

Certificate

THE STATE OF MINNESOTA.

I, William B. Henderson, Revisor of Statutes, hereby certify that I have compared each of the sections printed in this book with its original section of the statutes, so far as sections printed herein were derived from those statutes; and have compared every other section printed herein with the original section in the enrolled act from which the same was derived; and have compared every section that has been amended, with all amendments thereof; and that all sections herein appear to be correctly printed.

WILLIAM B. HENDERSON,  
Revisor.

# MINNESOTA STATUTES 1941

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## APPENDIX 1

## ACT OF 1870, AS AMENDED

Laws 1870, c. 31, entitled "An act to authorize the Incorporation of Cities," as amended. This act was not repealed by the Revision of 1905. As to cities incorporated under the act it is still applicable, except as otherwise changed by subsequent laws. The law is still applicable to five cities.

## CHAPTER I

Section 2. That cities may be organized within the limits of this state as herein provided. Whenever two-thirds of the legal voters residing within the limits of a territory comprising not less than two thousand inhabitants, and not more than fifteen thousand, and which territory they desire to have incorporated as a city, shall sign and have presented to the judge of probate of the county in which such territory is situated, a petition setting forth the metes and bounds of said city, and of the several wards thereof, and praying that said city may be incorporated under such name as may therein be designated, the judge of probate shall issue an order declaring such territory duly incorporated as a city, and shall designate therein the metes, bounds, wards and name thereof, as in said petition described. And the said judge of probate shall in said order designate the time and place of holding the first election of officers for said city, which shall be not less than thirty nor more than sixty days from the presenting of said petition, and shall cause said order to be posted in five of the most public places in said city, at least for thirty days prior to the day of such election, and also cause the same to be published in some newspaper published in said city, at least once in each week for three consecutive weeks prior thereto, and if there be no newspaper published in said city, then in the paper published nearest thereto, and if there be more than one newspaper published in said city, then in one of such papers. Upon presenting the petition aforesaid to the judge of probate as aforesaid, the inhabitants within the metes and bounds therein described shall henceforth be a body politic and corporate, subject to and with power to act under the authority of all the provisions of this act. They shall have power to sue and be sued; complain and defend in any court; make and use a common seal; and alter it at pleasure; and take, hold and purchase, lease and convey such real and personal or mixed estate as the purposes of the corporation may require, within or without the limits aforesaid; shall be capable of contracting and being contracted with; and shall (have) the general powers possessed by municipal corporations at common law, and in addition thereto, shall possess the powers hereinafter specifically granted; and the authorities thereof shall have perpetual succession.

Sec. 3. That the said judge of probate in his order designating the time and place of holding the first election of officers of any city incorporated under this act shall name three electors of each ward who shall conduct the said first election for their respective wards and who shall be the inspectors thereof and shall take the usual oath or affirmation as prescribed by the general laws of the state to be taken by the judges and inspectors of elections, and shall have the power to appoint clerks of such elections, and to administer the necessary oaths, and the persons so named as inspectors of the election shall hold and conduct the same in the manner and under the same penalties as provided by the laws of this state regarding elections, and shall have power to fill vacancies in the board of inspectors as provided by law. (Added '72, c. 91)

CHAPTER II  
Elections

Section 1. There shall be an annual election for elective officers hereinafter provided, held on the first Tuesday of April of each and every year, at such place in each ward as the common council shall designate; and the polls shall be kept open from nine o'clock in the forenoon until five in the afternoon; and ten days previous notice shall be given by the common council, of the time and place of holding such election, and of the officers to be elected, by posting notices thereof in three public places in each ward, and by publishing the same in at least one of the papers published in the city, if one shall be published in said city.

Sec. 2. Each city governed by this act shall be divided into not less than two nor more than five wards, as may be provided by ordinance of the city council thereof, and each ward shall contain as nearly as practicable, an equal number of legal voters, and also an area equal to each other.

Sec. 3. The corporate name of each city governed by this act, shall be "The City of \_\_\_\_\_," and all and every process and notice whatever affecting any such city shall be served upon the mayor, and in his absence, upon the president of the council, and in the absence of both, upon the clerk, and in the absence of these officers from the city, then by leaving a certified copy at the office of said clerk.

Sec. 4. The elective officers of each city shall be a mayor, treasurer, recorder, one justice of the peace for each ward, who shall be styled city justice, all of whom shall be qualified voters of the city, and two aldermen in each ward, who shall be qualified voters therein; all other officers for said city shall be appointed by the common council, unless otherwise provided. At the first general election for city officers, there shall be elected in each ward two aldermen, one for one year, and one for two years, at every annual election thereafter one alderman shall be elected from each ward, who shall hold his office for two years and until his successor is elected and qualified. The city justices shall hold their offices for two years and until their successors are elected and qualified; all other elective officers shall hold their offices for one year and until their successors are elected and qualified.

Sec. 5. Every person appointed to any office by the common council, or elected to any office by the people, may be removed from said office by a vote of two-thirds of all the aldermen authorized to be elected. But no officer elected by the people shall be removed except for cause, nor unless furnished with a written statement of the charges against him, nor until he shall have had a reasonable opportunity to be heard in his defense. The common council shall fix a time and place for the trial of such officer, of which not less than ten days' notice shall be given, and have power to compel the attendance of witnesses and the production of books and papers, and to hear and determine the case; and if said officer shall neglect to appear and answer the charges against him, the common council may declare the office vacant.

Sec. 6. Whenever a vacancy shall occur in the office of mayor or alderman by death, removal, resignation, or otherwise, the common council shall have power, and it shall be their duty to declare the office vacant by resolution entered upon their minutes. Such vacancy shall be filled by a new election, which shall be ordered by the common council within ten days after said vacancy is declared, and held within twenty days after such declaration, and reasonable notice of such election shall be given. Any vacancy happening in any other office shall be filled by the common council unless otherwise provided for. The person elected or appointed to fill a vacancy shall hold his office and discharge the duties thereof for the unexpired term, and with the same rights and subject to the same liabilities as the person whose office he may be elected or appointed to fill.

Sec. 7. All elections by the people shall be by ballot, and each ballot shall contain the names of the persons voted for, with a proper designation of the office written or printed thereon, and a plurality of votes shall constitute an election. When two or more candidates for an elective office shall receive an equal number of votes for the same office, the election shall be determined by the casting of lots in the presence of the common council, at such time and in such manner as they shall direct.

Sec. 8. All persons entitled to vote for state or county officers, and who shall have resided in the city for four months next preceding the election, and ten days in the ward where they offer to vote shall be entitled to vote for any officer to be elected under this law, and to hold any office hereby created, provided their names shall have been duly inserted in the list of qualified electors of the ward in which they reside, as in the case of the election of state and county officers; and the different wards established by law shall constitute election districts for state and county as well as city elections, and the mode of conducting all state and county elections in said city shall be in the manner herein provided in reference to city elections, except that the returns thereof shall be made by the judges of election to the county auditor of the county within the time and manner prescribed by law.

Sec. 9. The elections in said city shall be held and conducted by the aldermen of each ward, and one other elector of each ward, to be appointed by the common council, who shall be inspectors of election, and shall take the usual oath or affirmation as prescribed by the general laws of the state to be taken by the judges and inspectors of elections, and shall have power to appoint clerks of such elections, and to administer the necessary oaths. Said elections shall be held and conducted in the same manner and under the same penalties, and vacancies in the board of inspectors thereof filled as required by the laws of this state regarding elections. Provided, That no candidate for office shall act as inspector or clerk at such election.

Sec. 10. When a city election shall be closed and the number of votes for each person voted for shall have been counted and ascertained, the said judges shall make returns thereof, stating therein the number of votes for each person for each and every office, and shall deliver or cause to be delivered such returns to the clerk of the common council, within three days after any election, and the common council shall meet and canvass said returns and declare the result, as it appears from the same, within three days thereafter. The recorder of the common council shall forthwith notify the officer or officers elected, of their election by written notice served upon such officers in person, or left at their usual place of abode with some person of suitable age and discretion.

Sec. 11. Special elections to fill vacancies, or for any other purpose, shall be held and conducted by the aldermen of each ward, in the same manner, and the returns thereof made in the same form and manner as in general and annual elections, and within such time as may be prescribed by resolution.

Sec. 12. Any officer removing from the city or ward for which he is elected, or any officer who shall refuse or neglect for ten days after notice of his election or appointment, to enter upon the discharge of the duties of his office, shall be deemed to have vacated his office, and the common council shall proceed to fill the vacancy as herein prescribed.

Sec. 13. The term of every officer elected under this law shall commence on the second Tuesday of April for the year for which he was elected, and shall, unless otherwise provided, continue for one year and until his successor is elected and qualified.

Sec. 14. Should there be a failure by the people to elect any officer herein required to be elected on the day designated, the common council may order a new election to be held, ten days' notice of the time and place being given.

### CHAPTER III Duties of Officers

Section 1. Every person elected or appointed to any office under this act, shall, before he enters upon the duties of his office, take and subscribe an oath of office and file the same duly certified by the officer taking the same, with the recorder of the city, and the treasurer and marshal and such other officer as the common council may direct, shall severally before entering upon the duties of their respective offices, execute to the city a bond, with at least two sureties, (to be approved by the common council) who shall make affidavit that they are each worth the penalty specified in said bond over and above all debts, exemptions or liabilities, and said bonds shall contain such penal sum and such conditions as the common council may deem proper, and they may from time to time require new or additional bonds, and remove from office any officer refusing or neglecting to give the same.

Sec. 2. The mayor shall take care that the laws of the State and the ordinances of the city are duly observed and enforced, and that all other executive officers of the city discharge their respective duties. He shall from time to time give the common council such information and recommend such measures as he may deem advantageous to the city. The mayor shall be the chief executive officer and head of the police of the city, and shall appoint such police officers and watchmen, except when otherwise provided for; and in case of a riot or other disturbances, he may appoint as many special or temporary constables as he may deem necessary; and any police officer or watchman appointed by the mayor as aforesaid, may be discharged from office by him whenever in his opinion the welfare of the city may demand it, or a reduction of their number renders it necessary.

In case of a tie vote in the common council upon any measure, when all the aldermen are present and voting, he shall be called in and may vote with the common council upon the question upon which the vote is a tie. (Amended 1913 c. 81 s. 1)

Sec. 3. All ordinances and resolutions shall, before they take effect, be presented to the mayor, and if he approve thereof, he shall sign the same, and such as he shall not sign he shall return to the common council with his objection thereto, by depositing with the recorder to be presented to the common council at their next meeting thereafter; and upon the return of any resolution or ordinance by the mayor, the same vote by which the same was passed shall be reconsidered, and if after such reconsideration the common council shall pass the same by a vote of two-thirds of the members elected, it shall have the same effect as if approved by the mayor, and in such case the vote shall be by ayes and noes, which shall be entered in the record by the recorder. If an ordinance or resolution shall not be returned by the mayor within five days (Sundays excepted) after it shall have been presented to him, the same shall have the same effect as if approved by him.

Sec. 4. At the first meeting of the common council in each year, they shall proceed to elect by ballot from their number a president and vice president. The president shall preside over the meetings of the common council, and during the absence of the mayor from the city or his inability from any cause to discharge the duties of his office, the said president shall exercise all the powers and discharge all the duties of the mayor. In case the president shall be absent at any meeting of the common council, the vice president shall act as presiding officer for the time being, and discharge the duties of said president. The president of the common council, or temporary presiding officer, while performing the duties of mayor, shall be styled the acting mayor, and acts performed by him while acting as mayor as aforesaid, shall have the same force and validity as if performed by the mayor. The mayor and president and vice president of the common council shall have the right to administer oaths and affirmations.

Sec. 5. There shall be a recorder of said city, styled the city recorder, who shall keep his office at the place of meeting of the common council, or such other place convenient thereto as the council may determine. He shall keep the corporate seal and all the papers and records of the city, and keep a record of the proceedings of the common council, at whose meeting it shall be his duty to attend. Copies of all papers filed in office, and transcripts from all records of the common council, certified by him under the corporate seal, shall be evidence in all courts as if the original were produced. He shall draw and countersign all orders on the treasurer in pursuance of any order or resolution of the common council, and keep a full and accurate account thereof in books provided for that purpose. The city recorder shall have power to administer oaths and affirmations, and take acknowledgment of deeds and other writings.

Sec. 6. It shall be the duty of the city recorder to report to the common council the financial condition of the city, whenever the common council shall require. He shall make and keep a list of outstanding city bonds, to whom issued, for what purposes, when and where payable, and the rate of interest they respectively bear, and recommend such action to the common council as will secure the punctual payment of the principal and interest of such bonds. He shall report annually on or about the first day of April to the common council, an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year; and the fiscal year shall commence on the first day of April.

Sec. 7. He shall make or cause to be made estimates of the expenses of any work to be done by the city, and countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the common council or by any city officer. And every contract made in behalf of the city, or to which (the city) is a party, shall be void unless signed by the recorder. The city recorder shall keep regular books of account, in which he shall enter all indebtedness of the city, and which shall at all times show the precise financial condition of the city; the amount of bonds, orders, certificates, or other evidences of indebtedness issued by the common council, the amount of all bonds, orders, certificates, or other evidences of indebtedness which have been redeemed, and the amount of each outstanding, to



countersign all bonds, orders or other evidences of indebtedness of the city, and to keep accurate accounts thereof, stating to whom and for what purpose issued, and the amount thereof; to keep accounts with all receiving and disbursing officers of the city, showing the amount they have received from the different sources of revenue, and the amount which they have disbursed under the direction of the common council. He shall keep a list of all certificates issued for work or any other purpose, and before the levy by the common council of any special tax upon the property in the city, or any part thereof, shall report to the common council a schedule of all lots or parcels of land which may be subject to the proposed special tax or assessment, and also the amount of such special tax or assessment which it may be necessary to levy on such lots or parcels of land, which said schedule shall be certified by the affidavit of the recorder, and shall be prima facie evidence of the facts therein stated in all cases wherein the validity of such special tax or assessment shall come in question. The common council shall, if from such report they deem such special tax legal and just, cause the same to be levied in pursuance of the provisions of this act. If before the first day of January of any year, the amount expended, or to be expended, chargeable to any city fund, (adding thereto the current expenses estimated for the remainder of the fiscal year and chargeable to such fund) shall be equal to three-fourths of the tax authorized to be raised or revenue estimated for such fund, he shall report at once the same to the common council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected be ascertained; and during the remainder of the fiscal year he shall not countersign any contract the expenses of which shall exceed the revenue actually collected for the fund to which such expenses are properly chargeable. The recorder shall examine all reports, books, papers, vouchers and accounts of the city treasurer, and from time to time shall perform such other duties as the common council may direct. All claims and demands against the city, before they are allowed by the common council, shall be audited and adjusted by the recorder. And he shall keep a record of all his acts and doings, and keep a book in which he shall enter all contracts, with an index thereto; such record shall be open to the inspection of all parties interested. He shall not be interested directly or indirectly in any contract or job to which the city is a party, or in which the city is interested; and any contract in which he may be interested shall be null and void.

Sec. 8. The common council shall have power to elect an attorney for the city, who shall perform all professional services incident to his office, and when required, shall furnish opinions upon any subject submitted to him by the common council or its committees.

Sec. 9. The treasurer shall receive all moneys belonging to the city, including all taxes, license money and fines, and keep accurate and detailed account thereof, in such a manner as the common council shall from time to time direct. The treasurer shall exhibit to the common council, at least fifteen days before the annual election, or sooner if required by them, a full and detailed account of the receipts and expenditures after the date of the last annual report, and also of the state of the treasury, which account shall be filed with the clerk, and a copy of the same published in one or more of the city newspapers, or in the paper published nearest to said city. He shall also report to the common council at such times and in such manner as they may require.

Sec. 10. There shall be a chief of police of said city, who shall be appointed by the mayor, by and with the consent of the common council, and who shall perform such duties as shall be prescribed by the common council for the preservation of the public peace. All police officers and watchmen of said city shall possess the powers of constables at common law, or by the laws of this state; and it shall be their duty to execute and serve all warrants, process, commitments, and all writs whatsoever, issued by the city justice, for any violation of the laws of the state of Minnesota, or of the ordinances or by-laws of said city; and also all writs and process whatever, issued by the city justice in civil actions; and they shall have authority to pursue and arrest any person fleeing from justice, in any part of the state, and when performing the duties of constables aforesaid, shall be entitled to like fees. Watchmen shall have authority to arrest and detain any person guilty of any breach of the peace, or any violations of the

laws of this state, or of the ordinances or by-laws of the city; and for these purposes shall possess the powers of constables at common law, while on duty.

Sec. 11. The common council shall, at their first meeting after the annual election, or an adjournment thereof, elect by ballot a street commissioner, who shall hold his office for one year, and until his successor is elected and qualified. It shall be the duty of the street commissioner to superintend all work and improvements on the streets, bridges and public grounds of the city, and carry into effect all orders and ordinances of the common council in relation to work or improvements upon the streets, roads, bridges and public grounds of the city; and he shall be required to execute a bond, with sureties satisfactory to the common council, conditioned for the faithful performance of his duties, and that he will account for all moneys collected or received by him in his official capacity, or belonging to the city.

Sec. 12. The common council shall, in the month of April in each year, elect an assessor, who shall be styled the city assessor, who shall perform all the duties in relation to the assessing of property for the purpose of levying of all city, county and state taxes. And upon the completion of the assessment roll, he shall return the same to the common council, who may alter, revise and equalize the same, as they may deem it just and proper. Said city assessor shall hold his office for one year, and until his successor is elected and qualified.

Sec. 13. The justices of the peace of the city, styled city justices, shall possess all the authority, power and rights of a justice of the peace of the county under the laws of this state, and shall have, in addition thereto, exclusive jurisdiction to hear and try all complaints for violation of any provision or provisions of the city charter, or any ordinance, by-law, rule or regulation made or adopted under or by virtue thereof, and of all cases cognizable before a justice of the peace in which the city is a party, and of all writs, prosecutions and proceedings in the recovery of any fine, forfeiture or penalty under any by-law, ordinance or regulation of the said city or its charter, and in all cases of offenses committed against the same. And the said city justices shall have jurisdiction in cases of larceny, and may hear and try the same where the amount claimed to have been stolen does not exceed the sum of twenty-five dollars. In all prosecutions for assaults, batteries and affrays, and for all other offenses not indictable, and in all civil suits or proceedings before said city justices the same forms and proceedings shall be had and used, where not otherwise directed, as are established and required to be had in civil and criminal actions by the laws of this state before a justice of the peace; and appeals from the judgment and decisions of said city justices shall be allowed as now provided by law for appeals from judgments rendered by justices of the peace. In all cases of convictions for assaults, batteries and affrays within said city, and in all cases of convictions under any ordinances of the city for breach of the peace, disorderly conduct, keeping houses of ill-fame, or frequenting the same, and of keeping or maintaining disorderly or ill-governed houses, the said justices shall have power, in addition to the fines or penalties imposed, to compel said offenders to give security for their good behavior, and to keep the peace for a period of not exceeding six months, and in a sum not exceeding five hundred dollars. The said justices shall have the same power and authority in cases of contempt, as a justice of the peace under laws now in force. All fines and penalties imposed by the city justices for offenses committed within the city limits, for the violation of any ordinance, by-law or regulation of said city, shall belong to and be a part of the finances of said city, for offenses against the laws of the state, of the county treasury.

Sec. 14. The city justices shall, as often as the common council may require, report to the common council all the proceedings instituted before them in which the city is interested, and shall at the same time account for and pay over to the city treasurer, all fines and penalties collected or received by them belonging to said city; and said justices shall be entitled to receive from the county such fees in criminal cases as are allowed by statute to justices of the peace for similar services.

Sec. 15. Said justices shall be in attendance at their offices for the transaction of business at such reasonable hours as the common council may prescribe, and complaints may be made to, and writs and process issued by them at all times, in court or otherwise.

Sec. 16. In all suits brought on behalf of said city for the recovery of any forfeiture, fine or penalty, in all cases arising on complaints for the violation of any ordinance, by-law or regulation of said city, and on complaints for assault, battery or affray, or other misdemeanor, or criminal offense, not indictable, committed within said city, the said justices shall be authorized to tax, with the other legal costs, one dollar for each trial, for the benefit of said city, and their residence in said city shall not deprive them of jurisdiction of actions brought in favor of or against said city, when said actions are otherwise within the jurisdiction of a justice of the peace.

