GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

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WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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judgment in either case above stated the further sum, as such costs, of fifty cents for each additional hundred dollars, or fraction thereof. When issue is joined, and a trial had in the action, there shall be charged as court costs, in every case, in addition to the charges in this section above mentioned, the sum of three dollars for each day, or part of a day, consumed in the trial. The above-prescribed charges shall cover all ordinary court costs in any civil action up to and including entry of judgment, the issue of one execution, and satisfaction of judgment: *provided, however*, that they shall not be deemed to cover court costs, on motion for a new trial, or in arrest of judgment, or other motions not made at the trial or on the taking of an appeal from said court. In each and every civil action there shall be taxed and allowed, besides the court costs above stated, the same fees for services performed by the sheriff, city marshal, or other officer, in serving process or otherwise, as are allowed by the statutes for this state to constables for like services. All sums due for court costs or fees of the city marshal, or his deputy, or the court officer in any civil case, shall be paid to the clerk before judgment shall be entered therein. (*Sp. Laws* 1885, c. 115, § 29, *as amended* 1887, *Sp. Laws*, c. 49, § 11.)

*§ 322. Costs include clerk's fees.

The term "court costs," or "costs of court," as used in section twenty-seven and twenty-nine of this act, shall be construed as embracing clerk's fees; but for all services performed by the clerk in his official capacity, which are not within the provisions of said sections, and are not otherwise provided for in this act, the same fees shall be charged and collected as now are or may hereafter be allowed by law to the clerk of the district court of Winona county for similar services. (*Id.* § 30.)

*§ 323. Territorial jurisdiction.

The territorial jurisdiction of said municipal court shall be the same as that of justices of the peace in Winona county, except as is hereinbefore otherwise provided. (*Id.* § 31.)

CHAPTER 65.

COURTS OF JUSTICES OF THE PEACE.*

TITLE 1.

JURISDICTION.

§ 2. Place of holding office and court.

["Amended so as to read as follows: *Provided, further*, that no justice of the peace shall hold his office or court in any saloon, or in any room adjacent to a saloon, where there is communication, by door or otherwise, between said place where said court is held and said saloon.

"§ 2. Every justice of the peace shall keep his office in the town, city, or ward for which he is elected; but he may issue process in any place in the county, and may, in his discretion, for the convenience of parties, make any

*Jurisdiction of justices of the peace of offenses in relation to obscene books, etc., see *post*, c. 100, *§§ 12a, 12b.

For duties of justices of the peace to make reports to county attorneys, see *ante*, c. 8, *§ 212c.

cognizance of such causes and proceedings and proceed therein as if the same were originally commenced in said municipal court. And the dockets, records, files, and papers in the custody of any and all justices of the peace of said city shall at once be transferred and turned over to the said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any such justice of the peace, and to enforce, by execution or otherwise, all judgments theretofore rendered by justices of the peace within the present city of Winona. And such judgments shall stand on the same footing as judgments of said municipal court; and after the election and qualification of said municipal judge no justice of the peace within the city of Winona shall issue any process nor take cognizance of any action or proceedings, civil or criminal, but the jurisdiction of said municipal court shall, within said city, be exclusive in all causes heretofore cognizable before justices of the peace, except that this clause shall not affect the jurisdiction of any court of record having general jurisdiction, such as is conferred upon the district court. (*Id.* § 26.)

*§ 319. Costs in criminal cases.

In all criminal cases tried in said court, whether arising under the statutes of this state or under the ordinances of said city, in which the defendant shall be convicted, he shall be required to pay the costs of prosecution, and the clerk shall tax as costs of court, in addition to all fees of witnesses for the prosecution and of the sheriff, or other officer or officers taxed in said cases, and if not paid, judgment shall be entered therefor against the defendant, the following sums, viz.: In cases where no warrant is issued, and the defendant, upon being arraigned, shall plead guilty, two dollars; in cases where warrant shall be issued, and the defendant, upon arraignment, pleads guilty, two and one-half dollars; in cases where the defendant shall plead not guilty, and shall be tried before the court, five dollars; in cases where the defendant shall plead not guilty, and shall be tried before a jury, ten dollars. Said sums, respectively, to cover all ordinary court costs up to and including entry of judgment, and the issue of commitment or execution for the enforcement thereof. In any criminal case in said court, whether arising under the statutes of this state, or under the ordinances of said city, the court shall have power, if the defendant is convicted, to commit him either to the jail of Winona county or to the city prison of said city, until any fine which the court may impose upon him, and the costs of prosecution, or either, are paid: *provided*, that such commitment shall not in any case be for a longer time than three months. (*Id.* § 27.)

*§ 320. Costs in examinations.

In all examinations held by or before said court, to inquire of offenses of which said court shall not have final jurisdiction, the clerk shall tax as costs of said court the same fees as are now allowed to justices of the peace for similar services, including a fee of two dollars for the return, and collect the same from the county of Winona. (*Id.* § 28.)

*§ 321. Deposit by plaintiff.

On filing his complaint in any civil action in said municipal court, the plaintiff shall pay to the clerk, as court costs, the sum of two dollars, which shall be retained and paid over to the city treasurer whether any further proceedings in the case are taken or not; and if the amount claimed in the complaint, or the value as therein alleged, of the property of which recovery is sought does not exceed one hundred dollars, and judgment is rendered in plaintiff's favor, by default or by consent of defendant without trial, or in defendant's favor on dismissal of the action without trial, no further charge for such costs shall be made; but if the amount so claimed, or the value of property so alleged, exceeds one hundred dollars, there shall be charged on entry of

process issued by him, either civil or criminal, returnable, and may hold his court at any place appointed by him in a town or ward adjoining the town or ward in which he resides, or in any incorporated village located within the town in which said justice resides; *provided*, the place so appointed be within his county."] (*As amended* 1868, *c.* 92, § 1; 1885, *c.* 124.)

