the county in which
 4 the conviction was had.

C. S. p. 526, Sect.
 206.

1 SECT. 157. No assault, battery or affray is indictable,
 2 but all such offenses shall be prosecuted and determined in
 3 a summary manner, by complaint made before a justice of

4 the peace, and on conviction thereof, the offender may be
5 punished by fine not less than five dollars, nor more than
6 one hundred dollars.

1 SECT. 158. If any justice of the peace has any know-
2 ledge that any of the offenses mentioned in the last section,
3 are about to be committed, he shall issue his warrant and
4 proceed as is directed, when complaint has been made; and
5 if any such offense is committed, threatened or attempted
6 in his presence, he shall immediately arrest the offender, or
7 cause it to be done, and for this purpose no warrant or
8 process is necessary; but the justice may summon to his
9 assistance any sheriff, coroner or constable; and all other
10 persons there present, whose duty it shall be to aid the jus-
11 tice in preserving the peace, arresting and securing the of-
12 fenders, and all such as obstruct or prevent the justice, or
13 any of his assistants in the performance of their duty; and
14 any person who when summoned to aid in arresting and se-
15 curing an offender, refuses to give such assistance, shall
16 forfeit five dollars to the use of the county.

C. S. p. 527, Sect.
207.

c 59

1 SECT. 159. In case of the breach of any recognizance
2 entered into in a criminal case, the same shall be certified
3 and returned to the district court, to be proceeded in ac-
4 cording to law.

C. S. p. 527, Sect.
208.

1 SECT. 160. If, in the progress of any trial before a jus-
2 tice under the provisions of this title it appears to the jus-
3 tice that he has not final jurisdiction in the case before him,
4 and that the accused ought to be put upon his trial for an
5 offense cognizable before the district court, the justice shall
6 immediately stop all further proceedings before him and
7 proceed as in other criminal cases cognizable before the
8 district court.

C. S. p. 527, Sect.
209.

1 SECT. 161. In all cases arising under this title the jus-
2 tice shall summon the injured party, and all others whose
3 testimony is deemed material, as witnesses at the trial, and
4 enforce their attendance by attachment, if necessary.

C. S. p. 527, Sect.
210.

1 SECT. 162. In all cases of conviction under the provis-
2 ions of this title, the justice shall enter judgment for the
3 fine and costs against the defendant, and may commit him
4 until the judgment is satisfied, or issue execution on the
5 judgment to the use of the county; *Provided*, That no jus-
6 tice shall commit a defendant under the provisions of this
7 section for a longer period than three months.

C. S. p. 527, Sect.
211. Amended.

1 SECT. 163. When a trial under the provisions of this
2 title is continued by the justice, it shall not be necessary

C. S. p. 527, Sect.
213.

3 for the justice to summon any witness who may be present
4 to appear at the continuance, but the justice shall verbally
5 notify such witnesses as either party may require, to attend
6 before him to testify in the cause on the day set for trial.

cs9

1 SECT. 164. The justice may require of the complainant
2 to give security for costs, and if he refuses the justice may
3 dismiss the complaint.

1 SECT. 165. All fines imposed by a justice if paid before
2 the accused is committed, shall be received by the justice,
3 and by him paid over to the county treasurer, within thirty
4 days after the receipt thereof.

1 SECT. 166. If the accused is committed, payment of
2 any fine imposed upon him, shall be made to the sheriff
3 of the county who shall within thirty days after the receipt
4 thereof, pay over the same to the county treasurer.

TITLE XV.

FORMS OF WRITS, ETC., IN CRIMINAL PROCEEDINGS.

1 SECT. 167. The following forms may be used under the
2 last title :

Form of Warrant.

3 State of Minnesota, }
4 County of } ss.
5 The State of Minnesota.

6 To the sheriff or constable of said county :
7 Whereas, , has this day complained in writing to
8 me, on oath, that did on the day of A.
9 D. 18 , at , in said county (here insert the com-
10 plaint whatever it may be,) and prayed that the said
11 might be arrested and dealt with according to law ; now
12 therefore, you are commanded forthwith to apprehend the
13 said and bring him before me, to be dealt with ac-
14 cording to law.

c. s. p. 528, Sect. 218.