Sec. 17. The common council, at their first meeting in each year, or as soon thereafter as may be, shall elect a city surveyor, who shall be a practical surveyor and engineer. He shall keep his office in some convenient place in said city, and the common council shall prescribe his duties, and fix the fees and compensation for any services performed by him. All surveys, profiles, plans or estimates made by him for the city shall be the property of the said city, and shall be carefully preserved in the office of the surveyor, open to the inspection of persons interested; and the same, together with all the books and papers appertaining to said office, shall be delivered over by the surveyor, at the expiration of his term of office, to his successor, or the common council.

Sec. 18. The common council, at their first meeting after each annual election, or as soon thereafter as may be, shall advertise for proposals to do the city printing, giving public notice of not less than one week, in such manner as the council may direct, that sealed bids shall be received by the recorder of the common council for doing said printing. The bid or bids received by the clerk to do said printing shall be publicly opened and read by the recorder, at such time and place as the common council shall appoint, and the person or persons offering to do said printing for the lowest sum or price in any newspaper published in said city, and shall give satisfactory security for the performance of the work, shall be declared city printer for the ensuing year, and in the newspaper designated in said accepted bid or proposal, shall be published all ordinances, by-laws and other proceedings and matters required by this act or by the by-laws or ordinances of the common council to be published in a public newspaper. The city printer or printers, immediately after the publication of any notice, ordinance or resolution which is required to be published, shall file with the city recorder a copy of such publication, with his affidavit, or the affidavit of his or their foreman, of the length of time the same has been published; and such affidavit shall be prima facie evidence of the publication of such notice, ordinance or resolution; Provided, That if no person will publish, or offer to publish in any newspaper published in said city, such ordinances or other matters as the common council may require to be published, at a rate not exceeding that now prescribed by statute for legal advertisements or notices, the common council may make such other provisions for publishing its ordinances, by-laws and matters requiring publication as it may think fit, anything herein contained to the contrary notwithstanding.

Sec. 19. If any person, having been an officer of said city, shall not, within ten days after notification and request, deliver to his successor in office all property, books, papers and effects of every description in his possession belonging to said city, or pertaining to the office he may have held, he shall forfeit and pay to the use of the city, one thousand dollars besides all damages caused by his neglect or his refusal so to deliver, and said successor may receive possession of such books, papers and effects, in the manner prescribed by the laws of this state.

Sec. 20. The common council shall have power at any time to require other and further duties to be performed by any officer whose duties are herein prescribed, not inconsistent with this act, and to appoint such other officers as may be necessary to carry into effect the provisions of this act, and to prescribe their duties, unless otherwise provided for, but no officer elected or appointed by the common council, or appointed by the mayor, as hereinbefore provided, shall be appointed for a longer term than one year, and until his successor is elected or appointed and duly qualified. The common council shall have the power, unless herein otherwise provided, to fix the compensation of all officers elected

or appointed under this act, and such compensation shall be fixed by resolution; and in regard to all offices created by this charter, the compensation shall be fixed within three months from the first organization and meeting of the common council after the first year, the compensation of officers shall be fixed for the fiscal year in the month of April of each year, except for such offices as may hereafter be created, in regard to which the compensation shall be fixed at the time of the creation of such office, nor shall the compensation of any officer, after having been fixed, be increased or diminished during the term for which such officer was elected or appointed. No officer elected or appointed to office under the provisions of this charter shall be a party to or interested in any contract in which the city is interested, made while such officer is holding office. Provided, That the mayor and aldermen shall receive no compensation for their services as such officers.

Sec. 21. The mayor or acting mayor, recorder and each alderman, the city justices, police officers and watchmen, shall be officers of the peace, with powers of constables at common law, and may command the peace, suppress in a summary manner all rioting and disorderly behavior within the limits of the city, and for such purposes may command the assistance of the by-standers, and, if need be, of all the citizens and military companies; and if any person, by-stander, military officer or private, shall refuse to aid in maintaining the peace when so required, each person shall forfeit and pay a fine of fifty dollars; and in cases where the civil power may be required to suppress riots or disorderly behavior, the superior or senior officer present, in the order mentioned in this section, shall direct the proceedings.

#### CHAPTER IV

##### The Common Council—Its General Powers and Duties.

Section 1. The aldermen shall constitute the common council, and the style of all ordinances shall be, "The common council of the city of \_\_\_\_\_ do ordain," &c. The common council shall meet at such time and place as they by resolution may direct. A majority of the aldermen shall constitute a quorum.

Sec. 2. The common council shall hold stated meetings, and the mayor may call special meetings, by notice to each of the members, to be delivered personally or left at their usual place of abode. The common council shall be the judges of the election and qualification of its own members, and in such cases shall have power to send for persons and papers, and shall also determine the rules of its own proceedings, and have power to compel the attendance of absent members.

Sec. 3. The common council shall have the management and control of the finances and all the property of the city, and shall likewise, in addition to the power herein vested in them, have full power and authority to make, enact, ordain, establish, publish, enforce, alter, modify, amend and repeal all such ordinances, by-laws, rules and regulations for the government and good order of the city, for the suppression of vice and intemperance, and for the prevention of crime, as they shall deem expedient; they shall have power to establish and maintain a city prison: Provided, That until otherwise ordered by the common council, the county jail of the county shall be used as a city prison, and it shall be the duty of the sheriff or jailor of the county to take into custody and safely keep in said jail all persons committed thereto until discharged according to law. The common council shall have full power and authority to declare and impose penalties and punishments, and to enforce the same against any person or persons who may violate any provisions of any ordinance or by-law passed or ordained by them, and all such ordinance, rules and by-laws are hereby declared to have all force of law: Provided, That they be not repugnant to the constitution and laws of the United States, or of this state, and for these purposes shall have authority by ordinance, resolution or by-laws—

First—To license and regulate the exhibitions of common showmen, and shows of all kinds, or the exhibition of caravans, circuses, concerts, or theatrical performances, billiard tables, nine or ten-pin alleys, bowling saloons, to grant licenses to and regulate auctions and auctioneers, tavern keepers and victualing house-keepers, and all persons dealing in spirituous, vinous or fermented liquors: Provided, That all licenses for so dealing in spirituous, vinous

or fermented liquors, shall not be less than fifty dollars a year, and no license shall be granted for a less term than one year, and all licenses shall commence and terminate on the first day of May of each year.

Second—To restrain and prohibit all descriptions of gambling and fraudulent devices and practices, and all playing of cards, dice or other games of chance, for the purpose of gambling in said city, and to restrain any person from selling, giving or dealing in spirituous, vinous or fermented liquors, unless duly licensed by the common council.

Third—To prevent any riots, disorderly assemblages in said city, and provide for the arrest and punishment of any person or persons who shall be guilty of the same, to suppress disorderly houses, and houses of ill-fame, and to provide for the arrest and punishment of the keepers thereof, and to authorize the seizure and destruction of all instruments used for the purpose of gambling.

Fourth—To compel the owner or owners of any cellar, tallow-chandler shop, soap factory, tannery, stable, barn, privy, sewer or other unwholesome structure or place, to cleanse, remove or abate the same from time to time, as often as may be deemed necessary for the health, comfort and convenience of the inhabitants of said city.

Fifth—To direct the location and management of slaughter-houses and markets, breweries and distilleries, and to establish rates for and license venders of gunpowder, and regulate the storage, keeping and conveying of gunpowder or other combustible materials.

Sixth—To prevent the encumbering of streets, sidewalks, alleys, lanes and public grounds with carriages, carts, wagons, sleighs or other vehicles, or with boxes, lumber, firewood, posts, awnings or any other material or substance whatever.

Seventh—To prevent and punish immoderate driving or riding in the streets, to regulate (the speed of) cars and locomotives in said city, and to prevent their obstructing the streets of said city, to compel persons to, fasten their horses or other animals attached to vehicles or otherwise, while standing in the streets, and to regulate places of bathing and swimming in the waters within the limits of the city.

Eighth—To restrain the running at large of cattle, swine, sheep, poultry and geese, and to authorize the distraining and sale of the same, and to impose penalties on the owners of such animals for violation of the ordinances. Provided, That when a sale of such animals shall be made, the proceeds thereof, after deducting the expenses of distraining, keeping, advertising and selling such animals, shall be deposited in the office of the treasurer of said city, for the use and benefit of the owners thereof, if called for by such owner within one year from the day of such sale.

Ninth—To prevent the running at large of dogs, and may impose a tax on the same, in a summary manner, when at large contrary to the ordinance.

Tenth—To prevent any person from bringing, depositing or having within said city any putrid carcass or unwholesome substance, and to require the removal of the same by any person who shall have upon his premises any such substances, or any putrid or unsound meat, flesh, or fish, or hides or skins of any kind, and to authorize the removal of the same at the expense of the owners.

Eleventh—To establish and construct public pounds, pumps, wells, cisterns, reservoirs, and hydrants; to erect lamps, and provide for the lighting of the city, and to control the erection of gas works or other works for lighting the streets, public grounds and public buildings, and to create, alter and extend lamp districts; to regulate and license hacks, carts, omnibuses, and the charges of hackmen, draymen, cabmen and omnibus drivers in the city.

Twelfth—To establish and regulate boards of health, provide hospitals and hospital grounds, and the registration of births and deaths, and the returns of bills of mortality, and to regulate or prevent, if deemed expedient, the burial of the dead within the city limits.

Thirteenth—To regulate the size and weight of bread, and to provide for the seizure and forfeiture of bread baked contrary thereto.

Fourteenth—To prevent all persons riding or driving any horse, mule, or ox or other animal on the sidewalks in said city, or in any way doing any damage to said sidewalks.

Fifteenth—To prevent the discharging of fire arms or crackers, and to prevent the exhibition of any fire works in any situation which may be considered by

the common council dangerous to the city or any property therein, or annoying to any of the citizens thereof.

Sixteenth—To prevent open and notorious drunkenness, brawling and obscenity in the streets or public places of the city, and to provide for the arrest and punishment of all persons who shall be guilty of the same.

Seventeenth—To restrain and regulate parties, runners, agents and solicitors for boats, vessels, stages, cars and public houses or other establishments.

Eighteenth—To establish public markets and other public buildings, and make rules and regulations for the government of the same; to appoint suitable officers for overseeing and regulating such markets, and to restrain all persons from interrupting or interfering with the due observance of such rules and regulations.

Nineteenth—To license and regulate butcher shops and stands for the sale of game, poultry, butchers' meats, butter, fish and other provisions.

Twentieth—To regulate the place and manner of weighing and selling hay, and measuring and selling of fire wood, coal, peat and lime, and to appoint suitable persons to superintend and conduct the same.

Twenty-first—To compel the owner or occupant of buildings or grounds to remove snow, dirt or rubbish from the sidewalk, street or alley opposite thereto, and to compel such owner or occupant to remove from the lot owned or occupied by him, all such substances as the board of health shall direct, and in his default to authorize the removal or destruction thereof by some officer, at the expense of such owner or occupant.

Twenty-second—To regulate, control and prevent the landing of persons from boats, vessels or other conveyances whereon are contagious or infectious diseases or disorders, and to make such disposition of such persons as to preserve the health of the city.

Twenty-third—To regulate the time, manner and place of holding public auctions and vendues, and sales at public outcry.

Twenty-fourth—To provide for watchmen, and to prescribe their number and duties, and regulate the same, and to create and establish the police of said city, and to prescribe the number of police officers and their duties, and to regulate the same.

Twenty-fifth—To provide by ordinance for a standard of weights and measures; for the appointment of a city sealer, and require all weights and measures to be sealed by the city sealer; and to provide for the punishment of the use of false weights and measures.

Twenty-sixth—To regulate the inspection of flour, pork, beef, fish, salt, whiskey, and other liquors and provisions; and to appoint inspectors, measurers, weighers and gaugers; to regulate their duties and prescribe their compensation.

Twenty-seventh—To direct and regulate the planting and preservation of ornamental trees in the streets, alleys, highways and public grounds of the city.

Twenty-eighth—To remove and abate any nuisance injurious to the public health or safety, and to remove or require to be removed any building, which, by reason of dilapidation, defects in structure or other causes may have or shall become imminently dangerous to life and property; and to provide for the punishment of all persons who shall cause or maintain such nuisances, and to charge and assess the expense of removing or abating the same upon the lot or lots upon which such nuisance or dangerous building may be maintained.

Twenty-ninth—To remove and abate any nuisance, obstruction or encroachment upon the streets, alleys, public grounds, and highways of the city.

Thirtieth—To do all acts and make all regulations which may be necessary and expedient for the preservation of health, or the suppression of disease, and to make regulations to prevent the introduction of contagious diseases into the city, and to make quarantine laws and enforce the same within the city.

Thirty-first—To restrain and punish vagrants, mendicants, street beggars, and provide for the punishment of the same.

Thirty-second—Fines, penalties and punishments, imposed by the common council for the breach of any ordinance, by-law or regulation of said city, may extend to a fine not exceeding one hundred dollars, and imprisonment in the city prison or county jail not exceeding thirty days, or both, and to be fed on bread and water at the discretion of the city justice; and offenders against the same may be required to give

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security for their good behavior, and to keep the peace for a period not exceeding six months, and in a sum not exceeding five hundred dollars.

Sec. 4. All ordinances, regulations, resolutions and by-laws, shall be passed by an affirmative vote of a majority of the members of the common council present, by ayes and noes, and published in the official paper, and posted in three conspicuous places in each ward for two weeks, before the same shall be in force, and shall be admitted as evidence in any court in the state, without further proof; they shall be recorded by the city recorder in books provided for that purpose. No appropriation shall be made without a vote of a majority of the members of the council present in its favor, which vote shall be taken by ayes and noes, and entered among the proceedings of the council.

Sec. 5. The power conferred upon the common council to provide for the abatement or removal of nuisances, shall not bar or hinder suits, prosecutions or proceedings in the courts according to law. Depots, houses or buildings of any kind within the limits of said city, wherein more than twenty-five pounds of gunpowder, or more than five barrels of thirty-six gallons each, (or such greater or less quantity as said common council may direct by ordinance,) of petroleum, kerosene, naphtha, or other inflammable or explosive oils or substances are deposited, stored or kept at any one time, gambling houses, houses of ill-fame, disorderly taverns, and houses or places where spirituous, vinous or fermented liquors are sold without license required therefor, within the limits of said city, are hereby declared and shall be deemed public or common nuisances.

Sec. 6. The common council shall examine, audit and adjust the accounts of the recorder, treasurer, street commissioners, city justice and all other officers and agents of the city, at such times as they may deem proper, and also at the end of each year, and before the terms for which the officers of said city were elected or appointed shall have expired. And the common council shall require each and every such officer and agent to exhibit his books, accounts and vouchers for such examination and settlement; and if any such officer or agent shall refuse to comply with the orders of said council, in the discharge of their said duties, in pursuance of this section, or shall neglect or refuse to render his accounts, or present his books and vouchers to the council, or a committee thereof, it shall be the duty of the common council to declare the office of such person vacant. And the common council shall institute suits and proceedings at law against any officer and agent of said city who may be found delinquent or defaulting in his accounts, or in the discharge of his official duties, and shall make a full record of all such settlements and adjustment.

Sec. 7. That the common council of the city shall have full power from time to time to borrow money to pay the indebtedness of the city, and in order to pay such indebtedness the city may issue city bonds therefor, bearing interest not to exceed ten per cent per annum, redeemable at any time within ten years, at the discretion of the common council. Provided, That at no time shall it be lawful for said indebtedness, bonded or otherwise, to exceed the sum of fifteen thousand dollars, unless the same be authorized by two-thirds vote of the legal votes cast at the election held for such purposes. And provided further, That the city council shall each and every year levy a tax of one mill on the dollar of the taxable property of the city for each thousand dollars that may be funded by the said city into bonds to pay the interest on said bonds and create a sinking fund to pay the same when due. All laws, ordinances, regulations and by-laws, shall be passed by an affirmative vote of the majority of the common council, and be signed by the mayor, and shall be published in the official paper of the city, before the same shall be in force, and within twenty days thereafter they shall be recorded by the recorder in books provided for that purpose, but before any of the said laws, ordinances, regulations or by-laws shall be recorded, the publication thereof, as aforesaid, shall be proved by the affidavit of the foreman or publisher of such newspaper, and the said affidavit shall be recorded therewith, and at all times shall be deemed and taken as sufficient evidence of such publication.

### CHAPTER V Taxes

Section 1. The common council shall have power to levy upon all the taxable property of said city

taxes to provide for the current expenses of the city government and police, for the opening, maintaining and improvement of public grounds, and the construction of buildings and improvements of a general character; Provided, That such taxes shall in no year exceed one per cent of the assessed valuation.

Sec. 2. The common council shall have power to levy a special tax upon all the taxable property in the city, or of the different wards of the same, for the purpose of constructing, maintaining bridges and culverts, and opening, constructing, maintaining and repairing roads, highways, streets and alleys; for the construction of reservoirs, cisterns, sewers, drains and street gutters and grading of streets, and for other purposes conducive to good order and cleanliness, and to protection against crime, disease and fire. Provided, That such taxes shall, in no year, exceed one per cent of the assessed valuation. And provided further, That for the improvements in this section mentioned, the common council shall have power to assess the tax to pay the same upon the award or awards benefited by such improvements, in such manner and to such extent as the common council may think just and equitable. The tax shall be apportioned upon a cash valuation of the property, which it shall be determined is liable to assessment for such improvements. No debts shall be incurred or created by the city, the common council, or any officer of the city, except pursuant to the authority herein expressly given for that purpose; and no order or orders shall be issued upon the city treasury exceeding the amount of tax collected or assessed and in process of collection.

Sec. 3. The common council shall have power, and it shall be the duty of the common council, to levy, annually upon the taxable property of said city, taxes sufficient to pay all bonds or other indebtedness due and payable in any year, and the interest on bonds or other indebtedness due or payable in any year, unless that previously to the first day of September in each year some other adequate provision has been made for the payment of the same. The common council shall have the power to issue bonds and levy taxes exceeding the amount authorized by other sections of this act; Provided, The same be authorized by a majority of the voters present and voting at an election to be held for that purpose. The time, place and manner of holding such election to be prescribed by the common council, the same notice to be given as at other elections. And no bonds for any purpose shall be issued by the common council unless so authorized.

Sec. 4. Taxes may be levied by resolution of the common council, and no tax shall be invalid by reason of any informality in the manner of levying the same, nor because the amount levied shall exceed the amount required to be raised for the special purpose for which the same is levied; but in such case the surplus shall, if the tax be a general tax, go into the general fund of the city; if it be a bond or interest tax, it shall be kept and used for the future payment of principal or interest of the same class of bonds, or the purchase thereof before due; if it be for improvements, it shall be kept and used for future improvements of the same character.

Sec. 5. The common council shall cause to be transmitted to the county auditor of the county, on or before the first day of September of each year, a statement of all taxes by them levied, and such taxes shall be collected, and the payment thereof enforced, with and in like manner as state and county taxes are paid and the payment thereof enforced, and the county treasurer of said county shall pay such taxes over as fast as collected, to the treasurer of said city.

Sec. 6. No money shall be paid out of the city treasury unless such payment be authorized by a vote of the common council, and these shall be drawn out only upon orders by the mayor and countersigned by the recorder, which orders shall specify the purpose for which they were drawn, and the fund out of which they are payable, and the name of the person in whose favor the same are drawn, and may be made payable to the order of such person or to the bearer, as the common council may determine.

Sec. 7. When any such order shall have been paid or received by the treasurer, it shall not again be issued, but he shall immediately cancel the same, and file the same away in his office, keeping the orders drawn upon each fund separate.

Sec. 8. It shall be lawful for the common council of said city, at any time, to levy a corporation poll tax upon every qualified voter in said city; Provided, That said tax shall not in any one year exceed the sum of two dollars on each person.

## CHAPTER VI

## Opening and Vacating Streets, Alleys, &amp;c.

Section 1. The common council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and grounds within the limits of said city, and shall cause all streets which may have been opened and graded, to be kept open and in repair, and free from nuisances.

Sec. 2. The common council of said city, by a vote of not less than two-thirds of the members present, and constituting a quorum of any stated or special meeting, such vote to embrace a majority of all the members elect, shall have power to lay out, open, alter and vacate public squares, streets, grounds, highways and alleys, and to widen and straighten the same. Provided, That whenever it shall be required to take private property for the purposes above stated, they shall proceed in the manner hereinafter provided.