The effect of this section is to require a justice to transact his judicial business in the town, city, or ward for which he is elected, except that he may issue process in any place in his county, and may, in his discretion, for the convenience of parties, make any process issued by him returnable, and may hold any court which he is by law authorized to hold at any place appointed by him in a town adjoining the town for which he is elected, or a ward adjoining the ward for which he is elected, as the case may be, provided the place so appointed is within his county. State v. Marvin, 26 Minn. 323, 3 N. W. Rep. 991.

§ 4. Powers of justice.

A search-warrant issued by a justice of the peace, commanding search to be made for certain property of such justice, alleged to have been stolen, is void, and the fact that the property to be searched for is the property of the justice appearing upon the face of the warrant, the warrant furnishes no protection to the constable who executes the same. Jordan v. Henry, 22 Minn. 245.

§ 5. Jurisdiction.

SUBD. 1. Justices of the peace have (with the exceptions stated in the statute) exclusive original jurisdiction of all matters where the amount in controversy does not exceed $100. The district courts have original jurisdiction only where justices have not. Castner v. Chandler, 2 Minn. 86, (Gil. 68.)

A justice has no jurisdiction of an action for damages to real estate, where the damages claimed exceed $100. Turner v. Holleran, 8 Minn. 451, (Gil. 401.)

Under section 62, *c.* 5, Laws 1873, an appeal lies to the district court from the order of town supervisors laying out a highway, where the damages claimed by appellant exceed $100. Gorman v. Town of St. Mary, 20 Minn. 392, (Gil. 343.)

This section is not in contravention of the constitutional provision that no justice shall have jurisdiction in any civil action in which the amount in controversy exceeds $100. The words "the sum claimed" and "amount in controversy" are synonymous. Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

In actions before a justice, on contract for money, the sum claimed in the complaint determines the jurisdiction, and it cannot be affected by any counter-claim in the answer. Id.

SUBD. 2. A justice has no jurisdiction in an action in replevin where the value of the property and amount of damages claimed, taken together, appear from the complaint to exceed $100. Stevers v. Gunz, 23 Minn. 520.

In replevin before a justice the jurisdiction is not derived from the complaint, but from the filing of an affidavit stating the value of the property at $100 or less, and a bond; and where the answer does not allege a greater value on appeal, proof in the district court of a greater value does not affect the jurisdiction. Hecklin v. Ess, 16 Minn. 51, (Gil. 38.)

Where the damages claimed in the district court exceed the jurisdiction of a justice of the peace, the plaintiff, recovering only $50, is entitled to costs and disbursements. Greenman v. Smith, 20 Minn. 418, (Gil. 370.)

§ 6. Actions beyond jurisdiction.

A justice has no jurisdiction of an action to recover possession of real estate, sold at judicial sale, until the time to redeem expires. Stone v. Bassett, 4 Minn. 298, (Gil. 215.)

TITLE 2.

COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

§ 7. Justice's docket.

Where a justice has jurisdiction, the same presumption as to regularity and formality attaches to his proceedings as to those of a court of record. Clague v. Hodgson, 16 Minn. 329, (Gil. 291.)

The record must show facts which confer jurisdiction both of the person and cause of action. Barnes v. Holton, 14 Minn. 357, (Gil. 275.) Neither the nature of the action, nor the justice's jurisdiction therein, can be shown by the judgment. Id.

An entry in a justice's docket, "Nov. 19, 1852. Summons returned served by copy by

Officer Brott," sufficiently shows jurisdiction of the justice over the person. Bidwell v. Coleman, 11 Minn. 78, (Gil. 45.)

The failure of the justice's docket to show when the parties appeared does not affect the regularity of the judgment. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.) The justice's docket need not contain the verifications of the pleadings. Id.

Where the record of the proceedings, in an action in a justice's court, is silent as to the verification of a complaint in such action, it will be presumed that it was verified. Burt v. Bailey, 21 Minn. 403.

Where, in an action before a justice, the pleadings are in writing, and filed, the omission of the justice to make a statement of plaintiff's demand in his docket does not invalidate the judgment. Payson v. Everett, 12 Minn. 216, (Gil. 138.)

A docket entry, "By consent of parties, the case is adjourned till Monday, September 23, 1873, at 1 o'clock in the afternoon," sufficiently complies with the statute requiring that the justice shall enter in his docket "every adjournment, stating to what time and place." Anderson v. Southern Minnesota R. Co., 21 Minn. 30.

It is not necessary that a justice of the peace should sign judgments entered by him. State of Minnesota v. Bliss, 21 Minn. 459.

The return of the justice, on appeal, need not show of what county he is justice, nor contain his minutes of the trial. Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

A decision of a justice upon an objection to evidence not excepted to, will not be reviewed on appeal. Witherspoon v. Price, 17 Minn. 337, (Gil. 313.)

As to the requisites of the justice's record in a criminal action, see State v. McGinnis, 30 Minn. 48, 14 N. W. Rep. 256.

See Rahilly v. Lane, cited in note to § 20, *infra*.

§ 10. (Sec. 8.) Commencement of actions.

It was obviously the object of the statute to enable the parties to a controversy, of which a justice might, by the ordinary process of his court, acquire jurisdiction, to dispense with the delay and expense incident to jurisdictional proceedings, and, by mere consent and summarily, to submit the matter for adjudication. Anderson v. Hanson, 28 Minn. 402, 10 N. W. Rep. 429.

The consent necessary to confer jurisdiction may be not only express, but may be implied from a voluntary appearance and participation in the proceedings before the court, without objection seasonably made. One may not thus voluntarily invoke the jurisdiction of a court, or seek the benefits of its exercise, and afterwards be heard to object that the court had not the right to adjudicate as to him. Overruling Rahilly v. Lane, 15 Minn. 447, (Gil. 360.) Id.

Objections to the summons are waived by a general appearance, (in this case by appeal on questions of law from a judgment of a justice taken by default.) Johnson v. Knoblauch, 14 Minn. 16, (Gil. 4.)

Irregularities in the service of a summons issued by a justice are waived by appearing and objecting to the jurisdiction on other grounds. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.)