15 Given under my hand this day of , A. D. 18 .
16 J. P., justice of the peace.

Form of Certificate of Conviction.

17 State of Minnesota, }
18 County of } ss.
19 At a justice's court held at my office in said county, be-
20 fore me, , a justice of the peace in and for said

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64 Whereas, a justice's court held at my office in said county
 65 for the trial of , for the offense hereinafter stated,
 66 the said , of &c., was convicted of having, on
 67 the day of , A. D. 18 , in the said county ;
 68 (here state the offense, as in the warrant,) and upon con-
 69 viction the said court did adjudge and determine, that the
 70 said , should be imprisoned in the common county
 71 jail of said county for days; therefore, you the said
 72 constable, are commanded forthwith to convey and deliver
 73 the said to the said keeper; and you, the said
 74 keeper, are hereby commanded to receive the said
 75 into your custody, in the said jail, and him there safely keep
 76 until the expiration of said days, or until he shall be
 77 thence discharged by due course of law.
 78 Given under my hand this day of , A. D. 18 .
 79 J. P., justice of the peace.

C. S. p. 528, Sect.
 218.

Form of commitment after arrest, and before trial.

80 State of Minnesota, }
 81 County of } ss
 82 The State of Minnesota.
 83 To the sheriff or any constable, and to the keeper of the
 84 common jail of said county :
 85 Whereas, has been this day brought before the
 86 undersigned, one of the justices of the peace in and for said
 87 county, charged on the day of , A. D. 18 ,
 88 , in said county (here state the offense, as in the
 89 warrant,) and the said not having given bail to
 90 appear and answer for the said offense, therefore you, the
 91 said constable, are commanded forthwith to convey, and
 92 deliver into the custody of the said keeper, the body of
 93 the said ; and you, the said keeper are hereby
 94 commanded to receive the said into your cus-
 95 tody in the said jail, and him there safely keep, until he
 96 shall be required to be brought before the court to be tried,
 97 or shall be otherwise discharged by due course of law.
 98 Given under my hand, this day of A. D. 18 .
 99 J. P., justice of the peace.

*Form of commitment where justice on the trial shall find that he
 has not jurisdiction of the case.*

100 State of Minnesota, }
 101 County of } ss.
 102 The State of Minnesota.
 103 To the sheriff or any constable of said county :
 104 Whereas, of, &c., has been brought this day
 105 before the undersigned, one of the justices of the peace of
 106 said county, charged on the oath of , with hav-

107 ing, on the day of , A. D. 18 ,
 108 in said county, committed the offense of (here state
 109 the offense charged in the warrant,) and in the progress of
 110 the trial on said charge, it appearing to the said justice
 111 that the said had been guilty of the offense of
 112 (here state the new offense found on the trial,)
 113 committed at the time and place aforesaid, of which offense,
 114 the said justice has not final jurisdiction; and whereas,
 115 after examination, had in due form of law, touching the
 116 said charge and offense last aforesaid, the said justice did
 117 adjudge that the said offense had been committed, and that
 118 there was probable cause to believe the said to
 119 be guilty thereof; and whereas, the said has
 120 not offered sufficient bail for his appearance to answer for
 121 said offense, you are therefore commanded, forthwith to
 122 take the said and him convey to the common
 123 jail of said county, the keeper whereof is hereby required
 124 to detain him in custody, in said jail, until he shall be
 125 thence discharged according to law.
 126 Given under my hand this day of , A. D. 18 ,
 127 J. P., justice of the peace.

CHAPTER LXVI.

CIVIL ACTIONS.

TITLE I.

OF THE FORM OF CIVIL ACTIONS.

1 SECTION 1. The distinction between actions at law, and
 2 suits in equity and the forms of all such actions and suits, C. S. p. 532, Sect. 1.
 3 are abolished; and there shall be in this state, but one form Amended. 60
 4 of action, for the enforcement or protection of private rights,
 5 and the redress of private wrongs; which shall be called
 6 a civil action.

1 SECT. 2. The party complaining shall be known as the C. S. p. 532, Sect. 2.
 2 plaintiff, and the adverse party as the defendant.

TITLE II.

THE TIME OF COMMENCING ACTIONS.

1 SECT. 3. Actions can only be commenced within the