First—The common council, upon ordering an improvement above mentioned to be made, shall appoint as many commissioners as there may be wards of said city, selecting one from each ward, who shall be a disinterested freeholder and qualified voter of said city, to view the premises, and assess the damages which may be occasioned by the taking of private property or otherwise, in making said improvement. Said commissioners shall be notified as soon as practicable by the city clerk of said city, to attend at his office, at a time to be fixed by him, for the purpose of qualifying and entering upon their duties; and in case any such commissioner, upon being so notified, shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to said city, not exceeding fifty dollars, and shall be liable to be prosecuted therefor before the city justice of said city, as in the case of fines imposed for a violation of an ordinance of said city; and the commissioners in attendance shall be authorized to appoint another commissioner or commissioners in place of any absentee or absentees aforesaid, selected from the ward in each case not represented, and possessing the qualifications aforesaid. In all other cases of vacancy the common council shall fill such vacancy.

Second—The commissioners shall be sworn by the city clerk to discharge their duties as commissioners in the matter with impartiality and fidelity, and to make due return of their actions and doings to the common council.

Third—The said commissioners shall, with all reasonable speed, with the assistance of the city surveyor of said city, cause a survey and plat of the proposed improvement to be made and filed with the city clerk, exhibiting, as far as practicable, the land or parcels of property required to be taken, or which may be damaged thereby, and shall thereupon give notice by publication in the official newspaper of said city, for at least ten days, to the effect that such plat has been filed, and that the said commissioners will meet at a place and time designated by them, and thence proceed to view the premises, and assess the damages for property to be taken, or which may be damaged by such improvement.

Fourth—At the time and place appointed according to said notice, the said commissioners shall view the premises, and may hear any evidence or proof offered by the parties interested, and adjourn from day to day, if necessary, for the purpose aforesaid. When their view and hearing aforesaid shall be concluded, they shall determine and assess the amount of damages to be paid to the owner or owners of each parcel of property proposed to be taken, or which may be damaged by said improvement, and in so doing shall take into consideration the value of the property proposed to be taken, with such other damage as may be incident thereto, and also the advantages which will accrue to such owner or owners in making such improvement.

Fifth—If there should be any building standing in whole or in part upon the land to be taken, the said commissioners shall in each case determine and assess the amount of damages which should be paid to the owner or owners thereof, in case such building, or so much thereof as might be necessary, should be taken, and shall also determine and assess the amount of damages to be paid to such owner or owners in case he or they should elect to remove such building, and the damages in relation to buildings aforesaid, shall be assessed separately from the damages in relation to the land upon which they are erected.

Sixth—If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate in it less than an estate in fee, (the) injury or damage done to such

persons or interests respectively, may be awarded to them by the commissioners, less the benefit resulting to them from the improvement.

Seventh—The said commissioners having ascertained and assessed the damage aforesaid, shall make and file with the city clerk a written report to the common council, of their action in the premises, embracing a schedule or assessment of the damages in each case, with a description of the land and the name of the owners, if known to them, and also a statement of the costs of the proceeding.

Eighth—Upon such report being filed in the office of the city clerk, said city clerk shall give at least ten days' notice by publication in the official newspaper of said city, to the effect that such assessment has been returned, and that the same will be confirmed by the common council, at a meeting thereof, to be named in said notice, unless objections are made in writing by persons interested in any land required to be taken. Any persons interested in buildings standing in whole or in part upon any land required to be taken by such improvement, shall on or before the time specified in said notice, notify the common council in writing of their election to remove such buildings, according to the award of the commissioners. The common council, upon the day fixed for the consideration of such report, or at such subsequent meeting to which the same may stand over or be referred, shall have power, in their discretion, to confirm, revise, or annul the assessment, giving due consideration to any objections interposed by parties interested.

Ninth—The damages assessed shall be paid out of the general funds of said city, and shall be paid or tendered, or deposited and set apart in the treasury of said city, to and for the use of the parties entitled thereto, within six months from the confirmation of such assessment and report, and the land or property required to be taken for the purposes aforesaid, shall not be appropriated until the damages awarded therefor to the owner thereof, shall be paid or tendered to the owner or his agent, or deposited and set apart for his use as aforesaid; and in case the said city should be unable to determine to whom the damages in any particular case so awarded should be paid, or in case of disputed claims in relation thereto, the damages in such case may be deposited, by order of the common council, in the district court of the county, in the same manner as moneys are paid into court, until the parties entitled thereto shall substantiate their claim to the same.

Tenth—In case any owner or owners of buildings as aforesaid shall have elected in manner aforesaid to remove his or their buildings, he or they shall so remove them within thirty days, from the confirmation of said report, or within such further time as the common council may allow for the purpose, and shall thereupon be entitled to payment from said city of the amount of damages awarded in such case, in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected to remove) to remove the same, within the time prescribed, such buildings or so much thereof as may be necessary, upon payment or depositing the damages awarded for such taking, in manner aforesaid, may be then taken and appropriated, sold or disposed of, as the common council shall direct, and the same or the proceeds thereof, shall belong to said city.

Eleventh—When any known owner of lands or tenements, affected by any proceeding under this act, shall be an infant, or labor under legal disability, the judge of the district court of the county, or, in his absence, the judge of any court of record may, upon application of said commissioners, or of said city, or such party, or his next friend, appoint a suitable guardian for such party, and all notices required by this act, shall be served upon such guardian.

Twelfth—Any person feeling himself aggrieved by such assessment may, by notice in writing, served on the mayor of said city, a copy whereof, with proof of service, shall be filed in the office of the clerk of the district court of the county, within twenty days from the time of confirmation of said report or assessment, appeal from such assessment to the district court aforesaid, when such appeal shall be tried by the court and jury, as in ordinary cases; but no pleadings shall be required, and the party appealing shall specify, in the notice of appeal, the grounds of objection to such assessment, and shall not be entitled to have any other objections than those specified, considered, and a transcript of such report, certified by the city clerk, or the original thereof, shall be prima facie evidence of the facts therein stated, and that such

assessment was regular and just, and made in conformity to law. The judgment of such court therein shall be final. Such appeal shall be entered and brought on for trial, and be governed by the same rules in all other respects as appeals from justices of the peace in civil suits.

Sec. 3. Whenever any public ground, street, or alley shall be laid out, widened or enlarged, under the provisions of this chapter, the common council shall cause an accurate survey and profile thereof to be made and filed in the office of the city surveyor, and also filed in the office of the register of deeds of the county.

Sec. 4. No public grounds, streets, alleys, or highways within said city shall be vacated or discontinued by the common council, except upon the petition of a majority of the owners of property on the line of such public grounds, streets, alleys or highways, resident within the said city; such petition shall set forth the facts and reasons for such vacation, accompanied by a plat of such public grounds, streets, alleys, or highways proposed to be vacated, and shall be verified by the oath of at least two of the petitioners. The common council shall thereupon, if they deem it expedient that the matter should be proceeded with, order the petition to be filed of record with the city clerk who shall give notice by publication in the official paper of said city, for four weeks, at least once a week, to the effect that such petition has been filed as aforesaid, and stating in brief, its object, and that said petition will be heard and considered by the common council, or a committee appointed by them on a certain day and place therein specified, not less than ten days from the expiration of such publication. The common council, or such committee as may be appointed by them for the purpose, at the time and place appointed, shall investigate and consider the said matter, and shall hear the testimony and evidence on the part of parties interested. The common council thereupon after hearing the same, or upon the report of such committee, in favor of granting such petition, may by resolution passed by a two-thirds vote of all the members elect, declare such public grounds, streets, alleys, or highways, vacated, which said resolution, after the same shall go into effect shall be published as in the case of ordinances, and thereupon a transcript of such resolution duly certified by the city clerk, shall be filed for record and duly recorded in the office of the register of deeds of the county.

Sec. 5. Any person aggrieved thereby may within twenty days after the publication thereof appeal to the district court of the county, under the same regulations as in the case of opening streets and alleys, and the judgment of the court thereon shall be final.

Sec. 6. It shall be the duty of the clerk to keep in his office a record of all proceedings taken under this chapter, and after the confirmation of any report mentioned in sections two and four of this chapter, said clerk shall carefully record and transcribe in such record all the proceedings taken in relation to the matter in said report, including all petitions, orders and appointments of commissioners, returns and reports of commissioners, notices and proofs of publication thereof, and orders or resolutions of the council, and the said record, or a certified transcript thereof or the original papers, petitions, proofs of publication, orders or resolutions, on file in his office shall be prima facie evidence of the facts therein contained, in any court in this state.

#### CHAPTER VII Fire Department

Section 1. The common council, for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings or other buildings, the material or construction of which shall be regarded as dangerous to surrounding property, shall not hereafter be erected, placed or repaired, and to direct that all and any buildings within the limits prescribed, shall hereafter be built and constructed in such manner and of such materials, as in the judgment of the common council, shall not be dangerous to surrounding property, and to prohibit the repairing or rebuilding of wooden buildings within the fire limits, when the same shall have been damaged by fire or otherwise to the extent of fifty per cent of the value thereof, and to prescribe the manner of ascertaining such damages. The common council shall have power, by resolution, to order any building, structure, or materials therefor, hereafter erected, or in process of erection, of which the construction or materials may be dangerous to surrounding property to be taken down or removed beyond

the fire limits of the city, and shall have power to prescribe the notice to be given to the owner or agent to remove such building, and in case the same is not removed in pursuance of the notice given, to order the same taken down, removed by the police, or in such manner as the common council may see fit. And the common council may prescribe penalties for the violation of any of the provisions of this section, or of any ordinance made or enacted to carry out the provisions thereof, not exceeding one hundred dollars, which may be imposed by a city justice, upon the complaint of any citizen.

Sec. 2. The common council shall have power to prevent the dangerous construction and condition of chimneys, fire-places, hearths, stoves, stove pipes, ovens, boilers and apparatus used in and about any building, and to cause the same to be removed, or placed in a safe or secure condition, when considered dangerous. To prevent the deposit of ashes in unsafe places, and the throwing of ashes in the streets and alleys. To require the inhabitants to provide as many fire buckets, and in such manner and time as they shall prescribe, and to regulate the use of them in time of fire. To regulate and prevent the carrying on of manufactures dangerous in causing or promoting fires. To regulate and prevent the use of fire arms and fireworks. To compel owners or occupants of buildings to have scuttles in the roofs, and stairs or ladders to the same. To authorize the mayor, aldermen, fire wardens and other officers of the city to keep away from the vicinity of any fire all idle and suspected persons, and to compel all bystanders to aid in the extinguishment of fires and the preservation of property exposed to danger thereat, and generally to establish such regulations for the prevention and extinguishment of fires as the common council may deem expedient.

Sec. 3. The common council shall have power to purchase fire engines and all other apparatus which may be required for the extinguishment of fires, and to authorize the formation of fire engine, hook and ladder and hose companies, and to provide for the proper support and regulation of the same, and to order such companies to be disbanded, their public meetings prohibited and their apparatus to be given up. Every member of each company which may be authorized to be formed shall be exempt from highway work and poll tax, from serving on juries, and from military duty during the continuance of such membership.

Sec. 4. The common council shall have power to appoint the chief engineer and two assistant engineers of the fire department, and also one fire warden in each ward, and to prescribe the duties of such officers.

Sec. 5. Whenever any person shall refuse to obey any lawful order of any engineer, fire warden, mayor or alderman, at any fire, it shall be lawful for the officer giving such order to arrest or to direct orally any constable, police officer, watchman or any citizen, to arrest such person, and confine him temporarily in any safe place, until such fire shall be extinguished; and in the same manner such officers, or any of them, may arrest, or direct the arrest and confinement of any person at such fire who shall be intoxicated or disorderly; and any person who shall refuse to obey any such lawful order, or who shall refuse to arrest or aid in arresting any person so refusing to obey, shall be liable to such penalty as the common council may prescribe, not exceeding a fine of fifty dollars.

#### CHAPTER VIII Street Grades and Sidewalks

Section 1. The common council may cause to be established from time to time, and as rapidly as the convenience of the inhabitants may require, under the direction of the city surveyor, the grade of all streets, sidewalks and alleys in said city, and it shall cause accurate profiles thereof to be made and kept in the office of the city surveyor.

Sec. 2. Whenever the common council shall deem it necessary to construct or repair any sidewalk in said city, they shall require the street commissioner to notify all owners and occupants of any lot or lots, or parcels of land adjoining such sidewalk, to construct or repair the same at his or their own proper expense and charge, within a time designated by the publication in the official paper of said city, for not less than two weeks, of a notice to said owners or occupants, setting forth what work is to be done, and the character of the same, by such owners or occupants, and the time within which they are required to do the same.

Sec. 3. If such work is not done and the said sidewalks not built or repaired in the manner, and within the time prescribed, the common council may order the same to be done by the street commissioner, at the expense of the lots and parcels of land adjoining said sidewalks, and said expenses shall be assessed upon such lots and parcels of land so chargeable, by the street commissioner, and returned by him to the common council. And said assessment so made and returned, if approved by the common council, shall become a lien upon said lots and parcels of land, as in case of city, county and state taxes.

Sec. 4. If said assessment be not paid to the street commissioner or the city treasurer, on or before the twentieth day of August, in any year, the common council shall cause a statement of the same to be transmitted, with the city taxes levied for that year, to the auditor of the county, on or before the first day of September in each year, and the said auditor shall insert the same with the other taxes in the duplicate statement of taxes annually transmitted by him to the county treasurer for collection, and payment thereof enforced, with and in like manner as city, county and state taxes are collected and payment thereof enforced.

Sec. 5. The common council shall prescribe the width of sidewalks, and may establish different widths in different localities, and determine the kind of material of which they shall be constructed, having regard to the business and the amount of travel in the vicinity of each.

#### CHAPTER IX

##### Lighting of Streets—Supply of Water

Section 1. The common council shall have authority to contract with any person, persons or corporation for the lighting of such streets or parts of streets and public places as they shall deem proper for the convenience and safety of the inhabitants.

Sec. 2. The common council may permit the laying of gas pipes in any and all the streets, alleys, highways and public grounds of the city; but in all cases the common council shall regulate the laying of the same, so that said gas pipes may not at any time interfere with the construction of common sewers or the lateral branches thereof, or with the proper and convenient location of water mains and pipes, and may at any time require the location of any gas pipe to be changed, if the same shall be found to interfere with the proper and convenient location of common sewers or water mains and pipes.

Sec. 3. The common council may permit any party or corporation to lay water mains and pipes in any and all streets, alleys, highways and public grounds of the city, and shall regulate the position of the same, so that (they) shall not obstruct or interfere with common sewers or with the proper drainage of the city.

#### CHAPTER X Miscellaneous Provisions

Section 1. No vote of the common council shall be reconsidered or rescinded at a subsequent meeting, unless at such subsequent meeting there be present as large a number of aldermen as were present when the vote was taken.

Sec. 2. No penalty or judgment recovered in favor of the city shall be remitted or discharged, except by the vote of two-thirds of the aldermen elect.

Sec. 3. In all prosecutions for any violation of this act, the first process shall be by warrant on complaint being made; Provided, That no warrant shall be necessary in any case of the arrest of any person or persons while in the act of violating any law of the state of Minnesota, or ordinance or by-law of the city, but the person or persons so arrested may be proceeded against, tried, convicted and punished or discharged in the same manner as if the arrest had been made by warrant. All warrants, process or writs by a city justice for the violation of an ordinance and by-laws of said city, shall be directed to the chief of police or any police officer of said city.

Sec. 4. In all cases of the imposition of any fine or penalty, or of the rendering of any judgment by a city justice of said city, pursuant to any statute of the state of Minnesota, or pursuant to any ordinance or by-laws of the said city, as punishment for any offense, or for the violation of any ordinance or by-law as aforesaid, the offender shall be forthwith committed to the city prison of said city, or if there be no city prison, to the common jail of the county, and be there imprisoned for a term not exceeding three months, in the discretion of the city justice, unless the said fine or penalty be sooner paid or satisfied; and from the time of the arrest of any person or persons for any offense whatever, until the time of trial, the person or persons so arrested may be imprisoned in the city prison, or in case there be no city prison, in the common jail of the county.

Sec. 5. No person shall be an incompetent judge, justice, witness or juror, by reason of his being an inhabitant of said city, in any proceeding or action in which the city shall be a party, in interest.

Sec. 6. Each city may purchase and hold real and personal estate for public purposes, sufficient for the convenience of the inhabitants thereof, and may sell and convey the same, and the same shall be free from taxation.

Sec. 7. No law of the state concerning the provisions of this act shall be considered as repealing, amendatory or modifying the same, unless said purpose be expressly set forth in such law.

Sec. 8. The street commissioner shall collect the corporation or poll tax, which may be levied by the common council, and said street commissioner shall have all the power as possessed by road supervisors as provided by the laws of the state, and shall report to the common council when required.



## APPENDIX 2

## ACT OF 1895, AS AMENDED

Laws 1895, c. 8, entitled "An act to provide for the incorporation, organization and government of cities," as amended. Sub-chapter I of this act, Sections 1 to 40, were repealed by the Revised Laws 1905, Section 5541. The remainder of the act has not been repealed. As to cities incorporated under the act it is still applicable, except as otherwise changed by subsequent laws. The law seems to be applicable to five cities. It reads as follows:

## CHAPTER I

Repealed by Revised Laws 1905, Section 5541.

## CHAPTER II

## Election, Appointment and Duties of Officers

Sec. 41. Elective officers.—The elective officers of cities shall be mayor, treasurer, one ward alderman elected from each ward and aldermen elected from the city at large; the number of aldermen elected at large to be as follows:

In cities with six wards or less, two aldermen shall be elected from the city at large; in cities having more than six wards and less than ten wards, four aldermen shall be elected from the city at large; in cities having ten or more wards, eight aldermen shall be elected from the city at large. In cities with a population of 30,000 or more, there shall be elected in addition to the officers above provided for, a city comptroller. In all cities wherein there are any justices of the peace, judges of the municipal court or other city officers except school officers not provided for by this act, who are elected by the people, such officers shall be elected at the city election held under this act, but shall qualify at the time and hold such offices for terms provided by the laws under which such offices exist.

Sec. 42. Time of election.—The regular city election shall be held on the first Tuesday after the first Monday in November of each odd numbered year.

Sec. 43. Terms of elective officers.—The terms of officers elected by the people under this act shall be two years; and provided, that where there is in any city reorganized under this act under the laws governing such city prior to such reorganization, a legislative body, the members of which are elected at large, they shall serve as aldermen at large under the provisions of this act to the ends of the terms for which they were respectively elected, and where, in any city reorganized under this act, there is, under the law governing such city prior to such reorganization a legislative body, the members of which are elected by wards, such members shall serve as ward aldermen under the provisions of this act to the end of the terms for which they were respectively elected, and at the city elections respectively next preceding the expiration of the terms of such existing aldermen at large or ward aldermen, successors shall be elected for partial or full terms, to conform to the provisions of this act. And provided further, that at the first election in any city originally incorporated under the provisions of this act, five aldermen shall be elected from the city at large and no other aldermen shall be elected at such election. Such aldermen at large shall serve until the then next city election and until the aldermen elected thereto shall have qualified, as provided in section 44 hereof. At the said second city election there shall be elected aldermen as in this section provided for the first election held under this act.

Sec. 44. Commencement and end of term.—The term of each elective officer, unless herein otherwise provided, shall commence on the first Tuesday after the first Monday in January next succeeding his election; and all officers elective and appointive shall serve to the expiration of their respective terms and until their successors are elected or appointed and have qualified, except when removed as herein provided.

Sec. 45. Removal of officers.—Every person appointed to any office under the provisions of this act may be removed from such office by a vote of two-thirds of all the members of the city council, except as otherwise provided in this act; but no such officer shall be removed by the city council except for cause, nor unless he first be furnished with a copy of the charges, nor until he shall have had reasonable opportunity to be heard in person or by council in his own defense. The city council shall have power to fix the time and place for the trial of such officer, of which he shall be given not less than ten (10) days' notice, to compel the attendance of witnesses and the production of papers,

and to hear and determine the case. If such officer shall neglect to answer to such charge, the same shall be cause for removal.

Sec. 46. Vacancy—how filled.—Whenever a vacancy shall occur in the office of any officer elected by the people or appointed by the city council, such vacancy shall be filled by appointment by the city council for the unexpired term.