A corporation, after appearing generally, and pleading to the merits in an action in a justice's court, cannot afterwards object that the summons was not served in conformity with the requirements of statute. Anderson v. Southern Minnesota R. Co., 21 Minn. 30.

The amount claimed in the complaint exceeded the jurisdictional limits of a justice's court. Issue was joined, and parties proceeded to trial. On the close of plaintiff's testimony defendant moved to dismiss because of want of jurisdiction, and plaintiff then, by leave of the court, amended his complaint so as to reduce the amount of his claim to $100. Both parties then proceeded with the trial, and judgment was rendered for the plaintiff. Held, that the conduct of the parties after the amendment, and the proceedings subsequent thereto, gave the justice ample jurisdiction to render the judgment. Lamberton v. Raymond, 22 Minn. 129.

See Morse v. Barrows, 33 N. W. Rep. 706; Craighead v. Martin, 25 Minn. 41, 43.

§ 11. (Sec. 9.) Security for costs.

The obligation assumed by giving the statutory security for costs in an action in a justice's court extends to costs incurred in the district court, upon appeal thereto. Starlocki v. Williams, 34 Minn. 543, 26 N. W. Rep. 909.

An action to enforce such obligation is not required to be before the justice in whose court such security was given; nor in a justice's court. It may be prosecuted in the district court. Id.

§ 12. (Sec. 10.) Requisites of summons and process.

Every summons or process issued by a justice of the peace shall run in the name of the state of Minnesota, be dated on the day it issues, be signed by the justice issuing the same, and be directed to the sheriff or any constable of the proper county. It shall be entirely filled up, and have no blank, either

in date, or otherwise, at the time of its delivery to an officer to be executed. Every such process which is issued and delivered to an officer to be executed, contrary to the provisions of this section, shall be void: *provided*, that every summons or other process issued by a justice of the peace in a civil action shall not be returnable earlier than nine o'clock in the forenoon, nor later than five o'clock in the afternoon. (*As amended* 1885, c. 66.)

A summons in justice court, designating the time for the appearance of the defendant at "10 o'clock in the * * * noon," on a day named, is void. Seurer v. Horst, 31 Minn. 479, 18 N. W. Rep. 283.

A summons issued by a justice of the peace, in blank as to the return-day, is void. The service and return of such a summons, with the blank filled by any person other than the justice, is insufficient to confer jurisdiction. Craighead v. Martin, 25 Minn. 41.

§ 13. (Sec. 11.) Summons—Service.

The following properly-signed indorsement upon a summons is a sufficient return of sufficient service, to-wit: "[Venue.] I hereby certify and return that, at the town St. Augusta, in said county and state, on the 7th day of November, 1877, I served the within summons upon the within-named defendant, Jacob Woll, by leaving a true and certified copy at his usual place of abode, with his wife, she being a suitable person, of age and discretion; and then a resident therein; and further, that the person so served, as aforesaid, is the identical person named as defendant herein." Goener v. Woll, 26 Minn. 154, 2 N. W. Rep. 163.

Where a public officer is required to perform a ministerial duty in one of two ways, according to circumstances, and he performs it in one of them, the general presumption that officers of that kind do their duty operates as a presumption that the mode of performance was that which the circumstances authorized. Id.

Irregularities in the service of a summons issued by a justice are waived by appearing and objecting to the jurisdiction on other grounds. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.)

See Craighead v. Martin, 25 Minn. 41, 43.

§ 14. (Sec. 12.) Service of summons by publication.

See Beecher v. Stephens, 25 Minn. 146.

§ 20. (Sec. 18.) Transfer of actions.

This section does not apply to an examination for an offense charged under c. 106. State v. Bergman, 34 N. W. Rep. 737.

Where a cause in justice court is transferred to another justice, the fact of the transfer must be entered in the docket of the justice from whom the cause is transferred, otherwise the justice to whom it is sent acquires no jurisdiction. Rahilly v. Lane, 15 Minn. 447, (Gil. 360.) But see Anderson v. Hanson, 28 Minn. 400, 10 N. W. Rep. 429, where this case is overruled.

The affidavit for change of venue, in an action before a justice, need not be entered nor its substance set forth in the docket. McGinty v. Warner, 17 Minn. 41, (Gil. 23.) Where the transcript of docket entries showed that an affidavit for a change was filed, but there was no affidavit in the papers transmitted, and the certificate accompanying the papers stated that they were all the papers in the cause, and a copy of the docket, held, the absence of the affidavit did not go to the jurisdiction, but was a case only of diminution of the record. Id.

§ 21. (Sec. 19.) Appearance.

In proceedings of forcible entry and detainer, under c. 84, *infra*, the parties are not entitled to an hour after the time named in the summons in which to appear. This section is not applicable to proceedings under such chapter. Spooner v. French, 22 Minn. 37.

TITLE 3.

PLEADINGS AND TRIAL.*

§ 23. (Sec. 21.) Time to plead.

This section is imperative, and unless complied with the justice loses his jurisdiction. Mattice v. Litcherding, 14 Minn. 142, (Gil. 110.)

*As to effect of pleading counter-claim, see *post*, c. 66, *§ 97a.

A justice of the peace has no power to receive pleadings in an action after one week from the return-day of the summons. Holgate v. Broome, 8 Minn. 243, (Gil. 209.)
See, also, Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

§ 25. (Sec. 23.) Mode of pleading.

Unless the record show the contrary, on appeal or writ of error, all the proceedings of the court below are presumed to have been regular. It will be intended that there were proper pleadings unless the record shows there were not. Davidson v. Farrell, 8 Minn. 258, (Gil. 225.)

§ 27. (Sec. 25.) Answer.

Defendant cannot oust the justice of jurisdiction by putting in a counter-claim, which, together with plaintiff's claim or by itself, exceeds $100. Barber v. Kennedy, 18 Minn. 218, (Gil. 196.)
In an action before a justice an answer which alleges a set-off, and to which there is no reply, is taken as true, and the plaintiff will not be permitted to disprove the set-off. Taylor v. Bissell, 1 Minn. 225, (Gil. 186.)

§ 28. (Sec. 26.) Reply to counter-claim.

In a justice's court nothing but a counter-claim is admitted by failure to reply. Walker v. McDonald, 5 Minn. 455, (Gil. 368.)
See Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890.

§ 30. (Sec. 28.) Actions on accounts, etc.

An account headed "Rodney Parker to August Taylor, Dr.," containing items of debit and credit, and the balance struck, subscribed by the plaintiff and sworn to before the justice to whom it is delivered by the plaintiff as his complaint, is good as a complaint. Taylor v. Parker, 17 Minn. 469, (Gil. 447.)
Where, in an action in a justice's court on a promissory note, the complaint was defective in failing to state that defendant made the note, and that plaintiff was the owner or holder, upon the trial, (defendant having withdrawn his answer,) plaintiff, without objection, introduced in evidence and filed with the justice a note from defendant to plaintiff, and in other respects corresponding to the allegations of the one described in the complaint. Held, that the filing of the note might be treated as an amendment, the effect being to make a good complaint, in accordance with this section and section 35, *infra*. Royce v. Gray, 21 Minn. 329.

§ 31. (Sec. 29.) Verification of pleadings.

As to the power of the parties to waive verification of pleadings, see Taylor v. Bissell, 1 Minn. 225, (Gil. 186.)
The justice's docket need not show that the pleadings were verified. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.)

§ 32. (Sec. 30.) Failure to deny allegations.

See note to section 28, *supra*.

§ 33. (Sec. 31.) Defective pleadings.

A defective complaint in an action in a justice's court is cured by intendment after verdict or judgment, when the defendant has answered and gone to trial upon the merits without making any objection to the defective pleading, if the defects arise wholly out of an omission to plead expressly such facts as may be fairly implied from the allegations of the complaint. Chesterson v. Munson, 27 Minn. 498, 8 N. W. Rep. 593.

§ 34. (Sec. 32.) Variance.

Applied, Johnson Harvester Co. v. Clark, 30 Minn. 308, 15 N. W. Rep. 252.

§ 35. (Sec. 33.) Amendments.

See Royce v. Gray, cited in note to § 30, *supra*.

§ 36. (Sec. 34.) Adjournments.

A justice cannot adjourn a cause of his own motion. An adjournment must be either by consent or sufficient cause shown. The party applying for it must show due diligence to obtain his evidence. School-Dist. No. 7 of Wright County v. Thompson, 5 Minn. 280, (Gil. 221.)
A party who, in a suit before a justice, asks for an adjournment after the first adjournment, must, in his affidavit, show by facts that he has used due diligence to ob-

tain the evidence for which the adjournment is asked. Washington County v. McCoy, 1 Minn. 100, (Gil. 78.)

When a justice has adjourned a cause, and entered the adjournment in his docket, he cannot, in the absence of the parties, change the day to which it was adjourned. Wardlow v. Besser, 3 Minn. 317, (Gil. 223.)

Where the complaint is filed on the return-day of the summons, and the defendant, omitting to plead, consents to an adjournment for more than a week, the pleadings are closed, within this section, and his right to answer is gone. O'Brien v. Pomroy, 22 Minn. 130.

§ 37. (Sec. 35.) Actions involving real estate—Removal.

A justice cannot certify a cause to the district court until the title to real estate comes in question on the evidence. Goenen v. Schroeder, 8 Minn. 387, (Gil. 344.) Distinguished in Merriam v. Baker, 9 Minn. 40, (Gil. 34.)

Plaintiff claimed possession of real estate on the ground that after a foreclosure of a mortgage under a power of sale, the time to redeem had expired, and the title became absolute in him. The answer claimed that defendant had three years, instead of one, as claimed by plaintiff, in which to redeem, and that he had redeemed within the time. Held, the issue did not raise question of title. Id.

The docket entry of a justice of the certificate and return to the district court, under this section, of a cause, on the ground that the same involves the title to real estate, the pleadings showing that the title may be involved, and the cause otherwise being one within the justice's jurisdiction, is *prima facie* sufficient to invest the district court with complete jurisdiction. Lindekugel v. Angelhofer, 24 Minn. 324.

See, also, Goenen v. Schroeder, 18 Minn. 69, (Gil. 54;) Ferguson v. Kumler, 25 Minn. 183; Steele v. Bond, 28 Minn. 267, 9 N. W. Rep. 772; State v. Sweeney, 33 Minn. 23, 21 N. W. Rep. 847; Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890; Tordsen v. Gimmer, 34 N. W. Rep. 20; Radley v. O'Leary, 36 Minn. 173, 30 N. W. Rep. 457.

TITLE 4.

SET-OFFS.

§ 39. (Sec. 37.) Counter-claims.

In an action on contract a claim for use and occupation of real estate, held adversely by plaintiff, cannot be pleaded as a counter-claim. Folsom v. Carli, 6 Minn. 420, (Gil. 284.)

See Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890.

§ 40. (Sec. 38.) Actions by assignees—Set-offs.

Applied, La Due v. First Nat. Bank, 31 Minn. 33, 16 N. W. Rep. 426.

TITLE 6.

TRIAL BY JURY.

§ 58. (Sec. 56.) Jury—Oath of officer, etc.

The oath required by this section to be administered to the officer in whose charge a jury in a justice's court retires, may be waived by the parties, and will be deemed waived if omitted, and no objection is made at the time. Robert v. Brooks, 28 Minn. 138.

TITLE 7.

JUDGMENTS.

§ 62. (Sec. 60.) Set-off of judgments.

A judgment recovered for the value of personal property, exempt from execution, levied upon and sold by the judgment creditor, is not itself exempt, and may be set-off against a judgment held by the judgment debtor against the judgment creditor in it. Temple v. Scott, 3 Minn. 419, (Gil. 306.)

The assignee of a judgment takes subject to all equities existing at the time between the judgment debtor and the assignor. Brisbin v. Newhall, 5 Minn. 273, (Gil. 217.)