Sec. 47. What shall constitute an election.—A plurality of votes for elective officers shall constitute an election. When two or more persons shall receive an equal number of votes for the same office, the election shall be determined by the casting of lots in the presence of the city council, at such place and in such manner as they may direct. Officers appointed by the city council shall receive a majority vote of all its members to constitute an appointment.

Sec. 48. Removal, refusal or failure to act.—Any officer removing from the city or ward for which he was elected or appointed, and any officer elected under the provisions of this act, who shall refuse, or without cause neglect to enter upon the discharge of the duties of his office for ten (10) days after the beginning of the term which he was elected to fill, he having at least ten (10) days prior thereto been notified by the city clerk of his election, or any officer appointed under the provisions of this act who shall refuse or neglect to enter upon the discharge of the duties of his office for ten (10) days after receiving notice from the city clerk of his appointment, shall be deemed to have vacated or abandoned the same.

Sec. 49. Resignation.—Any officer having entered upon the duties of his office may resign the same by and with the consent of the city council.

Sec. 50. Oaths and bonds.—Every person elected or appointed to any office under this act shall, before he enters upon the duties of his office, take and subscribe an oath of office and file the same with the city clerk. The treasurer, clerk, comptroller, and such other officers as the city council shall require, shall severally, before they enter upon the duties of their office, execute to the city bonds in such amounts and upon such conditions as the city council may prescribe. Such bonds shall be approved by the city council, and it may from time to time require new or additional bonds, and it may remove from office any officer neglecting or refusing to give same.

Sec. 51. Interest in city contract disqualifies for holding office.—No mayor, member of the common council or other city officer, shall while such mayor, member of the common council, or other city officer, vote for, or make any contract in behalf of said city or any department of said city, with himself or with any firm of which he is a member, or with any corporation or association of which he is an officer or director, nor shall he be in any manner, directly or indirectly, interested in any contract with said city, and any contract in which said mayor, member of common council, or other city officer, is or becomes directly or indirectly interested, shall be and become absolutely void, and any such officer by said act shall forfeit his said office.

Sec. 52. Penalty for failure to observe duties imposed.—Any officer or employe of the city who shall offend against any of the provisions of this act by refusing to do any act or thing required to be done by him, or by wrongfully doing the same, or who shall wilfully violate any of the provisions of this act, or commit any fraud upon the city, or convert any of the public property to his own use, or knowingly permit any other person to so convert it, or by gross and culpable neglect allow the same to be lost to the city, shall be guilty of a misdemeanor and shall be punished therefor as misdemeanors are punished by the criminal laws of the state, and shall, as a consequence thereof, forfeit his office and be forever disqualified from holding any office of trust or profit under the city government, and shall be liable to the city for any amount lost or damage suffered by reason of such wrongful act or violation of law.

Sec. 53. The salaries of all officers and employes of the city shall be fixed by a resolution passed by a three-fourths vote of all the members of the city council and the salaries of the officers and employes shall be paid monthly and the salaries of employes may be paid weekly, unless otherwise provided by law, out of the treasury of the city, and the salaries of officers whose terms of office are fixed by this act shall not be increased or diminished during the term for which the officer shall have been chosen, nor during the time intervening between his election or appointment and the commencement of his said term; provided, however, that the salary of aldermen in cities containing a population exceeding thirty thousand inhabitants shall not exceed five hundred dollars per annum; and in



cities containing a population exceeding fifteen thousand and not exceeding thirty thousand inhabitants the same shall not exceed three hundred dollars per annum; and in cities containing a population not exceeding fifteen thousand inhabitants, the same shall not exceed one hundred dollars per annum; provided, however, that until the city council shall have so fixed the salaries as herein provided, no salary or compensation shall be allowed or paid to any of the following named officers or employees or any of them, in cities where the same may exist, in excess of the following named sums, to-wit: The mayor, three thousand dollars (\$3,000) per annum; the mayor's private secretary, twelve hundred dollars (\$1,200) per annum; the treasurer, four thousand dollars (\$4,000) per annum; the comptroller, four thousand dollars (\$4,000) per annum; the city clerk, four thousand dollars (\$4,000) per annum; the city attorney, four thousand dollars (\$4,000) per annum; the city engineer, four thousand dollars (\$4,000) per annum; the secretary of the board of water commissioners, two thousand dollars (\$2,000) per annum; the superintendent of the water department, eighteen hundred dollars (\$1,800) per annum; the commissioner of health, or health officer, twenty-four hundred dollars (\$2,400) per annum; the building inspector, eighteen hundred dollars (\$1,800) per annum; the chief engineer of the fire department, twenty-five hundred dollars (\$2,500) per annum; the first assistant engineer of the fire department, fifteen hundred dollars (\$1,500) per annum; the second assistant engineer of the fire department, twelve hundred dollars (\$1,200) per annum; the chief of police, twenty-five hundred dollars (\$2,500) per annum; the judge or judges of the municipal court, each, three thousand dollars (\$3,000) per annum; the clerk of the municipal court, eighteen hundred dollars (\$1,800) per annum; the superintendent of the workhouse, twenty-five hundred dollars (\$2,500) per annum; the commissioner of public works, two thousand dollars (\$2,000) per annum; and provided further, that where the duties performed by any of the officers aforesaid are by the terms of this act imposed upon officers otherwise designated, the limitations herein contained shall be construed to apply to such newly designated officers and in no event to perpetuate or authorize any office or position not recognized by this act.

Sec. 54. Reports of officers.—Every elective and appointive officer shall continue to reside in the ward or district for which elected or appointed, and shall keep and attend his office at such time and place as may be prescribed by the city council, and except members of the city council, shall annually and in the years when the city election is to be held, not less than ten (10) nor more than thirty (30) days before such election, make and transmit to the city council an accurate verified report of the business of his office for the preceding year, together with a true, verified inventory of all moneys, property and other effects of the city in his possession or under his control; and at the time of making such report he shall likewise make and transmit to the city council and the city comptroller an estimate of the cost and expense of the operation of his office for the ensuing fiscal year; and he shall likewise, whenever requested by the mayor or city council, make to them, or either of them, a similar report, and shall exhibit to them, or either of them, all the books of account, papers and other records of property kept in and controlled by his office. At the expiration of his term, or when removed from his office, he shall, on demand, turn over to the city or to his successor in office, all the books, papers, records, files, money and other property and things whatever pertaining to his office, or received by him, by virtue or reason of the exercise thereof.

Sec. 55. No gift nor gratuity shall be accepted—turning over fees.—No officer shall directly or indirectly, in or about the performance of the duties of his office, receive any gift, commission, gratuity or reward or other valuable thing whatever; and every such officer and member shall account for and pay over to the city at the end of each month all fees collected by him during the preceding month, by virtue or reason of his office, except as may be herein otherwise provided. Any violation of the provisions of this section shall be deemed corruption in office and punished as provided in this act.

Sec. 56. Exemption from jury service.—All officers and employes of the city while engaged in its service shall be exempt from serving as jurors in any court.

Sec. 57. Fiscal year.—The fiscal year of the city shall commence on the first day of January of each year.

## CHAPTER III

## Powers and Duties of the Mayor

Sec. 58. The chief executive.—The mayor shall be the chief executive officer of the city. He shall take care that the laws of the state and the ordinances of the city are duly observed and enforced within the city. He shall see that all other officers of the city discharge their respective duties. He shall from time to time give the city council such information and may recommend such measures as he shall deem advantageous to the city.

Sec. 59. Approval of ordinances and resolutions—veto power.—Every ordinance, order and resolution shall, before it takes effect, be presented to the mayor for approval. If he approves he shall sign the same, but if he disapprove it, he shall return it to the city council with his objections thereto, by depositing the same with the city clerk, to be presented to the city council at the next regular meeting thereafter.

Sec. 60. Reconsideration.—Upon the return of any ordinance, order or resolution by the mayor, the vote by which the same was passed shall be deemed to have been reconsidered, and the question shall be again put upon the passage of the same, notwithstanding the objections of the mayor; and if upon such vote, the city council shall pass the same by a vote of three-fourths ( $\frac{3}{4}$ ) of all its members, it shall have the same effect as if approved by the mayor, and in such case the vote shall be by yeas and nays, which shall be entered by the city clerk of record; provided, however, that in all cases where the original action of the council requires a three-fourths ( $\frac{3}{4}$ ) vote, the veto of the mayor shall be effectual unless overruled by unanimous vote of all the members of such council; provided, upon the return by the mayor without his approval of any ordinance, order or resolution authorizing the issuance of bonds or certificates of indebtedness without the submission for ratification to the electors of the city, or granting a franchise, such ordinance, order or resolution shall not be passed over the veto of the mayor, and shall be of no more force and effect than if the same had failed of passage by the council in the first instance.

Sec. 61. Time limited for approval by the mayor.—No ordinance, order or resolution shall be signed by the mayor within four (4) days after the same is presented to him, and if the same shall not be returned by him on the tenth (10) day (Sunday excepted) after it shall have been presented to him, it shall have the same force and effect as if approved by him.

Sec. 62. Indorsement by clerk.—The city clerk shall indorse upon each such ordinance, order and resolution the time when the same was delivered to the mayor, and the time when it was returned to his office by the mayor.

Sec. 63. Acting mayor.—During the absence of the mayor from the city, or in case of his death or disability for any reason to discharge the duties of his office, the president of the city council, or in his absence or in case of his disability, the vice-president of the city council shall for the time being exercise all the powers and discharge all the duties of the mayor. The president or vice-president so performing the duties of the mayor shall be styled the "acting mayor," and his acts while so acting as mayor shall have the same force and validity as if performed by the mayor.

Sec. 64. Control of police.—The mayor shall be chief magistrate of the city and shall have command and control of its entire force of police.

Sec. 65. Mayor's secretary and stenographer.—He may appoint a secretary and stenographer when authorized by the city council, who shall perform such clerical duties as the mayor may prescribe in his department and in the department of police.

Sec. 66. Executive contingent fund.—The mayor shall have authority to expend from the executive contingent fund such moneys as he may deem necessary in case of emergency to secure information and evidence of crime and arrest convicts and to relieve distress in the event of public calamity in this state.

Sec. 67. Shall sign bonds, obligations and contracts.—He shall sign all bonds and obligations of the city and all warrants drawn on the city treasurer, unless otherwise provided by law. He shall also sign all contracts entered into by the city.

Sec. 68. Process and notices.—He shall, upon service of notice or process upon him in an action or proceeding against the city, forthwith inform the city attorney and city council thereof.

Sec. 69. Annual report.—He shall make an annual written report at the close of each fiscal year to the city council of the general condition of affairs of the city.

CHAPTER IV  
Duties of Comptroller

Sec. 70. To keep books of account.—It shall be the duty of the city comptroller to keep regular books of account, both of the city and the boards and departments of said city, in which he shall enter all indebtedness of said city, and which shall at all times show the precise financial condition of the city and of the amount of bonds or other evidence of indebtedness outstanding, and the redemption of the same when redeemed. The city council shall provide for the salaries of such assistants and clerical force as may be needed by the comptroller. All such assistants and clerical force shall be appointed by the comptroller. The city comptroller shall designate one of his assistants as deputy city comptroller, and such deputy shall have in the absence or disability of the city comptroller the same powers and duties as are herein prescribed for the city comptroller.

Sec. 71. Warrant account.—He shall keep accounts of warrants drawn on the treasury in separate books, and shall note thereon the cancellation thereof whenever the same shall be cancelled and shall keep such other books and records as shall be necessary for the preservation of the accounts of the transactions and business of the city, and all books, lists and records heretofore kept, or which shall be kept in the comptroller's office, and copies thereof by him certified, and shall be competent evidence of all matters shown by them.

Sec. 72. He shall keep accounts with the city treasurer and all other receiving or disbursing officers of said city; in such accounts he shall charge such officers with all amounts received by them from all sources of revenue, and with all city property in their hands or control, as such officers, and credit them with all amounts disbursed, or property disposed of on proper authority, and with all money or property turned over to the city or to their successors in office.

Sec. 73. To countersign bonds and other evidences of indebtedness.—He shall countersign all bonds, warrants or other evidences of indebtedness of the city; and no such bond, order, certificate or other evidence of indebtedness shall be valid until so countersigned.

Sec. 74. To examine accounts of other officers.—He shall examine the reports, books, papers and vouchers of the treasurer and of other receiving and disbursing officers, and perform such other duties pertaining to his office as the city council may prescribe, and it shall be the duty of the city comptroller to make a report of the financial condition of the city to the city council at any time he may deem it advisable, with such recommendation as he may think proper.

Sec. 75. To report financial condition to city council.—He shall, within sixty days after the close of each fiscal year, report to the city council the financial condition of the city.

Sec. 76. To countersign all contracts.—He shall countersign all contracts made in behalf of said city, and no such contract shall be valid for any purpose until so countersigned, and he shall be the custodian of all such contracts. He shall countersign no contract in behalf of said city unless there be sufficient funds applicable by law thereto in the treasury of such city for the payment of any liability arising under such contract, or unless provision shall have been made therefor as in this act otherwise provided. He shall keep a book, in which he shall enter all contracts, which shall be open to the inspection of all parties interested.

Sec. 77. To audit all claims.—All claims and demands against the city before the same shall be allowed by the city council shall be audited and adjusted by the comptroller, and all warrants on the treasury, either on the part of the city or its boards, or of any officer or department thereof, shall be examined and countersigned by him, and by him kept until delivered to the person entitled thereto, and he shall take and preserve receipts for all warrants so delivered, and all claims and demands against any board or department of the city shall be allowed by the city council before payment thereof.

Sec. 78. Auditing and adjusting claims.—It shall be the duty of the city comptroller or city clerk in auditing and adjusting claims and accounts against the city, to designate and specify upon each claim, demand and account so audited and adjusted, the particular fund out of which the same shall be paid; and no claims whatsoever shall be reported to nor allowed by the city council until the same shall have been audited and adjusted by the city comptroller or clerk, as in this section provided. When so audited and reported to the city council, the same may be passed upon and allowed by the city council at any

meeting thereof, duly had and upon the approval of the same by the mayor, as provided by law, a warrant of said city, drawn upon the treasury thereof, signed by the mayor and countersigned by the city clerk or comptroller, shall be issued for such claim or account and delivered to the party entitled thereto. When such warrant is presented to the city treasurer, if there are no funds on hand applicable to the payment thereof, said warrant shall be endorsed "Presented but not paid for want of funds," and thereafter said warrant shall bear interest at six per cent per annum until paid. Provided, further, that all warrants heretofore issued by cities organized under the provisions of Chapter 8 of the General Laws for Minnesota for 1895, now outstanding and unpaid, at the time this act shall take effect, which warrants were issued in payment of legal claims against such city, are hereby declared to be the valid and subsisting indebtedness of each such city, respectively issuing the same. (Amended 1913 c. 174)

Sec. 79. In any city of this state where the office of city comptroller does not exist under this act, the duties imposed upon the city comptroller by the terms of this act shall be performed by the city clerk of such city.

Sec. 80. Reports to state auditor.—The comptroller of each city shall annually, within sixty days after the close of the fiscal year, report to the state auditor in writing, showing the receipts and disbursements on account of each fund and in each department of the city, and the condition of each of the city funds and the amount of bonds outstanding at the close of such fiscal year. The state auditor shall furnish to each comptroller at least thirty days before the close of the fiscal year, blanks upon which such statements shall be made, and the comptroller shall make the statement in detail upon and in accordance with such blanks.

CHAPTER V  
Finances—Duties of Treasurer

Sec. 81. Bond and management of finances.—The city treasurer shall give a bond in amount double that of all moneys likely to be in his control at any time, to be executed by at least four (4) sureties, who shall justify in an aggregate amount equal to the penal amount of the bond, and which shall be approved by the city council, filed and recorded in the office of the city comptroller, and shall be conditioned for the safe keeping of all moneys of the city that may come into his possession, and for the faithful performance of his duty, and the record of such bond, as well as the original, shall be evidence of the contents and execution thereof.

Sec. 82. To receive all moneys.—The treasurer shall receive and safely keep all moneys belonging or accruing to the city, and shall keep accurate and detailed accounts thereof, and in cities of 30,000 population or more he shall be entitled to and shall demand and receive of the treasurer of the county wherein such city is located on the tenth business day of each month all moneys which shall have been paid to such county treasurer during the calendar month preceding for taxes, assessments, and interests and penalties thereon on account of levies and assessments made for the city or for any local improvement.

Sec. 83. To apportion and deposit all moneys received.—The treasurer shall upon receipt of any moneys on any such account, or upon any such settlement, forthwith credit the same to the various funds to which the same belong, or for which they are levied, and shall deposit the same in the name of the city, subject to the order of the treasurer, in the various depositories which shall have been designated by the city council, and in so doing shall not deposit with any such depository an amount in excess of one-half ( $\frac{1}{2}$ ) of the penalty of the bond furnished by such depository, and all interest that may accrue to any such moneys shall be credited to the current expense fund.

Sec. 84. To pay money on warrants.—He shall pay money out of the city treasury, except for principal and interest of bonds and certificates of indebtedness, only upon warrants properly drawn, the same having been first authorized by the city council, which warrants shall specify the purpose for which they are drawn and the fund out of which, and the person to whom they are payable; and he shall, when directed so to do, pay employes of any department of the city upon pay rolls; and upon the payment or receipt by him of any such warrant, he shall cancel and file the same, and it shall not be

again issued; and he shall keep separately warrants drawn upon each particular fund; provided, that no ordinance warrant or order of the city council or of any officer, board or department of any city shall have any power or authority to authorize the city treasurer to divert any separate funds or money from the specific purposes for which the same were estimated, levied, collected and credited, as aforesaid, or to borrow and transfer any balance or portion of one of the said funds to the credit or for the use of another fund, except in the purchase of certificates as by this act provided.

Sec. 85. To make reports to the city council.—The treasurer shall make monthly statements to the city council, and to each board or department having control of any fund, of the amount received and disbursed on account of each fund controlled by the city council or such board or department, respectively, and a statement of the amount of money in the various funds deposited with each depository and in his hands. He shall manage all moneys in the interest of the city, and shall endeavor to secure interest thereon consistent with their safekeeping, but shall not postpone or defer any payment after the same becomes due in order to secure interest. He shall, whenever he shall deem the public interest to so require and whenever notified so to do by the city council, withdraw all funds from any depository, and notify the city council thereof, and shall thenceforth deposit no more therein until directed so to do by the city council.

Sec. 86. Banks or trust companies may become depositories.—Any bank or trust company having its principal place of business in this state may be designated as a depository of the moneys in the city treasury as hereinbefore provided; and when so designated shall execute to the city a bond in double the amount it may desire or agree to receive on deposit, which shall also be executed by five (5) or more sureties, none of whom shall be acting officers of such bank or trust company, who shall justify in an aggregate amount double the penalty of the bond, conditioned for the safe keeping and payment of the funds so deposited and interest thereon, all of which bonds shall be approved by the city council. Such bonds shall be filed and recorded in the office of the city comptroller, and whenever required so to do by the city council, such depository shall furnish a new bond and other sureties to be likewise approved, and the record of any such bond, as well as the original, shall be evidence of the contents and execution thereof, and when the moneys in the hands of the treasurer shall be deposited with any such depository as herein provided, the treasurer and his sureties upon his official bond shall be exempt from all liability by reason of the loss of said moneys while so deposited.

Sec. 87. General fund.—There shall be maintained in the city treasury a fund to be designated as the general fund, into which shall be paid all moneys not specifically designated as belonging to any particular fund, and from which there may be drawn to be credited to any such fund, or for such other purposes as may be designated by law or authorized by the city council.

Sec. 88. Current expense fund.—There shall be maintained in the city treasury a fund to be designated as the current expense fund, into which shall be paid all moneys derived from licenses, rents, fines, costs and judgments collected in favor of the city and not otherwise appropriated, and which shall further be maintained by an annual tax levy to be made by the city council for an amount necessary; and prior to the levy of such tax, a certain proportion of the said fund shall by the city council be set aside to each of the departments dependent thereon, to defray the expense of the ensuing year, and no more money than the sum thus appropriated shall be expended in such fiscal year for such department. Out of such fund shall be paid all the salaries and expenses of the city government not otherwise provided for, and the cost of the operation of all the departments of the city government having no special funds created therefor, and the purchase, construction and repair of all appliances and apparatus used therein.