§ 71. (Sec. 69.) Opening judgments and admitting defense.

Payment by garnishees, without execution, of the judgment against them in an action before a justice of the peace, discharges them, though the judgment against the defendant was upon default, upon service of the summons by publication, and subsequent to the payment, and within the year, it was set aside, and the defendant was permitted to defend, and succeeded in his defense. Troyer v. Schweizer, 15 Minn. 241, (Gil. 187.)

§ 72. (Sec. 70.) Transcript.

After the filing of a transcript of a justice's judgment in the office of the clerk of the district court, and the entry of such judgment in the docket of district court judgments, exemplifications of such transcript and docket entry, attested by the clerk, with the seal of the court annexed, are competent evidence to prove the judgment. Herrick v. Ammerman, 32 Minn. 544, 21 N. W. Rep. 836.

§ 73. (Sec. 71.) Same—Filing—Execution.

It is not necessary that a party claiming title to real estate sold on execution issued out of the district court on such judgments should affirmatively prove that execution had been previously issued by the justice; the presumption being that the clerk of the district court acted in accordance with law. What the effect would be if it affirmatively appeared that no execution had in fact been issued by the justice, not considered. Herrick v. Ammerman, 32 Minn. 544, 21 N. W. Rep. 836.

*§ 75. Presumptions in favor of judgments.

See note to § 72, *supra*.

TITLE 8.

EXECUTION AND PROCEEDINGS THEREON.

§ 79. (Sec. 76.) Execution—Renewal—Execution after filing transcript.

See Troyer v. Schweizer, 15 Minn. 244, (Gil. 189.)

STAY OF EXECUTION.

*§ 84. Duration—Recognizance.

Execution upon a judgment rendered by any justice of the peace in this state may be stayed as hereinafter provided: Upon a judgment for any sum not exceeding ten dollars, exclusive of costs, one month; upon a judgment not exceeding twenty-five dollars, exclusive of costs, two months; upon a judgment exceeding twenty-five dollars, and not exceeding fifty dollars, three months; upon a judgment exceeding fifty dollars, and not exceeding seventy-five dollars, exclusive of costs, four months; upon a judgment exceeding seventy-five dollars, exclusive of costs, six months: *provided* that, in order to obtain such stay, the party applying therefor shall, within ten days after judgment is rendered, file a recognizance with one or more responsible persons, to be approved by the justice, as bail for him, conditioned that the judgment debtor will pay the amount of such judgment, interest, and costs within the time for which the stay is granted, and authorizing the justice to issue execution for such amount upon default of such payment: *provided*, that the interest to be allowed shall be at the rate of seven per cent. per annum on the amount of the judgment, including the costs. (1871, *c.* 68, § 1, *as amended* 1879, *c.* 24, § 1.)

*§ 86. Form of recognizance.

The recognizance provided for in section one of this act may be in the following form: We, A. B. and C. D., do hereby acknowledge ourselves to owe and be indebted to E. F. in the sum of ——— dollars, to be levied and collected of our several goods and chattels if default be made in the condition

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

Dated this ——— day of ———, A. D. 18—. A. B.
C. D.

Taken and acknowledged before me the date aforesaid.
G. H., Justice of the Peace.

The recognizance shall be in double the amount of the judgment, including costs, and the bail shall justify in all cases, and shall possess the qualifications required by section one hundred and twenty-two of chapter sixty-six of the General Statutes. (1871, *c.* 68, § 3, *as amended* 1879, *c.* 24.)

TITLE 9.

REPLEVIN.

§ 89. (Sec. 82.) Affidavit.

In an action to recover exempt property in justice court, a replevin affidavit, which states in the statute language that the property in question was not taken from the plaintiff "by any process legally or properly issued against him, or, if so taken, it was exempt from seizure on such process," is not invalid on account of the retention of the alternative clause, and substantially states that the property was exempt whether taken under lawful process or not. Carlson v. Small, 32 Minn. 492, 21 N. W. Rep. 737.

A complaint in such suit is sufficient which alleges generally plaintiff's ownership, etc., without stating the particulars of his title, or the levy by defendant, and the exemption of the property from seizure. Id.

And if the defendant justify under process, this is matter of avoidance, and not a counter-claim; and no reply in such case being authorized in that court, plaintiff may, upon the trial, show in rebuttal that the property taken is exempt from process. Id.

See Hecklin v. Ess, and Stevers v. Gunz, cited in note to § 5, *supra*.

§ 90. (Sec. 83.) Bond.

The plaintiff shall also execute a bond to the defendant, with sufficient sureties, to be approved by the justice, in a penalty 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 on such bond 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. (*As amended* 1881, *Ex. Sess. c.* 5, § 1; 1885, *c.* 33, § 1.*)

§ 91. (Sec. 84.) Writ.

Upon the approval and filing by the justice of the bond required by section one [*ante*, § 90] of this act, the justice shall issue a writ, directed to the

*All laws or parts of laws inconsistent with the act of 1885 (§§ 90, 91, 92, 94, 95, *supra*) are thereby repealed. § 6.

sheriff or any constable of the county in which the action may be brought, commanding him to take the property described therein, and deliver the same to the plaintiff, and summon the defendant to appear and answer the same on the return-day mentioned in the writ. (*As amended* 1881, *Ex. Sess. c.* 5, § 2; 1885, *c.* 33, § 2.)

The defendant, by answering without objecting to defects in the writ, or in the papers on which it issued, waives such objections, and gives the justice jurisdiction to try the action. McKee v. Metraw, 31 Minn. 429, 18 N. W. Rep. 148.

See Terryll v. Bailey, 27 Minn. 304, 7 N. W. Rep. 261.

§ 92. (Sec. 85.) Duty and power of officer.

In obedience to such writ, the officer receiving such writ shall forthwith take possession of the property mentioned in the writ, if the same is in the possession of the defendant, or his agent, for which purpose he may break open any dwelling-house or other inclosure, having first demanded entrance, and exhibited his authority, if required, and shall return the writ immediately after the service thereof, and state in his return fully in what manner he served and executed the same. (*As amended* 1881, *Ex. Sess. c.* 5, § 3; 1885, *c.* 33, § 3.)

§ 94. (Sec. 87.) Recovery by plaintiff—Damages—Execution.

If the property sought be not obtained, the plaintiff, if he establishes his right thereto, shall recover the value of that right; whether obtained or not, he shall recover the damages and costs he has sustained in consequence of the illegal detention, or the taking or withholding thereof; and upon the entry of any such judgment the justice shall, at the expiration of ten days thereafter, if no appeal be taken from such judgment, issue execution for the costs and damages awarded to said plaintiff, together with the amount due plaintiff as the value of the property not obtained, and to which plaintiff is entitled. (*As amended* 1881, *Ex. Sess. c.* 5, § 4; 1885, *c.* 33, 4.)

See McKee v. Metraw, 31 Minn. 429, 18 N. W. Rep. 148.

§ 95. (Sec. 88.) Recovery by defendant—Damages—Judgment.

If the plaintiff fails to establish his right to the property, or the action is dismissed by the justice for want of jurisdiction or other cause, or the action is dismissed by the plaintiff, the defendant shall recover such damages and costs as, under the circumstances, he shows himself entitled, and, in addition thereto, may have judgment for the return of the property, or the value thereof, if the same shall have been taken out of his possession or delivered to the plaintiff. (*As amended* 1881, *Ex. Sess. c.* 5, § 5; 1885, *c.* 33, § 5.)

The judgment must be in the alternative, but on appeal upon questions of law alone the district court may correct the judgment in that particular. Kates v. Thomas, 14 Minn. 460, (Gil. 343.)

See Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890; Terryll v. Bailey, 27 Minn. 304, 7 N. W. Rep. 261.

§ 96. (Sec. 89.) Judgment for return.

In replevin, where the property has been delivered to plaintiff, if upon appeal on questions of law alone the district court reverses the judgment of the justice, without deciding the merits of the action, the defendant is entitled, as upon dismissal, to judgment for a return of the property, and if it cannot be had, for its value. An answer alleging, as a bar to an action in replevin, the recovery of judgment by plaintiff against defendant before a justice of the peace, in replevin, for the same property, an appeal by defendant to the district court on questions of law alone, and the judgment of the district court reversing the judgment of the justice, and adjudging a return of the property to defendant, and the recovery by him of its value if a return cannot be had, does not show a bar unless it allege or show that the judgment of the district court was rendered on the merits. That judgment alone does not show it. Terryll v. Bailey, 27 Minn. 304, 7 N. W. Rep. 261.

TITLE 10.

PROCEEDINGS BY ATTACHMENT.

§ 98. (Sec. 91.) Affidavit.

An affidavit for an attachment stating the facts justifying the issuance of an attachment, in the words of the statute, is sufficient. It need not, as is required in the district court, set forth the evidence of such facts. Curtis v. Moore, 3 Minn. 29, (Gil. 7.)

§ 99. (Sec. 92.) Writ—When returnable.

If the affidavit state facts authorizing an attachment returnable in three days, and also facts authorizing one returnable in six days, and it is issued returnable in six days, the justice has jurisdiction. Id.

§ 105. (Sec. 95.) Bond for restoration.

Where personal property was attached by an officer, and subsequently a bond was given, under this section, and possession obtained from the officer, held, in a suit brought upon the bond, that the obligors could not object to want of sureties on the bond, though sureties were required by statute, nor could they question the validity of the officer's levy. Scanlan v. O'Brien, 21 Minn. 434.

§ 110. (Sec. 100.) Dissolution of attachments.

Cited, Rossiter v. Minnesota Bradner-Smith Paper Co., 33 N. W. Rep. 855.

TITLE 11.

APPEALS.

§ 113. (Sec. 103.) Right of appeal.

The provision giving an appeal "where the amount claimed in the complaint shall exceed thirty dollars," applies to all actions save those excepted in a subsequent part of the section. Shunk v. Hellmiller, 11 Minn. 164, (Gil. 104.)

Appeal cannot be taken where the judgment of the justice court is less than $15, exclusive of costs. Dodd v. Cady, 1 Minn. 289, (Gil. 223.) On such appeal from a judgment for less than $15, exclusive of costs, the district court gets no jurisdiction, and in such case the consent of parties does not confer it. Id.

Where neither the amount of the judgment nor the claim in the plaintiff's complaint is sufficient to allow an appeal from a judgment, such appeal is not saved to the aggrieved party by the fact that the answer contains a counter-claim for more than $30. The words "amount claimed in the complaint," in the statute, are not equivalent to "the amount claimed in the pleadings of either party." Ross v. Evans, 30 Minn. 206, 14 N. W. Rep. 897.

An appeal from a judgment of a justice, upon questions of law and fact, does not waive objections to the jurisdiction. Rahilly v. Lane, 15 Minn. 447, (Gil. 360;) Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

§ 114. (Sec. 104.) Requisites to allowance of appeal.

SUBD. 1. Where the return of a justice, on appeal, does not include an affidavit for appeal, it is presumed that there was none, and the district court has not jurisdiction. McFarland v. Butler, 11 Minn. 72, (Gil. 42.)

The affidavit must appear on its face to have been taken before a proper officer. Knight v. Elliott, 22 Minn. 551.

It is not necessary that the affidavit for appeal be sworn to before the justice from whom the appeal is taken. Rahilly v. Lane, 15 Minn. 447, (Gil. 360.)

SUBD. 3. The notice of appeal is jurisdictional, must be in writing, and signed by the applicant, his agent or attorney, and cannot be waived. Larrabee v. Morrison, 15 Minn. 196, (Gil. 151.)

Filing with the justice the original notice of appeal, with proof of service thereof, within the time prescribed by statute, is a jurisdictional prerequisite to the allowance of the appeal that cannot be dispensed with nor supplied after the prescribed time. Marsile v. Milwaukee & St. Paul Ry. Co., 23 Minn. 4.