Sec. 89. Permanent improvement fund.—There shall be created, when not already existing and maintained in the city treasury, a fund to be designated as the permanent improvement fund, into which shall be paid all the moneys received from the sale of any property or permanent improvements of the city not otherwise provided, and such amounts from time to time as may be realized from the sale of any bonds or certificates of indebtedness issued on account of

such fund, and all amounts collected on special assessments advanced in first instance out of such fund, and the principal sum of all excess of assessments for water mains and sewers. It shall be further maintained by an annual tax levy to be made by the city council of an amount necessary. And out of such fund shall be paid the cost of acquiring all real property and appurtenances, and the construction and improvement of all buildings and permanent improvements which shall not be otherwise provided for out of other funds, and also the cost of all local improvements, unless the city council maintains a permanent improvement revolving fund; and the city shall maintain such fund sufficient to meet the expenses of all such improvements as the same become payable as in this act provided.

Sec. 90. Permanent improvement revolving fund.—There shall be created, if necessary, and maintained in the city treasury, if the city council shall so direct by ordinance, a fund to be designated as the permanent improvement revolving fund, into which shall be paid all accounts realized from the sale of certificates of indebtedness issued on account of such fund, and the principal sum of all special assessments and benefits assessed and levied on account of any local improvements, as well as all taxes levied on account of such fund, and there shall be paid out of such fund that portion of all local improvements for which special assessments are levied, also that portion of all local improvements which must be paid out of the permanent improvement fund in anticipation of taxes levied for that purpose, and such amount of excess assessment as may in any instance be refunded, and for no other purpose whatever. And the city shall maintain such fund sufficient to meet the expenses of all such improvements as the same become payable, as in this act provided. And the city council may from time to time by ordinance by a three-fourths ( $\frac{3}{4}$ ) vote, issue, negotiate and sell certificates of indebtedness for the creating or maintaining of such fund, and such certificates shall not be sold for less than par and accrued interest, and shall bear interest at a rate not to exceed six (6) per cent per annum, and shall be made payable from said fund and at such times as the city council may determine; provided, however, that the amount of certificates so issued shall not exceed at any one time three-fourths of one per cent of the total value of taxable property of such city, according to the last preceding assessment for purposes of taxation; provided, however, that cities already having created a permanent improvement revolving fund, by the issuance of bonds up to the limit prescribed by existing laws, shall not have the authority to issue certificates of indebtedness as permitted by this section. (Amended 1911, c. 49; 1913, c. 184)

Sec. 91. Water and light works account.—Where any city is the owner of its own water and light works, or either, an accurate account shall be kept of all rents, fines, dues, assessments, excess of assessments and appropriations made on account of or accruing in the water and light works department, or either, and the proceeds of the sale of all bonds issued on account of the same, the proceeds of any property used or operated by the department; and also all salaries and expenses incurred in the operation of the department and the maintenance of the system of water and light works, or either, and the cost of the construction, enlargement, alteration or repair of any and all stations, machinery and hydrants, and of the proportion of the cost of any main or appurtenances chargeable to the city and not specially assessable. But all moneys received for rents, fines and dues shall be paid into and accredited to the current expense fund, and receipts from assessments and other sources shall be paid into and credited to the proper fund above provided. And an appropriation shall be made to defray the expenses of the department from the current expense fund, as appropriations are made for other departments.

Sec. 92. Park fund.—In any city now or hereafter having a system of public parks there shall be maintained in the city treasury a fund to be designated as the park fund, and into such fund shall be paid all amounts received from the sale of any park property, and the principal sum of all special assessments and benefits assessed or levied on account of the acquisition, opening, laying out, extending or improving of any park, parkway or boulevard, and the cost of which is provided to be advanced out of such fund, and all amount of taxes, interest and penalties accruing thereto by reason of the levy of

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any tax for the use of park purposes, and out of such fund shall be paid all interest upon bonds issued by or on account of parks, and all salaries and expenses incurred in the operation of the department of parks and the maintenance of the park system and the cost of acquiring, opening, laying out, extending and improving any park, parkway or boulevard.

Sec. 93. Library fund.—In any city now or hereafter having a library board there shall be maintained in the city treasury a fund to be designated as the library fund, which shall be under the control of such library board and subject to be paid out upon its order, and into such fund shall be paid all amounts received from the sale of any property under the control of such board, and all appropriations thereto and the proceeds received from the sale of any property under the control of such board, and all taxes, interests and penalties accruing thereto by reason of the levy of any taxes for such board, and out of such fund shall be paid the expenses of such board and all salaries, and the cost of the acquisition, maintenance and operation of the system of public libraries of the city, and of the property under the control of such board.

Sec. 94. Educational fund.—There shall be maintained in the city treasury a fund to be designated as the educational fund, into which fund shall be paid all moneys received from the sale of any property under the control of the educational department of the city, and all taxes, interests and penalties accruing thereto by reason of the levy of any taxes, as well as all other moneys received for educational purposes. Such fund shall be under the control of and disbursed upon orders of the board of education in cities where a board of education exists, and out of such fund shall be paid the expense and cost of the maintenance of the educational system of the city, and the salaries and compensation of the officers, teachers and employes thereof; provided, however, that nothing herein contained shall apply to any city or village whose territory has heretofore, in whole or in part, been organized as an independent school district, and so exists at the present time.

Sec. 95. Interest fund.—There shall be maintained in the city treasury a fund to be designated as the interest fund, which shall be maintained by an annual levy upon all the taxable property of the city of an amount which, in addition to any balance remaining in said fund, shall be sufficient to pay the interest to become due during the next fiscal year, upon all the bonds or debts of the city. There shall be maintained in the city treasury such other funds, and the city treasurer shall perform such other duties as are prescribed by law or ordinances.

Sec. 96. Sinking fund.—In every city of this state, in order to provide for the certain payment of the bonds of the city, the city council shall establish and maintain a sinking fund, and where the same has been heretofore established, shall maintain the same. It shall provide by ordinance for the care, investment and security of such fund, but shall have no authority to abolish the same until all the bonds of the city are fully paid, nor shall it divert said fund, nor any revenue nor increase thereof, for any purpose.

Sec. 97. How maintained.—Such fund shall be maintained by an annual tax levy of one-tenth (1/10) of one per cent of the assessed valuation of all the taxable property in the city which shall be made by the city council at the time of levying taxes for other purposes. There shall also be placed in such fund any and all amounts of taxes collected to pay the interest on the bonds of the city in excess of the amount of such interest, if any there be, and all revenues of the city not otherwise appropriated.

Sec. 98. Sinking fund commissioners.—The mayor, comptroller and treasurer shall constitute a board of sinking fund commissioners, and the city council shall define such of their duties as are not herein enumerated. Such commissioners shall have charge of such sinking fund, and by and with the consent of the city council may invest the same in the bonds and certificates of the city and such other bonds as are permitted for the investment of the permanent school fund of the state of Minnesota, and in the bonds of any city in the state of Minnesota, and in such county and school bonds in the state of Minnesota as may be approved by the city council, and not otherwise.

Sec. 99. Bonds of city in sinking fund not canceled.—In case of investment in the bonds or certificates of the city for whose benefit the such sinking fund is established, such bonds or certificates shall not be canceled before the maturity thereof, but shall

be held by said commissioners, and the interest thereon paid over and applied to the increase of such sinking fund.

Sec. 100. Payment of bonds from sinking fund.—Whenever the principal of any bonds or certificates of the city shall become due such commissioners shall, by and with the consent of the city council, dispose of such of the bonds or certificates belonging to such funds as, with the money on hand belonging to the same, shall be necessary to pay such bonds or certificates.

Sec. 101. Discontinuance of sinking fund tax.—Whenever the amount of such sinking fund shall, with the interest or revenue thereof computed to the time of the maturity of the bonds of the city, be sufficient to pay all of said bonds at the maturity thereof, the levy of the one-mill tax above provided for shall be omitted, but in case, by reason of decrease of interest or depreciation of investment or other cause, such funds shall become insufficient, said levy shall be resumed.

Sec. 102. Action against commissioners.—In case the sinking fund commissioners, or other city officers, shall violate or neglect to perform any of the provisions of this section, any taxpayer of the city or any owner of any of its bonds shall have the right to maintain in any court of competent jurisdiction any proper action to enforce compliance therewith. The substantial maintenance of the provisions of this and the preceding section for the payment of the principal and interest of the bonds of the city is hereby declared to be part of the contract with the holder of any bonds or certificates of indebtedness of the city that may hereafter be issued and shall be kept inviolate.

Sec. 103. Bonds for sinking fund.—Whenever such sinking fund shall be insufficient to pay all the bonds of the city that may at any time become due, or when it shall by the city council be deemed advisable and for the interest of the city to take up any outstanding bonds of the city not due, which may be offered for sale by the holders thereof, the city council may issue the bonds of the city, to run not to exceed thirty (30) years, on such terms as to place of payment and rate of interest as may be deemed advisable, to such an amount as may be necessary, to meet such deficiency, or to take up and refund such bonds not due; provided, that the refunded bonds shall in no case draw a higher rate of interest than the bonds so taken up.

Sec. 104. Conference committee.—There shall be a conference committee in each city which shall consist of the president of the city council, the president of each election or appointive board and the head of each department of the city. Such committee shall meet on or before the first day of September of each year and shall report to the board of tax levy an estimate of the amount of the expenses of each department for the next ensuing fiscal year, and the amount required in each of the funds for which a levy may be made during the next fiscal year.

Sec. 105. Board of tax levy.—There shall be a board of tax levy in each city which shall consist of the mayor, comptroller and president of the city council. Said board of tax levy shall meet at the office of the mayor of said city on the second Monday in September in each year and may adjourn from time to time as may be necessary by the duties hereby required, but not later than the first Tuesday in October. A majority vote of said board shall decide all questions coming before said board. The said board shall consider, determine and fix a maximum rate of taxation for the various purposes for which the city council of said city is authorized to levy taxes for such year, and it shall be the duty of the said board to reduce the maximum rate of taxation for the various purposes to the lowest practical limit. The city comptroller shall on or before the first Tuesday of October in each year certify and transmit to the city council the maximum rate of taxation for the various purposes for which said council is authorized to levy taxes, as fixed and determined by said board of tax levy, and no taxes shall be levied for said year by said city council in excess of the maximum rate so fixed and determined by said board.

Sec. 106. Report of estimates.—The city comptroller shall, at the time of the certifying of the report of the board of tax levy, as above provided, report to the city council an estimate of the current expenses of the city for the fiscal year commencing on the first day of January next ensuing, together with a statement of the amount of all revenues received by the city for the then current year.

Sec. 107. The city council shall, on or before the tenth day of October of each year, upon the coming

in of the said reports of the board of tax levy and the city comptroller, levy an annual tax upon all property in such city, taxable under the laws of this state, for the purpose of defraying and paying all the expenses, obligations and liabilities existing or authorized by this act, and the said levy so made, as aforesaid, shall be reported by the city clerk forthwith to the county auditor of the proper county and shall be entered upon the tax duplicate of such county and collected annually in like manner as county and state taxes are collected.

Sec. 108. No debt or liability to be created in excess of levy.—Neither the city council of any city nor any officer or officers of said city shall, except as in this act provided, have authority to issue any bonds or create any debt or any liabilities against said city in excess of the amount of revenue actually levied and applicable to the payment of such liabilities.

#### CHAPTER VII Powers and Duties of City Council

Sec. 109. Legislative power vested in the city council.—The legislative power and authority of the city shall be vested in a city council, composed of the aldermen of such city as herein provided.

Sec. 110. Organization.—The city council shall, biennially, on the first Tuesday after the first Monday in January next succeeding the city election, organize, and at the time of its organization, proceed to elect from their own number a president and vice-president for the ensuing two years, and such other officers as may be necessary for the transaction of its business. Such election shall be by ballot and the affirmative vote of the majority of all the members elect shall be necessary to elect.

Sec. 111. Duties of president.—The president, and in case of the absence of the president, the vice-president, shall preside over the meetings of the city council, and shall sign all resolutions and ordinances passed by the city council, and during the absence of the mayor from the city, or his inability for any reason to discharge the duties of his office, shall have and exercise all the powers and duties of the mayor, under the style of "acting mayor." The acts of such acting mayor shall have the same force and effect as if performed by the mayor.

Sec. 112. Rules and special meetings.—The city council shall prescribe rules for its own guidance and the time for its regular meetings, and provide for the calling of special meetings. No business shall be transacted at a special meeting unless the same shall have been specified in the call therefor.

Sec. 113. Quorum.—A majority of the members shall constitute a quorum, but less than a majority may adjourn from time to time, and a minority as well as a majority may compel the attendance of absent members.

Sec. 114. Canvassing votes.—The city council shall have power to, and it shall, canvass the returns of votes cast at all city elections and declare the results thereof. (Amended 1907, c. 274, s. 1)

Sec. 115. Ordinances and resolutions.—Every legislative act of the city council shall be by ordinance or resolution. The style of all ordinances shall be: "The city council of the city of.....do hereby ordain as follows:" No ordinance, except for general appropriations, shall contain more than one subject, which shall be expressed in its title, nor shall any ordinance be amended after its introduction so as to change its original purpose.

Sec. 116. Readings of an ordinance.—No ordinance shall be introduced except at a regular meeting, at which meeting it shall have its first reading. Its second reading shall be had at subsequent regular or adjourned regular meeting occurring not less than one (1) week after its first reading, and such ordinance shall not be amended after the meeting at which it receives its second reading. It shall receive its third reading and be passed only at a regular or adjourned regular meeting occurring at least one (1) week subsequent to the time at which the second reading was had.

Sec. 117. Passage of ordinances and resolutions.—Every ordinance, order and resolution, except as in this act otherwise provided, shall be passed by a majority vote of the members of the city council, taken by yeas and nays, which shall be entered upon its journal. It shall then forthwith, before it takes effect, be presented to the mayor for his approval as herein provided. Every ordinance, order and resolution shall be published in the official newspaper of the city before it takes effect. No vote of the city council shall be reconsidered or rescinded at subsequent meeting unless at such a meeting there are present as large a number

of its members as were present when said vote was taken.

Sec. 118. Contract awarded and warrants drawn pursuant to resolution.—The award of every contract and order for the payment of money shall be made and authorized only by resolution, except that the pay roll of city officers or employes whose salaries or compensation have been fixed by law or resolution may be passed and warrants ordered therefor by motion.

Sec. 119. Two-thirds vote required.—Every ordinance, order and resolution appropriating money or creating any liability (or for the issuing of certificates of indebtedness in anticipation of tax or assessment levies), awarding or approving of any contract for the payment of money, ordering any condemnation of private property, or the making of any local improvements, shall require a two-thirds ( $\frac{2}{3}$ ) vote of all the members of the city council.

Sec. 120. Issuance of bonds and incurring of indebtedness.—Any ordinance or resolution authorizing the issuance of bonds of the city shall require the affirmative vote of three-fourths ( $\frac{3}{4}$ ) of all the members of the city council; if, however, it receive a majority, but less than a three-fourths ( $\frac{3}{4}$ ) vote of all the members of the city council, it may be submitted for ratification to the electors of the city at the next regular city election, or at a special election called for that purpose, the form of ballot to be used at which shall be prescribed by the city council. If two-thirds of all the electors voting upon such question shall vote in favor of the issuance of such bonds, then said ordinance or resolution shall take effect and be in force; otherwise, the same shall become null and void; provided, however, that a majority vote of the member of the city council shall be sufficient to pass an ordinance or resolution authorizing the issuance of bonds for the purpose of paying maturing bonds of the city without submission to the electors; provided, further, that the amount of all such bonds, except as hereinafter provided, shall be controlled by the limitations herein made on the power to issue bonds, and the city council shall not in any manner, either with or without a vote of the people, authorize the issuance of any bonds, or create any indebtedness of the city in excess of the said limit herein prescribed, except as hereinafter provided.

Sec. 121. Whenever a special or private ordinance is enacted, the city council shall require a bond from the beneficiary thereof to protect the city against any claim for damages resulting from the grant of right or privilege under such ordinance, the amount of such bond and the conditions thereof to be fixed and determined by the city council, and further security may be required at any time and the terms of the grant shall so provide.

Sec. 122. Aldermen not to solicit appointment.—No member of the city council shall demand, request or solicit any board, officer or employe connected with the city to engage or appoint to a position in said city, and upon proof of the violation of this provision the office of such member shall become and be declared vacant by the city council.

Sec. 123. Witness before the city council.—The city council, and any of its committees authorized by it so to do, shall have the power to compel the attendance of witnesses and the production of books, papers and other evidence at any of its meetings, or before such committee, and for that purpose may issue subpoenas or attachments in any case of inquiry or investigation, to be signed by its president, or the chairman of such committee, as the case may be, which shall be served and executed by any officer or person authorized by law to serve subpoenas and other process.

Sec. 124. Punishment for refusal to testify.—If any witness shall refuse to testify to the facts, within his knowledge, or to produce any books or papers in his possession, or under his control, the city council shall have the power to fine or commit him for contempt.

Sec. 125. Witness not to be excused.—No witness shall be excused from testifying touching his knowledge of the matter under investigation in any such proceeding or inquiry before the city council or any committee thereof, or before any officer of the city having power to conduct the investigation, but such testimony shall not be used against him in any criminal prosecution except for perjury.

Sec. 126. City council to control finances—limit on bond issue.—The city council shall control the property and finances of the city, and shall have the power to appropriate money for city purposes only, except as hereinafter provided; to provide for the payment of its debts and expenses, to borrow money on its credit for city purposes, and to issue bonds therefor, as herein provided; to issue bonds in the place of, or to supply

means for paying maturing bonds or to consolidate or fund the same;

Provided, that the total indebtedness of such city, except as hereinafter provided, shall not thereby be made to exceed five (5) per cent of the total value of the taxable property of such city, except in cities where such limit has already been reached or expenditures have already been authorized by vote of the people of said city which will cause the said limit to be reached, provided, however, that the certificates of indebtedness issued for the creation and maintenance of the permanent improvement revolving fund shall not be considered as a portion of the indebtedness of the city for the purposes of this section. Provided, further, however, that in case of any such city now organized or territory hereinafter to be organized, the total indebtedness of which at the time of the passage of this act exceeds five (5) per cent of the total value of taxable property of said city, according to the last preceding assessment for the purposes of taxation, when such city shall accept the provisions of this act, the city council of such city may issue bonds sufficient to pay all the floating indebtedness then existing of such city, and any certificates of indebtedness of such city then outstanding, the proceeds of which bonds shall be used solely for the purpose of paying such indebtedness; and thereafter the city council of such city shall not be authorized to issue any bonds, except as hereinafter provided, and except for the purposes of paying maturing bonds of said city, until the total indebtedness of said city, except as hereinafter provided, shall be reduced to an amount less than five (5) per cent of the total value of the taxable property of such city, according to the last preceding assessment for the purposes of taxation; and thereafter the city council of such city may issue bonds in accordance with the provisions hereof and within the limit herein first prescribed.

Provided, further, that in any city having a population of less than 8,000, and indebtedness of not to exceed ten per cent of the total value of the taxable property of such city may be incurred by the issuing of bonds in the same manner as above provided for the incurring indebtedness not to exceed five (5) per cent.

Provided, further, that any ordinance or resolution authorizing the issuance of bonds that would increase the bonded indebtedness to an amount exceeding five (5) per cent of the total value of the taxable property of the city, shall be submitted for ratification to the electors of the city at the next regular city election, or at a special election called for that purpose, the form of ballot to be used at which shall be prescribed by the city council. If two-thirds of all electors voting upon such question shall vote in favor of the issuance of such bonds, the said ordinance or resolution shall take effect and be in force; otherwise, the same shall become null and void.

Provided, further, however, that the city council of any city heretofore organized and existing under the provisions of Chapter 8 of the General Laws of Minnesota for 1895 which has an outstanding floating indebtedness of \$5,000 or more may within six months after passage of this act by resolution duly adopted by the unanimous vote of the said council and approved by the mayor and approved by the two-thirds ( $\frac{2}{3}$ ) vote of the electors of said city voting on said question at a general or special election duly called and held in said city as hereinafter provided authorize, issue and negotiate the negotiable coupon funding bonds of said city, for the purpose of taking up and funding any or all of its outstanding floating indebtedness, due or to become due within six months from the time of such issuance.

The term "floating indebtedness," as used herein, shall be construed to include all debts and liabilities of such city of every kind, including past due bonds, contract liabilities, outstanding warrants or certificates of indebtedness and interest charges.