An indorsement, on a notice of appeal, "Personal service of the within is hereby admitted this twenty-third day of December, 1867," and signed by the attorneys for a

party, is sufficient proof of service of such notice, and presumptive evidence that it was made on the day of its date. Rahilly v. Lane, 15 Minn. 447, (Gil. 360.)

SUBD. 4. Payment of the costs and fee for making the return are essential conditions to the jurisdiction of a justice to allow an appeal. Trigg v. Larson, 10 Minn. 220, (Gil. 175.)

A certificate of a justice on allowance of appeal, "Costs paid and appeal allowed," is evidence that the two-dollar appeal fee was paid. Distinguishing Trigg v. Larson, 10 Minn. 220, (Gil. 175;) Rahilly v. Lane, 15 Minn. 447, (Gil. 360.)

§ 115. (Sec. 105.) Allowance of appeal—Stay.

Cited, Dutcher v. Culver, 23 Minn. 419.

§ 116. (Sec. 106.) Return on appeal.

Where the transcript of the docket in the return states that a notice of appeal was served and filed, and the notice returned is void, the return shows want of jurisdiction. Larrabee v. Morrison, 15 Minn. 196, (Gil. 151.)

It was not the intention of the legislature to change the law relating to criminal actions, so that it should be the duty of the justice to keep a record of the evidence in such actions, and to return it, upon appeal, to the district court. State v. McGinnis, 30 Minn. 51, 14 N. W. Rep. 256.

Upon the trial in the district court of an appeal on questions of law alone, if the return does not show that it contains all the testimony, and no request for the return of the testimony appears to have been made, the sufficiency of the evidence to sustain the judgment will not be considered, but it will be presumed that sufficient competent evidence was given; distinguishing Payson v. Everett, 12 Minn. 216, (Gil. 137;) Hinds v. American Express Co., 24 Minn. 95.

See McFarland v. Butler, cited in note to § 114, *supra*. See, also, Lehmicke v. St. Paul, etc., R. Co., 19 Minn. 478, 479, (Gil. 413, 414;) Chesterson v. Munson, 27 Minn. 498, 501, 8 N. W. Rep. 593.

§ 117. (Sec. 107.) Trial of appeal.

An appeal was taken prior to the passage of this section from the judgment of a justice, upon questions of both law and fact. After its passage, and before trial in the district court, application was made to amend the pleadings, so as to raise issues different from those tried in justice court. Held, that c. 93, Laws 1868, affected the trial only, and it was proper for the district court to allow any amendment that would have been proper if the action had been originally commenced in the district court. Bingham v. Stewart, 14 Minn. 214, (Gil. 153.)

Either party may urge an objection to the jurisdiction at any stage of the proceeding. Mattice v. Litcherding, 14 Minn. 142, (Gil. 110, 112.)

An appeal on questions of law and fact does not waive objections to the jurisdiction of the justice. Barber v. Kennedy, 18 Minn. 216, (Gil. 196.) Where the objection to the jurisdiction is that the justice transferring the cause to the one who tried it did not do so by an order entered in his docket specifying the justice to whom the transfer was made, and it is made here for the first time, the party must show the omission affirmatively by the record. What appears to be copies of entries in the docket, but not certified as a transcript of the docket, do not show it. Id.

An appeal upon questions of law alone, may, with the consent of the parties, be heard and determined by the court in any county within its judicial district. Appearing and arguing such appeal before the court in another county than the one wherein the appeal is pending, without objecting to the jurisdiction of the court to try the same in such other county, is a waiver of all objections of that character. Chesterson v. Munson, 27 Minn. 498, 8 N. W. Rep. 593.

Such appeal may be placed upon the calendar and brought on for argument at the next term of the district court after the return of the justice is made and filed, unless continued for cause, although 30 days may not have elapsed since the allowance of the appeal. Id.

The appeal being taken on questions of law only, no question of law can be tried or raised in the district court except those tried or raised in the court below, and to which an exception was taken to the order made thereon by the justice, except objections to the jurisdiction of the court, and that the complaint or answer does not state facts sufficient to constitute a cause of action or defense. Bennett v. Phelps, 12 Minn. 326, (Gil. 216, 220.)

Upon an appeal upon questions of law alone the judgment may be so modified as to correct errors of law appearing upon the return, by which the appellant is aggrieved, if the erroneous part of the judgment is distinct and separable from the rest of it. Watson v. Ward, 27 Minn. 29, 6 N. W. Rep. 407.

If a defendant appeals, and does not succeed in reducing the amount of the recovery before the justice one-half or more, the plaintiff is entitled to his costs and disbursements in the district court. Id.

See Kates v. Thomas, cited in note to § 95, *supra*, and Hinds v. American Express Co., cited in note to § 116, *supra*.

§ 118. (Sec. 108.) Entry of appeal for trial.

Cited, Minnesota Valley R. Co. v. Doran, 17 Minn. 191, (Gil. 165.)

§ 121. (Sec. 111.) Compelling amendment of return.

The fact that the justice did not attach the papers in the case to his transcript, nor identify them, nor return them all, is no ground to dismiss the appeal. Rahilly v. Lane, 15 Minn. 447, (Gil. 361.)

§ 123. (Sec. 113.) Trial of appeal—Time.

See Chesterson v. Munson, cited in note to § 117, *supra*.

§ 124. (Sec. 114.) Appellant's default—Judgment.

The provision authorizing judgment upon affirmance to be entered against the surety in the recognizance is valid. Davidson v. Farrell, 8 Minn. 258, (Gil. 225.)

Where appellee is entitled to judgment as of course, he should apply to the court, but the entry of judgment by the clerk, in such a case, as upon failure to answer, is a mere irregularity, which, if not prejudicial, will be disregarded. Libby v. Mikelborg, 28 Minn. 38, 8 N. W. Rep. 903.

TITLE 14.