The refunding bonds so issued shall run for not more than twenty (20) years, and shall bear interest at a rate not to exceed six per cent per annum, principal and interest payable at such times and places as may be fixed by the city council, such bonds to be of such denominations as the council may, by resolution prescribe, and shall be sold at not less than par value to the highest bidder after notice published at least once in each week for two consecutive weeks prior to the date of such sale, in the official paper of such city. Such bonds shall not be limited by the restriction hereinafter provided, upon the indebtedness of such city.

Provided, further, that any bonds or other certificates of indebtedness issued and sold, or to be issued and sold, by any city for the purchase, construction, maintenance, enlargement or improvement of a water or light plant, or local telephone exchange plant, or

system, or either thereof in such city, shall not be considered a portion of the indebtedness which such city is in this section forbidden to make, and any city organized and existing under this charter [chapter] is hereby expressly empowered to issue and sell bonds or other certificates of indebtedness, payable not less than ten nor more than thirty years from the date of issue, bearing interest not to exceed six per cent per annum, payable semi-annually for the purchase, construction, maintenance, enlargement or improvement of a water or light plant, or local telephone exchange plant or system or either, irrespective of the bond limitations hereinbefore or hereafter prescribed.

Such bonds shall be authorized, issued, negotiated and sold in the same manner as other city bonds, except that an ordinance or resolution authorizing such bonds shall require an affirmative vote of four-fifths of all members of the council and shall then be ratified by an affirmative vote of a majority of the electors voting thereon at a regular city election or at a special election called for that purpose. The principal and interest represented by said bonds shall be first lien upon the water or light plant, or local telephone exchange plant or system, or either, as the case may be, purchased, constructed or improved by the proceeds of said bonds.

Provided, further, that the city council by a majority vote thereof may issue such bonds in place of, or to supply means for, paying maturing bonds which have been issued for either of said purposes, or to be consolidated or fund the same, and if any plant or plants acquired by the city by purchase have outstanding bonds which by their terms were not due at the time of such purchase and the city has assumed said bonds or has purchased the plant or plants subject thereto, the city council may at any time exchange the bonds of said city for such outstanding bonds of said ..... plant or plants or any part thereof, the bonds so exchanged not to bear any greater rate of interest or to be greater in amount than the rate of interest of the amount of the par value of such outstanding bonds for which they are exchanged, and said bonds so issued for the purpose aforesaid, or either of them, shall not be deemed a part of the total indebtedness of said city, which said city is hereinbefore forbidden to make to exceed five per cent of the total value of the taxable property in such city, according to the last preceding assessment for the purpose of taxation.

Provided, further, that the city council shall set aside annually such portion of the gross income for the water and light works, or either, of the city as they shall determine to create a sinking fund for the payment of said water and light bonds, or either as they become due. (Amended 1899, c. 319, s. 1; 1907, c. 235; 1911, c. 362; 1913, c. 173)

Sec. 127. Power to levy taxes and make assessments.—It shall have power to fix the rate of, subject to the restrictions in this act contained, and levy and collect general and special taxes for municipal purposes on real and personal property within the city, and to levy assessments for local improvements, and to prescribe the procedure in making local improvements and assessing therefor, in so far as the same is not fixed and prescribed by the terms of this act.

Sec. 128. Condemnation.—It shall have power to acquire by condemnation, dedication or otherwise, lands for and to lay out, open, widen and extend streets, alleys, avenues, bridge approaches, parks and public grounds, and to establish the grade and width of such streets, alleys and avenues, and to change the same; and to acquire by condemnation or otherwise easements for slopes, cuts and fills; to acquire by condemnation or otherwise land for docks, landings, wharves and levees, and to construct and improve the same; by condemnation or otherwise to extend or widen any street, alley or highway over or across or to construct any sewer under or through any railroad track, right of way or land of any railroad or other corporation, and to acquire by condemnation or otherwise the right to take, use or divert water from any lake, stream or water course, for the water supply of said city.

Sec. 129. Improvement and vacation of streets.—It shall have power to extend, widen, straighten, grade, drain, pave, repave, macadamize or otherwise improve any street, alley or public ground, and to lay or order laid sidewalks, curb and gutter thereon, also to establish a building line for any residence, avenue or street, and prevent the erection of buildings in front of such line, but no such line shall be established on any such street or avenue until a majority of the owners of the property affected thereby fronting on such street or avenue shall have petitioned the city council therefor.



Sec. 130. Maintaining and altering water courses and lakes.—It shall have the power to build and maintain bridges and viaducts, to deepen, widen, dock and cover, wall, alter or change the channel of any water course within the city, and by condemnation or otherwise, to acquire the lands and rights necessary therefor, and may remove any obstruction or unsightly structures from any lake in the city and prevent the dumping of any garbage therein.

Sec. 131. Approval of plats.—It shall have the sole power to accept and approve plats of additions within or adjoining the city, and to prescribe the width and location of streets and alleys required in such plats of property.

Sec. 132. Light, water and transportation plants.—It shall have power to provide for the lighting of streets, avenues and public grounds and buildings, and to purchase, acquire or establish gas, electric and other lighting plants, and to furnish gas, heat and electricity to persons within the city limits on such terms as it may provide; to purchase, procure or establish water works and to provide water for the use and convenience of the inhabitants of such city, and to prescribe and fix the charge for the same and the manner in which the same shall be paid; and to provide for systems of public transportation within the city and to regulate the operation thereof. It shall also have the power to make contracts with individuals, firms or corporations for the use of water for protection against fire and other purposes. It shall also have the power to contract with individuals, firms or corporations for the use of electric or gas light for street lighting and other purposes. Such contracts for water and electricity and gas to be made for such time as the council may deem for the best interests of the city, not to exceed thirty (30) years for water, and not to exceed five years for gas or electricity for street lighting and other public purposes.

Sec. 133. Power to maintain buildings.—It shall have power by a three-fourths ( $\frac{3}{4}$ ) vote of all the members thereof to erect, provide for, improve and repair a city hall, police stations, fire stations, armories, jail, auditorium, workhouse, houses of correction for females and children, and parental schools, hospitals, medical dispensaries, sanitariums, public baths and public lodging houses, infirmaries, public cemeteries, foundling homes, school houses, libraries, markets, and market houses, public wharves, pounds, pest houses, quarantine hospitals, dumping places, dumping stations, sewer stations and such appurtenances, accessories, apparatus, and equipments in connection therewith as may be necessary for the transaction of the business of the city, either within or without its limits, for its government, or the operation of its departments; and to acquire by purchase, gift or condemnation lands for sites for said buildings or to be used in connection therewith; and to acquire by purchase, condemnation or otherwise, any real property for municipal purposes, and by resolution passed by a three-fourths ( $\frac{3}{4}$ ) vote of all its members, to sell or authorize the sale of any of the same. Provided, that in any city having a board of education the power to erect, provide for, improve and repair school houses and acquire sites by purchase, gift or condemnation, shall be vested in the board of education of such city.

Sec. 134. Depositing of funds and auditing of accounts.—It shall designate the depositories of the funds of the city treasurer, and by resolution approve all bonds given for the safe keeping thereof, and it shall examine and audit the accounts of all city officers.

Sec. 135. Specific powers.—The city council shall have power by ordinance, not inconsistent with the constitution and laws of the state and the United States, as follows:

First—To regulate the use of, and to prevent and remove encroachments on and over streets, alleys, avenues and public grounds and public places, and to prevent injury to the same, and to regulate the construction of coal holes, and hatchways, and coverings, and guards therefor in sidewalks, or to prohibit the same.

Second—To regulate and prevent throwing or depositing of ashes, offal, dirt, garbage or any offensive matter in or upon any street, alley or public ground or place, and to require the owner or occupant of any premises to keep the sidewalks along or in front of the same free from snow, ice, or other obstruction.

Third—To regulate openings and excavations in streets, alleys and public grounds, for the laying of gas, electric conductors, water mains and pipes, or for other purposes, and the building of sewers, tunnels and drains, and to regulate the construction and use

of all structures and conduits underneath the streets, alleys and sidewalks.

Fourth—To provide for and regulate cross walks, curbs and gutters.

Fifth—To regulate and prevent the use of streets, sidewalks and public grounds for signs, sign posts, awnings, awning posts, telegraph poles, horse troughs, racks, and the posting and distributing of handbills and advertisements; to prevent the incumbering of the streets with vehicles, lumber, boxes, or any other things or material; to remove and abate any nuisance, obstruction and encroachment upon the walks, streets, alleys and public grounds; to provide for and regulate the erection of hitching posts and rings for fastening horses, and to prohibit the same in any portion of the city, at its discretion; and shall prohibit the piling of snow or other incumbrances upon any street by persons owning or operating any railway along or across the same.

Sixth—To regulate and control or prohibit the placing of poles and the suspending of wires along or across the streets and alleys, and to require any and all wires within prescribed limits or throughout the city to be placed, as it may designate, beneath the surface of the streets or sidewalks, and to require any poles already erected or wires already suspended to be removed and the wires likewise placed in conduits beneath the surface of the street, and to compel any or all such wires, pipes and other constructions and conduits to be placed in a common area beneath the surface, upon such terms as it may designate.

Seventh—To regulate and prohibit the exhibition or carrying or distribution or throwing of banners, placards, advertisements and hand bills in or upon streets, public grounds and sidewalks.

Eighth—To regulate and prevent the flying of flags, banners and signs across the streets, and to regulate the construction and use of bill boards adjacent to or near the streets or public places.

Ninth—To regulate and prohibit traffic and sales upon the streets, sidewalks or public places.

Tenth—To regulate the speed of horses and other animals, vehicles, cars and locomotives upon the streets and within the limits of the city, and to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing in the streets.

Eleventh—To regulate and prescribe the width of tires on the wheels of vehicles used in the city, and the highest weight of a load to be drawn over any street in the city; and may direct upon what streets heavily loaded vehicles may be drawn, and from what streets, avenues and boulevards the same may be excluded, and to license any and all vehicles of every description.

Twelfth—To name and change the names of streets, avenues, alleys and other public places.

Thirteenth—To regulate the use of all bridges, viaducts, tunnels, drains, sewers and cesspools within the city, and to prohibit the use or maintenance of cesspools and privies in such portions of the city as it may designate, and to compel sewer connections in such portions, and to make the same and to assess the cost thereof on the property so connected with the sewer.

Fourteenth—To regulate the numbering of houses and lots and to compel the owners of houses and other buildings to have the numbers of such houses and buildings shown conspicuously thereon or adjacent thereto.

Fifteenth—To prevent and regulate or prohibit the locating, construction and laying of street railway tracks in, under or over any street, alley or public place; provided, that it shall grant all public franchises and rights over, upon or under the public streets and highways of the city only to such parties as will contribute to the city the greatest amount of money for and give the best service in the exercise of the same.

Sixteenth—To provide for and change the location, grade and crossing of any railroad, and to compel railroad companies to lower and bridge over their tracks and to fence their respective railroads, or any portion of the same, and to construct cattle guards on the streets and public roads, and keep the same in repair within the limits of the city. In case any railroad company fails to comply with any such ordinance it shall be liable for all damages to the owner of any cattle, horses or domestic animals which he may sustain by reason of injuries thereto while on the tracks of such railroad company, in like manner and extent as under the general laws of the state relative to the fencing of railroads; and actions to recover such damages may be instituted before any justice of the peace or other court of competent jurisdiction.

Seventeenth—To require railroad companies to keep flagmen, and to erect and maintain gates at railroad crossings of streets, and to provide protection against injury to persons and property in the use of such railroad.

Eighteenth—To regulate or prohibit the whistling of locomotives, and the discharge of steam, cinders, sparks and dense smoke therefrom and to designate the kind of coal any yard or switch engine may consume while operating within the limits of the city.

Nineteenth—To compel railroad companies to raise or lower their tracks to conform to any grade which may be established in said city and to keep such tracks on a level with the street surface, and to compel the planking of such tracks by such railway company so that they may be crossed at any place on the said street, alley or highway.

Twentieth—To compel and require railway companies to make and keep open and in repair ditches, drains, sewers and culverts along and under their railroad tracks, so that filthy or stagnant water cannot stand on their grounds or right of way, and so that the natural drainage of adjacent property shall not be impeded.

Twenty-first—To restrain the pollution of the waters of a creek, river, pond, lake or water course within or adjacent to the city; to prevent the dumping of refuse or other matter therein, and to provide for the cleansing and purification of water, water courses and canals, and the draining or filling of ponds or pools on private property whenever necessary to prevent or abate nuisances, and to compel the owner or occupant of any building or grounds to remove from the premises owned or occupied by him all such offensive substances as the city council or commissioner of health may direct, and upon his default to authorize the removal or destruction thereof by some officer of the city at the expense of said owner or occupant.

Twenty-second—To compel the owner of low ground where water is liable to collect and become stagnant to fill or drain such low places, and upon his default to authorize such draining or filling at the expense of such owner, and to make the expense of the destruction or removal of such substances, specified in subdivision 21, or expense of filling or draining any such low ground, a lien upon the property from which such substances are removed or destroyed, or in which said low ground is filled or drained, and to make a special assessment for the same upon such property, to be collected as other special assessments are collected.

Twenty-third—To regulate the use and maintain general supervision and control of navigable waters within, upon and adjacent to the city limits; to regulate the use of public and private docks, landings, wharves and levees in such city; to establish, alter and maintain docks, dock lines, landings and levees; to regulate and control the anchorage, moorage and landing of all water craft and their cargoes within the city; to license and regulate or prohibit wharf boats, tugs and other boats used about the harbors or within the jurisdiction of the city; and to fix the rates of wharfage and dockage, and to collect wharfage and dockage from all boats, rafts or other craft landing at or using any public landing place, wharf, dock or levee within the city.

Twenty-fourth—To make regulations in regard to the use of steamers, towing of vessels, opening and passing of bridges, to appoint harbor masters and define their duties; and to prevent and prohibit the removal of sand and other material from or near any levee, embankment or boundary line of public waters.

Twenty-fifth—To fix the amount, terms and manner of issuing licenses not inconsistent with law; provided that no licenses shall be issued for a longer term than one year; and provided further, that nothing herein contained shall affect laws now in force pertaining to the issuance of licenses for the sale of intoxicating liquors.

Twenty-sixth—To license and regulate or prohibit and to suppress billiard, pool, pigeon hole tables, pin alleys, bowling alleys, shooting galleries, taverns and victualing houses.

Twenty-seventh—To license and regulate or prohibit conductors of gift, fire, auction or bankrupt sales, itinerant merchants and transient vendors of merchandise, and tax the proceeds of their sale, and to license and regulate runners, agents and solicitors for stages, cars, vessels, public houses or other things or persons.

Twenty-eighth—To license and regulate the exhibitions of common showmen and shows of all kinds, and the exhibitions of caravans, menageries, circuses, concerts, theatrical performances, skating rinks and all places of amusement and museums, for entrance into which money is charged.

Twenty-ninth—To license and regulate auctioneers, pawnbrokers, second-hand dealers and junk dealers, and to compel all such persons to keep such records of their transactions as it may direct, and make report thereof.

Thirtieth—To license and regulate keepers of intelligence or employment offices, and all persons doing the business of seeking employment for or furnishing employes to others, and to require such persons to keep such records as it may direct, and make reports thereof, and to punish unfair dealings by said persons in their said business.

Thirty-first—To license and regulate newsboys, bootblacks, fortune tellers, clairvoyants, astrologists and massage doctors.

Thirty-second—To license and regulate or prohibit hackmen, draymen, expressmen, porters and all other persons engaged in carrying passengers, baggage or freight and to regulate their charges therefor, and to prescribe standing places or stations within the streets or near railway stations where the same may remain while waiting for business, and to prohibit the same from standing or waiting for business at any other place than the places so prescribed.

Thirty-third—To license and regulate all peddlers, book agents, canvassers, street hawkers, vendors and public criers doing business in the city.

Thirty-fourth—To license and regulate the sale of intoxicating liquors, and the city council may designate within the territory in the city more particularly devoted to trade and manufacture than to residences, certain definite limits to be known as the patrol limits, wherein intoxicating liquors may be sold, and no such limits shall comprise any territory devoted more especially to residence than to trade and manufacture, and no license shall be granted to any person to keep or maintain a saloon or place where such liquor may be sold outside of such limits (except to regularly licensed druggists to sell for medicinal, chemical or mechanical purposes, not to be used or drunk upon the premises), and where such limits now exist or are, or shall be hereafter established by law or ordinance, the same shall not be enlarged or added to except as follows: Upon a petition signed by four-fifths (4/5) of the owners of real property within the territory sought to be included within such limit being presented to the city council, by a four-fifths (4/5) vote of all its members, the city council may include such territory within such limits; provided, that where in any city in the state limits are now prescribed by law, outside of which no license shall be granted to any person to vend and deal in or dispose of any spirituous, vinous, fermented or malt liquors (except to regularly licensed druggists to sell for medicinal, chemical or mechanical purposes, not to be used or drunk upon the premises), upon the acceptance of this act by any such city, the limits so established and fixed by law shall remain established and fixed, and no license shall be granted by the city council of such city to any person or persons to vend, deal in or dispose of any such liquors, outside the limits so established, or within any territory where the sale or licensing of persons to sell such liquors is now prohibited by law or ordinance; provided, that where any territory has, by law, been incorporated or made part of any city and by such law the city council of such city is prohibited from ever granting a license to sell or dispose of any wines, spirituous or malt liquors within such territory, or any part thereof, no license to sell or dispose of any such wines, spirituous or malt liquors within such territory shall ever be granted; provided, further, that in no case shall a license be granted by the city council of such city to any person or persons to vend, deal in or dispose of any such liquors within a distance of three hundred feet of any public school located within such limits.

Thirty-fifth—To tax, license and regulate distilleries, breweries and pawnbrokers.

Thirty-sixth—To license and regulate butchers' stalls and shops, and stands for the sale of game, poultry, meat, fish and perishable provisions.

Thirty-seventh—To license and regulate plumbers, and to regulate sewer and water connections of all kinds and the laying of branch sewer and water pipes.

Thirty-eighth—To license, regulate and control or prohibit the carrying of concealed weapons, and to provide for the confiscation of the same.

Thirty-ninth—To license and regulate the keeping of dogs, and to prevent the same running at large, and to authorize the destruction thereof in a summary manner.

Fortieth—To regulate and prevent the storage of gunpowder, dry pitch, resin, coal oil, benzine, naphtha, gasoline, turpentine, hemp, cotton, nitro-glycerine or any products thereof, and other combustible or explo-



sive materials within the city, and the use thereof, and of lights in stables, shops and other places, and the building of bonfires; and to regulate and restrain the use of firecrackers, torpedoes, roman candles, sky-rockets and other fireworks.

Forty-first—To prevent and suppress riots, routs, affrays, disturbances, disorderly assemblies, cock fights, dog fights, sparring matches and all brutal or depraving exhibitions or sports.

Forty-second—To restrain and punish vagrants, mendicants, street beggars and prostitutes; and to regulate bathing and swimming in waters within the city limits, and to prevent and punish drunkenness, fighting, assaults, batteries and disorderly conduct and obscenity in the city; and to prohibit within the city the circulation, sale or exhibition of libelous, obscene and immoral publications, prints, pictures, advertisements and illustrations, and any printed matter naturally tending to provoke a breach of the peace or impair the morals of the community.

Forty-third—To suppress bawdy and disorderly houses and houses of ill fame and assignation within the limits of the city.

Forty-fourth—To restrain and prohibit lotteries, and to prohibit all descriptions of gambling and playing of cards, dice, hazard, roulette or other games of chance; the use of blackboards, lists and tickets for the purpose of gambling; all pool rooms and betting rooms; and the selling of pools and making of books on horse races or other contests, real or fictitious; to suppress and prohibit all mechanisms and devices used for gambling or betting; to prohibit all fraudulent practices and the use of fraudulent devices, and to authorize the destruction of all instruments used for the purpose of gambling, or other unlawful purpose as aforesaid.

Forty-fifth—To establish pounds and pound districts; to restrain the running at large of horses, mules, cattle, swine, sheep, poultry, geese and other animals, and to authorize the detaining and sale of the same.

Forty-sixth—To establish and regulate the location of markets and market houses, and to provide for the use thereof.

Forty-seventh—To regulate the making and sale of bread, and prescribe the weight and quality of the bread in the loaf, and provide for the seizure and forfeiture of bread baked contrary thereto.

Forty-eighth—To provide for and regulate the inspection of meats, poultry, fish, game, butter, cheese, lard, eggs, vegetables, flour, meal, milk, fruits and other provisions, and to provide for the taking and summarily destroying of any such provisions which are unsound, spoiled or unwholesome.

Forty-ninth—To provide for and regulate the place and manner of weighing of hay and straw and selling the same, and measuring and selling of fire wood, coal and lime.

Fiftieth—To provide for a standard of weights and measures and for the inspection and sealing of all weights and measures and to enforce the keeping and use by vendors of proper weights and measures duly tested and sealed.

Fifty-first—To regulate the construction of all buildings, chimneys and stacks; to prohibit and prevent the erection or maintenance of insecure or unsafe buildings, walls, stacks or chimneys, and to provide for their summary abatement; to prescribe the depth of cellars, the material and methods of construction of foundations and foundation walls, the manner of construction and location of drains and sewer pipes, the thickness, material and construction of party walls, partition and outside walls, the size and material of floor beams, girders, piers, columns, roof, chimney flues and heating apparatus, and to apportion and adjust such regulations to the height and size of the building to be erected; to regulate the construction of privies and vaults in buildings; to prohibit the construction of buildings not conforming to such prescribed standard as it may prescribe, and to vary such regulations according to the location of such buildings, and to direct the suspension at any time of the erection of any such buildings as does not conform to such regulations.

Fifty-second—To prescribe the limits within which wooden buildings shall not be erected nor placed nor repaired without permission; and to direct that all and any buildings within such fire limits, when damaged by fire, decay or otherwise, to the extent of fifty (50) per cent of the value shall be torn down and removed, and to prescribe the manner of ascertaining such damages; and to provide for requiring the owners of buildings or other structures, which shall have been destroyed or partially destroyed by fire or otherwise, to take the same or any part thereof down, to prevent

accident, and in case of refusal or neglect of said owner to so take the same down when ordered by officers designated by said city council, then to cause the same to be done at the expense of the owner, the cost thereof to be made a special assessment on the land on which said buildings stand, and collected as other special assessments.

Fifty-third—To require the owner or lessee of any building or structure now or hereafter built in the city to place thereon such fire escapes and appliances for protection against or for extinguishment of fires as it may direct, and to require such owner or lessee to do any act necessary or advisable to lessen the danger to human life in case of fire or accident.

Fifty-fourth—To prevent the dangerous construction and condition of chimneys, fire places, hearths, stoves, stovepipes, ovens and boilers, and apparatus used in or about any building or manufactory, and to cause the same to be removed or placed in a safe condition when considered dangerous; to regulate and prevent the carrying on of manufactories, dangerous in causing and permitting fires; to prevent the depositing of ashes or accumulation of shavings, rubbish or other combustible material in unsafe places, and to cause all such buildings and enclosures as may be in a dangerous state to be placed in a safe condition, and to make provisions to guard against fire and to prevent the spreading of fires.

Fifty-fifth—To regulate the operation of blasts and blasting, and the construction, location and operation of derricks, windlasses, freight and passenger elevators and other mechanical structures, apparatus or operations, hazardous to life or property.

Fifty-sixth—To declare the emission of dense smoke from chimneys, stacks, boats and locomotives within the limits of the city a nuisance, and to prohibit and prevent the emission of dense smoke in any portion of or through the city, and to require the use, in connection with furnaces, of such practical appliances as it may designate to prevent and lessen the emission of dense smoke, and to designate the kind of fuel which shall not be used in any furnace, stove or fireplace without the use of such appliances to prevent the emission of dense smoke.

Fifty-seventh—To regulate the construction of chimneys and smoke stacks, and to prevent the emission of sparks and cinders from the chimneys and smoke stacks, and to declare the emission of sparks and cinders a nuisance, and to prescribe and require the use of such practical appliances as it may designate to prevent the emission of such sparks and cinders.

Fifty-eighth—To declare what shall be a nuisance, to abate the same, and to impose fines upon parties who may create, continue or suffer nuisances to exist.

Fifty-ninth—To provide for and compel the reporting and recording of all births and deaths within the city.

Sixtieth—To regulate or prevent the burial of the dead within the city, and to regulate and determine the manner in which bodies have been buried in a vault or tomb or other place for the purpose of burial may be removed, and to regulate and control the location of cemeteries and crematories, and to vacate and cause the removal of bodies interred in any cemetery not existing according to law.

Sixty-first—To direct the location and regulate the management and construction of stock yards, slaughter houses, packing houses, renderies, tallow chandlers, store-houses for hides, bone or glue houses, gas works, soap factories, dye houses and tanneries within the limits of the city, or within a distance of one (1) mile without the limits thereof.

Sixty-second—To direct the location and regulate the use and construction of breweries, dispensaries, stables, livery stables, blacksmith shops and founderies within the limits of the city.

Sixty-third—To declare what is a nuisance and prohibit any offensive or unwholesome business or establishment within or within one (1) mile of the limits of the city.

Sixty-fourth—To compel the owner of any grocery, cellar, or soap and tallow chandlery, pig sty, privy or other unwholesome or noxious house or place, to cleanse, abate or remove the same, and to regulate and prescribe the location thereof.

Sixty-fifth—To regulate or prohibit the keeping of any lumber yard, and the places for piling of timber, wood and other combustible material within the fire limits of said city, and to require any person maintaining any lumber, shingles or lath piles or mill-wood yards in the city to remove the same when

they become dangerous to any building or buildings or other property near the same.

Sixty-sixth—To establish and enforce rules for the use and regulation of all buildings maintained by the city.

Sixty-seventh—To prevent or regulate the rolling of hoops, playing of ball, flying of kites or any other amusement or practice having a tendency to annoy persons on the streets or sidewalks, or to frighten horses and to regulate the use of bicycles and any other vehicles on sidewalks and streets.

Sixty-eighth—To require and provide for the removal or destruction throughout the city in such districts or on such streets and avenues, and in such manner as the council may direct, of any and all swill, offal, garbage, ashes, street sweepings, barn yard litter, manure, rubbish, yard cleanings and the contents of privy vaults, cesspools and sinks, decaying animal matter and dead animals, or any other vile or unhealthy material, and to provide for the removal to a point beyond the city limits of any or all such matter or things, and the city council is hereby authorized and empowered to make and enter into contracts with persons or corporations for such removal of such material and substances, or any of them, upon such terms and conditions as it may deem best, and for any time not to exceed five (5) years.

Sixty-ninth—To do all acts and make all regulations which may be necessary and expedient for the preservation of health and the suppression of disease, and to make regulation to prevent the introduction of contagious, infectious or other diseases into the city, and to make quarantine laws and to enforce the same within the city, and to regulate, control and prevent the landing of persons, baggage, merchandise or property from boats, vessels, cars or other conveyances, whereon are infectious or contagious diseases or disorders, and to make such disposition of such person or property as to preserve the health of said city, and to prevent infected boats, vessels, cars or other conveyances from coming within or near the limits of the city.

Seventieth—To establish and regulate public wells, cisterns, hydrants and reservoirs.

Seventy-first—To regulate and control the quality and measurement of gas, and to prescribe and enforce regulations for the manufacture and distribution of gas, and to inspect gas and gas meters, and to control and regulate the measurement and use of electricity and electrical apparatus for furnishing light, heat and power in the city.

Seventy-second—To establish offices for inspectors, weighers, gaugers, scalers, electricians, wharf masters, market masters, quarantine masters and such other officers as it may be necessary to carry into effect the inspection laws of the city, and the powers herein granted; and to regulate the duties of said officers and to authorize and direct said officers to enforce and carry into effect the provisions of any ordinance passed hereunder.

Seventy-third—To regulate lodging houses and tenement houses, and to prevent the overcrowding of the same, and to require the same to be kept in proper sanitary condition.

Seventy-fourth—To prohibit and punish cruelty to animals and to require the places where such animals are kept to be maintained in healthful condition; and to inspect and regulate dairies and dairy products, and to regulate persons engaged in selling milk within the city.

Seventy-fifth—To regulate and require licenses to be obtained for the pursuit and prosecution of such occupation or kinds of business not hereinabove expressly referred to and provided for, as in the opinion of the city council may require regulation and, in general, to adopt all such measures and to establish all such regulations, in cases for which no express provision is hereinbefore made, as the city council may from time to time deem necessary for the promotion of the health, comfort and safety of the inhabitants, the preservation of peace and good order, the suppression of vice and the enhancement of public welfare in said city.

Seventy-sixth—To license, regulate and control the employment and occupation of minors on the public streets and other public places.

Seventy-seventh—To compel the owner or owners of vacant property within the city limits to keep the same clear of any brush, timber or other material or substance liable to receive or communicate fire to adjoining property, and in case the owner or owners of such property shall neglect or refuse to remove the same within ten days after being notified so to

do by the city council either personally or by one publication in the official newspaper of said city, said city council shall have the authority to have the same done at the expense of owner or owners, and in case such owner or owners shall refuse to pay such expense, shall have the right to assess the same against said property, and to make, enforce and collect such assessment as other assessments for local improvements for benefits are made, enforced and collected.

Seventy-eighth—No rule, resolution or ordinance shall be passed appropriating money or obligating any city to pay any money, and no franchise shall be granted save by a three-fourths (¾) vote of all members elect of the council, and it shall require at least a majority vote of all members elect of the council for the council to do any official act, save to adjourn and, save as in this act otherwise expressly prescribed, no council shall have any power or authority to obligate its city beyond the revenues then in the possession of such city or embraced in its then current and uncollected tax levy.

Sec. 136. Other powers.—The city council shall prescribe by ordinance all regulations proper and necessary to carry into effect any and all powers granted by this act, and may provide by such ordinances for the punishment of the violation of any of the same by subjecting the offender to pay a fine not to exceed one hundred (100) dollars, or to be confined and kept at hard labor in the workhouse of the city, or upon the public works, or to be confined in any place of confinement maintained by the city, or in case there be no such place, then to be confined in the county jail of the county in which the city is located, not to exceed the term of ninety (90) days, and may provide that such imprisonment may be cumulative or for an indefinite term, not to exceed ninety (90) days, subject to suspension or termination by reason of or during good behavior of the person so imprisoned.

Sec. 137. Revocation of license.—The city council shall have power to revoke any license granted by it.

Sec. 138. No exclusive nor perpetual franchise to be granted.—No exclusive nor perpetual franchise nor privilege shall be granted by the city council.

Sec. 139. Protection of streets and city property.—It shall have the power to punish any person willfully damaging any sidewalk, pavement or appurtenance to the water works or sewerage system, or to any other property in or upon the public works of the city, and shall have power to punish interference with or the withholding of any property of the city by any officer thereof, or any other party, and to require any officer, member or employe of any department to produce the books and accounts thereof at any time for inspection and examination, and at the expiration of the time for which elected, appointed or employed, to turn over the same and all property in his possession to the proper custodian thereof, or his successor in office, and to require reports at any time from any such person of the condition or operation of the business under his management.

Sec. 140. Appointment by ballot.—The appointment of any officer by the city council shall require the affirmative vote of a majority of all its members, taken by roll call and recorded by the clerk.

Sec. 141. Letting of contracts.—It shall have power to let contracts for the erection, improvement and repair of any of the public works or buildings of such city, and for the performance of any work required to be done, and material to be furnished in carrying into execution its powers, and the operation of its department; provided, however, that the city council may authorize the doing of the same by the employes of the city under the direction of the department in charge of such work or building, when the cost thereof shall not exceed three hundred (300) dollars. And provided further, that where proposals have been received for the doing of any public work, if the lowest of such proposals be higher than the estimate of the cost of such work, the city council may, if it deem it for the best interest of the city so to do, by a two-thirds (⅔) vote of all its members elect, direct such work to be done by day's labor.

Sec. 142. Advertisements.—It shall let no contract for the performance of work or the furnishing of material or supplies or property or lighting service involving the expenditure of more than one hundred (100) dollars by the city, nor authorize the purchase, or sale, of any property of a greater value than one hundred (100) dollars, nor grant any public franchise, nor authorize the sale or negotiation of any bond or evidence of indebtedness issued by the city,

nor designate any depository for the money of the city, except upon advertisements for proposals therefor as provided by law.

Sec. 143. Contracts to lowest bidders.—It shall let all such contracts to the lowest responsible bidder who will enter into the contract and give security for the performance thereof, and shall let no contract to any party in default to the city in the performance or by reason of any other contract. It shall sell all property, bonds and evidence of indebtedness only to the highest bidder for cash therefor, and shall not sell nor negotiate any such bond or evidence of indebtedness below its par value, the same being its face value and accrued interest. It shall designate as city depositories only such duly incorporated banks or trust companies in this state as shall furnish the bonds required by law, and shall be satisfactory to the city council.

Sec. 144. Bonds of contractors.—It shall require of every party entering into a contract with the city or any of its departments, or accepting any license, immunity, privilege or franchise from or under the city pursuant to any power of authority herein vested, a bond to be approved by the mayor for the full and faithful performance of such contract, or the just and lawful exercise of the powers and privileges conferred, which bond shall be sufficient in amount to indemnify the city against any loss or damage that may be sustained by a breach of contract, or any wrong committed in the exercise of such power or privilege.

Sec. 145. Advertising for proposals.—Every advertisement for proposals shall be made by the publication in the official paper of the city at least twice, of a notice containing a general description of the contract to be let or the property to be purchased or sold, or bond or other indebtedness to be negotiated, or funds to be deposited, or franchise to be granted, and shall invite sealed proposals therefor, which proposals shall be filed with the city clerk at such time as shall be designated in said advertisement, not less than one (1) week after the last publication. All proposals shall be opened and read by the city clerk in the presence of the city council before any of the same are acted upon or accepted.

Sec. 146. Designation of official papers.—The city council shall annually, at its second regular meeting in January of each year, or as soon thereafter as practicable, designate some newspaper printed in the English language which is, and shall have been printed, published and of general circulation in the city, for one (1) year prior to its designation as the official paper of the city, and shall let the contract of publishing the ordinances and proceedings of the council, and other public notices required by law, to such newspaper, as other contracts are required to be let. The compensation paid for printing shall never exceed two-thirds ( $\frac{2}{3}$ ) of the amount allowed by law for legal advertising. Whenever in any city no newspaper is published, any paper printed in the English language, and published in the county in which such city is situated, may be designated as the official paper; provided, that if each and all of said proposals shall fix a price in excess of the maximum as herein provided, or if no proposal shall be received, then in either event the city council may adopt such other method for publication of ordinances, proceedings and other matters as it may determine, the compensation in no event to exceed the amount herein provided; provided further, that in any city in which three (3) or more daily papers are printed and published in the English language, the city council may, in the first instance, direct that proposals shall be received for the publication, in a daily paper published in the English language, or ordinances and proceedings and other public notices required by law to be published in the official paper of the city; and in such case the city council shall not consider any proposals for the publication of the same in any weekly paper unless no proposal to publish the same in a daily paper, as provided herein, shall have been received.

Sec. 147. Power to enter private property.—It may authorize the entry into any lands or tenements for the purpose of carrying into effect its inspection laws, and may enter upon any lands to lay any branch sewer or water mains, or drain any marsh, or make any changes or erections in, upon or about any water course.

Sec. 148. Relief funds.—It may set aside from the fines and penalties paid to the city such sums as it may deem proper for the maintenances of a police relief fund, pension fund and a fireman's relief fund.

Sec. 149. Mayor's contingent fund.—The city

council of each city shall have power to appropriate by resolution, passed by a three-fourths ( $\frac{3}{4}$ ) vote of all the members elect of such council, such amount for the mayor's contingent fund as it may deem proper to advance the interest of the city; provided, however, that the sum so appropriated shall not exceed in any one year such sum as would be realized by the tax of one-fifteenth (1-15) of one per cent upon the assessed valuation of all the taxable property in such city, and that none of such funds shall be used for any charitable or religious purpose, nor for the use of any person, company or corporation outside of the state of Minnesota. (Amended 1911, c. 364.)

Sec. 150. Vacation of streets.—The city council of each city shall have the sole and exclusive power to vacate and discontinue public grounds, streets, alleys or highways within said city, and also all county, territorial and state roads, whether actually traveled and used at the date of the petition for such vacation or not. No such vacation or discontinuance shall be granted or ordered by the city council except upon the petition of a majority of the owners of property on the line of such public ground, street, alley or highway, resident within such city, which petition, provided for in this section, shall state the facts and reasons for such vacation and be accompanied by a plat of such public grounds, street, alley or highway, county, territorial or state road proposed to be vacated, and shall be verified by the oath of one (1) of the petitioners. The city council, if it deem it expedient that the matter be proceeded with, shall order the petition to be filed for record with the city clerk, who shall give notice by a publication in the official paper of the city for four (4) weeks at least once a week, to the effect that such petition has been filed as aforesaid, and stating in brief its object, and that said petition will be heard and considered by the city council at a certain time and place therein specified, not less than ten (10) days from the expiration of said publication. The city council, at the time and place appointed, shall investigate and consider the said matter, and shall hear the testimony and evidence on the part of the parties interested, and thereupon, after hearing the same, may by resolution passed by a three-fourths ( $\frac{3}{4}$ ) vote of all the members elect declare such public ground, street, alley or highway, county, territorial or state road vacated, which resolution shall, before the same shall go into effect, be published as in the case of ordinances, and thereupon transcript of such resolution, duly certified by the city clerk, shall, before the same shall take effect, be filed for record and duly recorded in the office of the register of deeds of the county wherein the property is situated.

Sec. 151. Vacation to take effect, when.—No such vacation shall take effect until the value of the premises so vacated shall have been deposited in the treasury of the city, which value shall be fixed by a resolution of the city council by a three-fourths ( $\frac{3}{4}$ ) vote of all the members elect, and shall in no case be less than the proportionate average value of the abutting property according to the last previous assessment for taxation; provided, in case the city council shall have approved a plat embracing the premises proposed to be vacated, which plat dedicates to the public use, in the opinion of the city council, land equivalent in area and value to the premises sought to be vacated, then the city council may, by a three-fourths ( $\frac{3}{4}$ ) vote of all its members, accept said plat and pass said resolution of vacation, and after said plat and resolution have been recorded in said register of deeds' office said vacation shall be valid without the payment of any money into the said city treasury; provided, further, however, that vacations and discontinuance of such county, territorial or state road may be granted upon the petition of a majority of the owners of property through which the same or portions thereof sought to be vacated exist, when such owners shall have platted the same and shall have provided in lieu of such road sufficient streets in the opinion of the city council, of which fact the approval and acceptance of such plat and the resolution of vacation shall, when recorded, be conclusive evidence.

Sec. 152. Prohibiting any relief from assessment, etc.—The city council shall not have the power to relieve any citizen from the payment of any lawful tax, assessment, judgment, fine or license, bond or security, nor to exempt him from any burden imposed upon him by law or ordinance, or to ordain the payment of any demand not authorized and audited according to law. The city council shall

not have power to ordain nor authorize any compromise of any disputed demand arising under contract, nor any allowance therefor or therein, except as provided in the contract therefor.

The city council shall not have power nor authority to authorize or ordain the payment of any damages or claim for alleged injuries to persons or property except by resolution, adopted by the vote of three-fourths ( $\frac{3}{4}$ ) of all the members elect.

Sec. 153. Compilation of laws and ordinances.—The city council may from time to time provide for the compilation and publication, in book or pamphlet form, of the ordinances and regulations of the city, rules of the city council, police rules, regulations adopted by the board of health, and such resolutions of the city council as it may designate; and may provide for the distribution by sale or otherwise of copies of such compilation and publication; and such books or pamphlets so issued, purporting on the title page to have been published by authority of the city council and to contain the ordinances of the city or other matter in this section above mentioned, shall be prima facie evidence of their contents in all courts of this state; and in the absence of evidence to the contrary, all ordinances, rules, regulations and resolutions found therein shall be presumed to have been duly and legally passed, promulgated or adopted. Copies, duly certified by the city clerk of such city, of ordinances, or rules, regulations or resolutions in writing or other papers in his official custody, or of any records kept by him in his official capacity, shall also be received as prima facie evidence of their contents in all courts of this state. All municipal courts, justice courts and other city courts located in such city shall take judicial notice of all ordinances duly passed by the city council of such city.

Sec. 154. Care of streets.—The city council shall have and maintain an active care, supervision and control of all public highways, bridges, streets, alleys, public squares and grounds, as in this act provided, and of all other public improvements and public property within the limits of the city, and shall cause all streets which have been opened and graded under the authority of the city or with its assent, to be kept open and in repair and free from nuisances.