JURISDICTION OF JUSTICES IN CRIMINAL CASES, AND THE PROCEEDINGS THEREIN.

§ 140. (Sec. 131.) Jurisdiction.

Cited, State v. Schmail, 25 Minn. 370; State v. Galvin, 27 Minn. 16, 6 N. W. Rep. 380.

§ 141. (Sec. 132.) Complaint—Proceedings.

A complaint may be made under this section, by any person, for obstructing a highway. Chapter 13, § 65, is not exclusive. State v. Galvin, 27 Minn. 16, 6 N. W. Rep. 380.

§ 142. (Sec. 133.) Title of action—Docket entries.

That a justice of a city, in the entries on his record, and in the papers subsequent to the warrant, entitles a criminal proceeding in the name of the city instead of in the name of the state, they fully disclosing the character of the proceeding, is a mere irregularity which will be disregarded. Faribault v. Wilson, 34 Minn. 254, 25 N. W. Rep. 449; following State v. Graffmuller, 26 Minn. 6.

A justice is not required to keep a record of all the evidence, nor, upon appeal upon questions of law, is he required to return all the evidence given upon the trial. A certification and return of the justice of such evidence as being all of the evidence given upon the trial, being unauthorized, constitutes no part of the official return of the justice, or of the record of the cause in the appellate court. Hence the appellate court cannot consider the matter so certified for the purpose of determining whether the judgment is sustained by sufficient evidence. State v. McGinnis, 30 Minn. 48, 14 N. W. Rep. 256.

Entries made in his docket by a justice of the peace in a criminal case are competent evidence. Cole v. Curtis, 16 Minn. 182, (Gil. 161.) A justice's docket may be identified by the justice or any other competent proof. Id.

§ 149. (Sec. 140.) Selecting jury—Venire.

A defendant in a criminal prosecution before a justice has a right, if he demand it, to be tried before a jury of 12. This is so, notwithstanding he may, on conviction, obtain such a trial in the district court, by appeal, upon entering into recognizance, with surety, as required by statute. Trial by a constitutional jury is not secured to him if, to obtain it, he is required to do what he may not be able to do. State v. Everett, 14 Minn. 439, (Gil. 330.)

§ 154. (Sec. 145.) Conduct of trial.

This right of presence is that of the accused, and may be waived by him, at least when the counsel of the accused is present for him. State v. Reckards, 21 Minn. 47.

§ 155. (Sec. 146.) Verdict.

The statement in the justice's return that "the verdict was first made public by reading to the defendant," does not tend to show that the verdict was not publicly declared to the justice. City of St. Paul v. Smith, 25 Minn. 372.

§ 157. (Sec. 148.) Acquittal—Judgment for costs.

Whenever the accused, tried under the provisions of this chapter, either by court or by a jury, shall be acquitted, he shall be immediately discharged, and if the court before whom the trial is had shall certify in his docket that the complaint was willful and malicious, and without probable cause, it shall enter a judgment against the complainant to pay all the costs that shall have accrued to the court and sheriff, or constable and jury, and the fees of witnesses in the proceeding had upon such complaint. The complainant may stay such judgment for thirty days by giving satisfactory security by bond to the state, with one or more sureties, conditioned for the payment of such judgment at the expiration of thirty days; but if the complainant shall neglect to give such security, or shall neglect to pay such costs, then, in such case, the court before whom the cause is tried may issue execution on said judgment therefor; but the defendant in such judgment shall have the right of appeal therefrom, as in civil cases tried before a justice of the peace, and the case shall be tried and determined by the court on such appeal upon the records and evidence in the case duly certified and returned by the magistrate. (*As amended* 1881, *Ex. Sess. c.* 32, § 1.)

The entry in the docket of the justice that the complaint was malicious, and without probable cause, is not admissible in evidence in a suit for the malicious prosecution of such action. Casey v. Sevatson, 30 Minn. 516, 16 N. W. Rep. 407.

§ 158. (Sec. 149.) Appeal—Requisites.

A provision in a city charter that no appeal shall be allowed from the judgment of the city justice in cases of assault, where the judgment or fine imposed, exclusive of costs, is less than $25, prevails over the general statute, allowing appeals in all cases of convictions before justices of the peace. Tierney v. Dodge, 9 Minn. 166, (Gil. 153.) Such a provision does not conflict with § 2, art. 6, of the constitution, giving the supreme court appellate jurisdiction in all cases, for it does not attempt to take away review by *certiorari*. Id.

Where, on appeal in a criminal case, it appears from the docket entry that the proper recognizance has been given, notice of appeal served, proof thereof made, and the appeal allowed, the presumption in favor of the verity of the docket entry, as well as of the performance of duty by the justice, throws upon the party seeking to contradict such entry the burden of affirmatively showing its falsity. State v. Christensen, 21 Minn. 500.

Certiorari will not issue, after the time to appeal has expired, unless some good reason be shown why an appeal was not taken. State v. Milner, 16 Minn. 55, (Gil. 43.)

§ 159. (Sec. 150.) Allowance of appeal—Proceedings by justice—Trial.

Upon a compliance with the foregoing provisions the justice shall allow the appeal, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal. The justice shall thereupon make a return of all the proceedings had before him, and cause the complaint, warrant, recognizance, original notice of appeal, with proof of service thereof, and return, and all other papers relating to said cause, and filed with him, to be filed in the district court of the same county, on or before the first day of the general term thereof next to be holden in and for said county. And the complainant and witnesses may also be required to enter into recognizance, with or without sureties, in the discretion of the justice, to appear at said district court at the time last aforesaid, and to abide the order of the court therein. Upon an appeal on questions of law alone the cause shall be tried in the district court upon the return of the justice. On an appeal taken upon questions of fact alone, or upon questions of both law and fact, the cause shall be tried in the same manner as if commenced in the district court: *provided*, that upon an appeal upon questions of law alone, the justice before whom the action is tried shall, upon the request of either party to the suit, return to the district court a true and certified transcript of all the evidence offered or received upon the trial, and the same