Sec. 155. City exempt from liability for injuries caused by railway cars.—The city shall be exempt from all liability or damages caused by railroads, either to persons or property, when said railroads or engines or cars are passing along, across, under, over or upon any street, lane, alley or other public way within the limits of the city.

#### CHAPTER VII Police Department

Sec. 156. Organization.—There shall be in each city a police department, of which the mayor shall have control and supervision and be the chief executive officer and head, and which shall consist of a superintendent of police and such other officers of police, patrolmen, detectives and employes as may from time to time be authorized by the city council. Such superintendent of police and all other officers of police, patrolmen, detectives and employes so authorized shall be appointed and may be removed by the mayor of such city.

Sec. 157. Eligibility.—No person shall be eligible to appointment as superintendent of police, or other officer of police, or patrolman who is not a citizen of the United States and able to read and write the English language, and all officers, patrolmen and superintendent, shall have been for at least three (3) years residents of the city wherein appointed before they are eligible to such appointment.

Sec. 158. Extra police.—On occasions of large public gatherings, or in case of riot, unlawful assemblages or disturbances requiring additional police force the mayor may appoint such number of special or temporary police officers at a compensation not exceeding three (3) dollars a day, as he may deem necessary; but such special or temporary appointment shall not continue in force for more than one (1) week without consent of the city council.

Sec. 159. Special police.—The mayor may likewise, at the request of persons, firms, corporations, societies or organizations requiring special police protection, appoint special police or watchmen, who shall serve without expense to the city, and possess police power to preserve the peace, protect property and make arrests for crime at such places and within such limits as may be designated by the mayor; but such special policeman or watchman

shall not exercise any official authority nor wear any badge or office outside of the limits so designated, except that, in the event of an arrest made by him, he may so wear such badge while taking the person so arrested to the nearest police station or city lock-up.

Sec. 160. Appointments.—The mayor shall, within twenty-four (24) hours after making any appointment of superintendent of police, officer of police, patrolman, detective or employe, or after removing any person from office in said department, notify the city clerk in writing of such appointment or removal.

Sec. 161. Powers of police.—The superintendent of police and all regular police officers of such city shall possess the powers of constables at common law, and under the statutes of this state, and in addition thereto shall have the power to serve and execute any warrant, summons, commitment, writ, subpoena, and process issued out of the municipal or other court of such city, and shall have authority to pursue and arrest in such city or in any part of the state beyond the limits of such city any person charged with, or who has committed any violation of any ordinance of such city, or any other offense or crime within the limits of such city; provided, that no such officer shall have power to arrest without a warrant, except in cases in which arrests without a warrant are authorized by the General Statutes of the state; and the violation of any city ordinance shall be deemed a public offense.

Sec. 162. Appointments and promotions.—All appointments and promotions in the police force in the city, except superintendent of police, shall be under and in pursuance of rules providing for the ascertainment of the comparative fitness of all applicants therefor by a systematic, open and competitive examination thereof, which rules it shall be the duty of the mayor and superintendent of police to make, subject to the general laws of the state.

Sec. 163. Approval of rules.—Said rules shall be submitted to the city council for approval, and when so approved they shall be adopted and enforced as permanent rules, and shall only be changed in the manner herein provided for their adoption.

Sec. 164. Appointment subject to rules.—No officer nor member of said police force shall be appointed until such rules have been promulgated, except to fill vacancies caused by death or resignation, nor shall any member of said force, under the grade of captain, be removed until after charges are preferred in writing and an opportunity to appear and defend against the same with witnesses before the city council, but any member may be suspended pending such hearing.

Sec. 165. Suppression of riots.—The mayor, or acting mayor, the superintendent of police, the captain of police, the sheriff of the county and all police officers shall be conservators of the peace, and may command the peace, and suppress in a summary manner all riotous or disorderly behavior or proceedings within the city limits, and for such purpose may require the assistance of all bystanders, and, if need be, of all citizens; and in suppressing any riotous and disorderly behavior or proceedings, the supreme authority to command and direct shall reside in the senior or superior officer present, in the order in this section above mentioned.

Sec. 166. Penalty for failure to assist.—If any bystander or citizen shall refuse to aid in preserving the peace, or in suppressing riotous or disorderly behavior or proceedings, when thereto required as provided in the last preceding section, he shall be liable to a fine of not less than ten (10) dollars or more than one hundred (100) dollars.

Sec. 167. Acting without authority.—If any person shall without lawful authority assume to act as a police officer of said city, or falsely pretend to be authorized so to act, or wear the badge of a police officer within said city he shall be liable to a fine of not less than ten (10) dollars nor more than fifty (50) dollars, or to imprisonment for a term not exceeding thirty (30) days.

Sec. 168. Citizens must assist.—If any person shall willfully refuse or neglect to assist the superintendent of police or any police officer of said city in making a lawful arrest when requested by such superintendent or officer so to do, or shall willfully resist, impede or obstruct such superintendent or officer in making or attempting to make a lawful arrest, or in the performance of any other official duty, such person so offending shall be liable to a fine of not less than ten (10) dollars or more than fifty (50) dollars, or imprisonment for a term not exceeding thirty (30) days.

Sec. 169. Police relief fund.—In any city having,

or in which there shall hereafter be, a police department relief association, whose articles of incorporation and by-laws shall have been approved by the city council, there shall be paid to such association, in addition to other sums now provided by law, the following: All rewards for the apprehension and conviction of offenders, all witness fees or other fees, emoluments, gifts or gratuities received or receivable by any member of the police department in the line of his duty; such portion of all sums obtained from the forfeiture of city criminal bonds and receipts from the licensing of dogs, and of moneys paid into the municipal court of any police court of the city as fines collected in criminal cases as the city council may determine.

Sec. 170. Treasurer.—The city treasurer shall be treasurer of the police department relief association, and all moneys paid for said association shall be paid directly to said treasurer.

Sec. 171. Police pension fund.—Any city may, by ordinance, provide for the establishment of a police pension fund to be under the control of a board of trustees to consist of the mayor, controller and treasurer, and appropriations therefrom for pensions may be granted to any member of the police force serving as superintendent, captain, lieutenant, sergeant, inspector, detective or patrolman at the time of the passage of such ordinance, or to any person who has been or may hereafter become a member of the police force in either of the capacities aforesaid, to be paid from the police pension fund by appropriations thereof, as follows:

First—To any such member of the police force in either of the capacities aforesaid, who shall have performed police duty in said city for a period of twenty-five (25) years or upwards, and shall have arrived at the age of not less than fifty-five (55) years, and who shall have retired from such service, and during the period of such retirement; provided, whenever a police officer who has been or hereafter may be so pensioned shall thereafter accept a position on the police force, such officer shall forever forfeit his rights to be placed back on the pension list.

Second—To any such member of the police force who shall be rendered unfit for service as a member of such force from injury received while in actual performance of police duty. Such sum awarded, granted and paid as a pension to any person, as provided in subdivisions 1 and 2 above, shall not amount to an annual sum during his lifetime greater than one-half ( $\frac{1}{2}$ ) the full pay of a member of said police force of the rank of the member so pensioned; provided, however, that no pension granted under the provisions of this act shall exceed the sum of six hundred (600) dollars per annum nor a greater total than four thousand (4,000) dollars.

Third—To the widow (while she remains such) of any member of the police force in either of the capacities aforesaid at the time of, or prior to the passage of this act and such ordinance, or who may thereafter become a member of the police force, who shall have been killed while in the actual performance of police duty, or shall have died from the effect of any injury received while in the actual discharge of such duty, a sum not to exceed four hundred (400) dollars per annum, and such pension may date from the time of the death of such member, the total amount not to exceed two thousand (2,000) dollars.

Sec. 172. Fund, how constituted.—Such police pension fund shall consist of the appropriation of such portion of the moneys paid into the municipal or other court of the city as fines collected from criminal cases, as the city shall in such case determine, and all fines imposed by the mayor of such city upon members of the police force; and if, at any time, there shall not be sufficient money to the credit of the police pension fund to pay all claims against it in full an equal percentage shall be paid upon such claims to the full extent of the fund on hand, and shall be accepted as payment in full of his claims by the pensioner, and no pensioner shall have a legal or equitable demand or cause of action against said city, save as to the extent of his proportionate share of such fund under the provisions of this act and such ordinance; provided, however, that any person who has been heretofore retired from any police force of any city in this state under any existing law, shall continue to receive from such city such sum as has been heretofore granted to such person under any such law.

#### CHAPTER VIII Fire Department

Sec. 173. Appointment of chief engineer.—In all cities of the state maintaining a fire department, the city council shall at the time of the appointing of other city officers appoint a chief engineer of the fire depart-

ment, and in cities not now having a fire department the city council thereof may by ordinance establish such department.

Sec. 174. Duties of engineer.—The chief engineer, under the direction of the city council, shall have the custody and general superintendence of the fire department, engines and engine houses, hooks and ladders, hose and horses, public cisterns and other property and conveniences for the extinguishment and prevention of fire; and it shall be his duty to see that the same are kept in order, and to see that the rules and regulations and ordinances relative to the fire department and to the prevention and extinguishment of fires are duly executed; and to make detailed and particular report of the state of the department and conduct of the members thereof and such other matters as may be required by the rules and regulations of the city council.

Sec. 175. The city council may provide for the appointment of one or more assistant engineers and for one or more fire wardens, and shall provide for the appointment of a proper number of firemen and such number of hook and ladder men and hose men as they may deem necessary, and shall fix the salaries thereof.

Sec. 176. The chief engineer shall appoint, subject to the regulations herein made, all assistants, wardens, firemen, hook and ladder and hose men provided for by the city council, and shall report such appointments to the city council.

Sec. 177. All appointments and promotions to and in the fire force made by the chief engineer shall be made under and in pursuance of rules to be prescribed by the city council, providing for the ascertainment of the comparative fitness of all applicants therefor by a systematic, open and competitive examination of such applicants. No appointments to positions in said fire force shall be made by the city engineer except of men in said force prior to the adoption of this act, until such rules have been promulgated, except to fill vacancies caused by death or resignation.

Sec. 178. The city council shall prescribe rules for the punishment and discipline of members of the fire department, and may provide for the summary suspension, without pay, of any member of the department, except the chief engineer, for any misconduct, insufficiency or insubordination, and the chief engineer shall have power to make such suspension.

Sec. 179. The chief engineer of the fire department shall be subject to removal by the city council in the same manner as herein provided for the removal of other city officers. Any other member of the fire department may be removed upon recommendation of the chief engineer of the department by the chief engineer, mayor and president of the city council, acting as a board of removal, whenever such board shall deem it for the best interest of the city to remove such member; and the chief engineer shall have authority to suspend, without pay, any member of the department pending an investigation by said board concerning the removal of such member. But no member of said department, under the grade of captain, shall be removed until after charges are preferred in writing and an opportunity to appear and defend against the same with witnesses before said board.

Sec. 180. In appointing members of the department, as herein provided, the chief engineer shall, in all cases, reappoint the members in the department immediately prior to such appointment, unless said board of removal shall deem it for the best interest of the city not to reappoint certain members of the department, and in that case the chief engineer shall at the time of reporting to the city council the appointments made by him, report the certificate of said board of removal, stating the names of the members that such board deemed should not be reappointed.

Sec. 181. Duties of fire force.—The city council shall prescribe the duties of the chief engineer and other members of the fire department at fires, and may vest in them such power as shall be deemed necessary to preserve property from being stolen, and to extinguish and prevent fires; but in no case shall any member of said council, or any officer of the city direct the chief engineer or assistants during any fire; the council may provide for the removal and keeping away from fires of all idle, disorderly or suspicious persons, and may confer powers for that purpose upon the engineer, fire warden and other officers of the city; they shall require reports from the chief engineer and other officers in charge of the department of all fires, fire alarms, losses and insurance on all property destroyed, and keep proper record thereof, and it shall be competent for the city council to provide for the sending of any steam or fire engines, with hose and apparatus, to the relief of any community in the vicinity of the city.

Sec. 182. The city council shall have power to establish and maintain an efficient system of fire alarm, telegraphic and telephone apparatus, and to purchase or lease such fire engines and other fire apparatus and fire protection as may be necessary to secure the highest efficiency of the department.

Sec. 183. The city council may provide for the allowance to firemen injured in actual service in the department and rendered incapable of performing the duties of firemen, full or half pay for a period not to exceed twelve months, but not exceeding in any case the period of disability; but this provision shall not apply to cities where a fireman's relief fund is maintained in whole or in part by funds received otherwise than by contribution of the firemen.

Sec. 184. Destruction of buildings adjacent to fires.—Whenever any building of said city shall be on fire it shall be the duty of and be lawful for the chief engineer to order and direct such or any other building in the vicinity, which he may deem hazardous and likely to communicate fire, or any part of such buildings, to be pulled down and destroyed, and no action shall be maintained against any person or said city therefor.

#### CHAPTER IX Department of Parks

Sec. 185. In addition to the other city officers in cities maintaining a system of public parks, there shall be a board of park commissioners, consisting of five members, and who shall serve without compensation, who shall be appointed by the mayor and who shall each hold office for the term of five years and until their successors shall have been appointed and qualified; provided, however, that in making the first appointment under this act such commissioners shall be so classified that the term of office of one shall expire on the second Tuesday of the first January after his appointment; one on the second Tuesday of the second January after his appointment; one on the second Tuesday of the third January after his appointment; one on the second Tuesday of the fourth January after his appointment; and one on the second Tuesday of the fifth January after his appointment; and thereafter upon the expiration of terms of office appointments shall be made for full terms of five years; provided, however, in filling of vacancies appointments shall be made only for unexpired terms; and in cities not now maintaining a system of public parks the city council thereof may by ordinance establish a system of public parks, and thereafter there shall exist in said city a board of park commissioners, who shall be appointed as herein provided.

Sec. 186. The board of park commissioners shall appoint a superintendent of parks and may employ and dismiss such employes as may be necessary in the maintenance of said parks, and fix the compensation of such employes, subject, however, to the rules and regulations of the city council governing city employes.

Sec. 187. The superintendent of parks shall, under the direction of the board of park commissioners, have general supervision of all work and improvements on any public park, parkway or boulevard in the city, and shall see that all ordinances and rules of the city council relating to such public parks, parkways and boulevards are properly enforced.

Sec. 188. The board of park commissioners shall have power to recommend to the city council the acquirement by gift, purchase or condemnation of real estate for public parks, and may from time to time make such recommendations affecting the public parks of the city as they may deem proper.

#### CHAPTER X Civil Service

Sec. 189. Examinations.—All assistant engineers, inspectors and assistant inspectors, the proper discharge of whose duties require technical skill, knowledge or training, shall be appointed only after a fair competitive and open examination of all applicants for such appointment, said examination to be conducted before an impartial board of not less than three nor more than five experts, unless otherwise provided by law, which board shall certify to the qualification of such candidates as they deem thoroughly competent, and no candidate shall be appointed until so certified to. The city council shall by ordinance provide for the appointment of such board and the time of holding and manner of conducting such examination; provided, any candidate for any of said positions who, at the time, is holding the position to which he desires reappointment, if such officer has once been examined and certified to as competent, he need not be again examined as a condition of such reappointment, and prefer-

ence over other applicants shall always be given to any such officer who has been efficient in the discharge of his duties.

Sec. 190. Clerks.—All clerks employed in the various departments shall be appointed for competency only, and in making appointments to any such position preference shall always be given to the person occupying such position, if he has been efficient in the discharge of his duties.

Sec. 191. Registration of laborers.—The city council shall provide books for registering the names of persons desiring employment on the public works of the city, and shall prescribe rules governing such registration. Any person desiring employment by the city shall first register his name as herein provided and shall be a bona fide resident of such city.

Sec. 192. Selection of laborers.—The city council and all heads of departments empowered to employ labor under the provisions of this act shall give preference to persons registered as provided in section one hundred and eighty-nine, and shall, as far as possible consistent with the best interests of the city, give employment to the persons so registered in the order of their registration.

#### CHAPTER XI City Clerk

Sec. 193. City clerk.—The city council, at the meeting of its organization, shall appoint a city clerk, whose term of office shall be two (2) years, and who shall keep the corporate seal of the city and all the papers and records of the city, except as in this act otherwise provided, and a record of the proceedings of the city council, whose meetings it shall be his duty to attend.

Sec. 194. Copies of records — Legal evidence.—Copies of all papers filed in his office and transcripts from the records of the city council, certified by him under the corporate seal, shall be received in evidence in all courts the same as though the originals thereof were produced by the city clerk at the trial, and he shall receive for certified copies of papers and instruments the same fee as allowed by law to the clerk of the district court of the county in which such city is situated, for like services. He shall draw and sign all orders on the treasury on the order of the city council, and shall keep a full and accurate account thereof in the books provided for that purpose, and shall sign all contracts and affix the seal of the city thereto and deliver the same to the city controller. All fees received by him shall be covered into the city treasury each month.

Sec. 195. May administer oaths.—The city clerk shall have power to administer oaths and affirmations and take and serve acknowledgments of deeds and other instruments in all cases in which the same are required or sanctioned by law, and shall perform all other services required of clerks in cities or townships in this act.

Sec. 196. Supervision of official publications.—The city clerk shall have the supervision of all printing and official publications ordered by the city council. He shall cause to be published in the official paper the minutes of all proceedings of the city council as soon after each meeting as practicable.

Sec. 197. Assistants.—The city clerk shall have power when authorized by the city council to appoint a deputy city clerk, who shall hold his office during the pleasure of the city clerk, and shall have authority, under the direction of the city clerk, to perform all the duties of the city clerk. The city clerk may, when authorized by the city council, select such other assistants as may be necessary in his office, the salary of said assistant city clerk and all such assistants to be paid by the city, the amount of compensation to be fixed and determined by the city council.

#### CHAPTER XII City Attorney

Sec. 198. Appointment.—The city council, at the meeting of its organization, shall appoint a city attorney, whose term of office shall be two years.

Sec. 199. Duties.—He shall be the legal advisor of the city and shall perform all the services incident to the office, and shall appear in and conduct all civil suits, prosecutions and proceedings in which the city shall be directly or indirectly interested, except as otherwise provided in this act, and when necessary, take charge of and conduct all prosecutions for violation of city ordinances and perform such other duties as may be required of him by law.

Sec. 200. Opinions.—He shall, when so required, furnish opinions upon any subject submitted to him by

the city council or any of the committees or boards thereof. He shall advise the city council and all city officers in respect to their official duties. He shall personally or by an assistant attend all the meetings of the city council and such of its committees or boards as shall request his attendance, and no board, department nor officer of the city shall have or employ any other attorney in connection with their official duties.

Sec. 201. Assistants.—The city council may determine the number and fix the salaries of such assistants and clerical force as may be necessary in the department of the city attorney, and all such assistants and clerical force shall be appointed by the city attorney. He shall designate one of such assistants as the first assistant city attorney. Such first assistant attorney shall have, in the absence or disability of the city attorney, the same powers and duties as are prescribed herein for the city attorney, and the city council may provide for such temporary assistants to the city attorney—to be appointed by the city attorney—as may be necessary. In case no assistant city attorney is provided for, the city attorney, in case of absence, sickness or other inability, may at his own expense appoint an attorney to act in his stead for the time being.

Sec. 202. Appeals.—The city attorney, unless otherwise ordered by the city council, shall have the right to decide whether or not, in any case in which the city is a party in any court, to take an appeal from any order, judgment or determination of the court, and in case of any such appeal, or in case of suing out any writ of error, certiorari, mandamus, attachment or any writ from any court, the city shall not be obliged to give any bonds, either for costs, supersedeas, or any other purposes whatever. The city attorney shall notify the city council of the result of all actions to which the city is a party, or in which it is interested.

#### CHAPTER XIII City Assessor

Sec. 203. Appointment.—The city council, at the meeting for its organization, shall, by resolution, appoint a city assessor, whose term of office shall be for two (2) years.

Sec. 204. Deputy assessors and clerks.—The city assessor shall each year appoint such number of deputies as may be required to enable him to properly perform the duties of his office, who shall serve during the time of the making of the list of property for taxation, but only so long as their services may be needed. The city assessor shall discharge such deputies from time to time as he can spare, and the city council may order said deputies or any of them to be discharged at any time. The city assessor shall present to the city council at the second regular meeting thereof in March in each year the names of such persons as he shall desire to have for deputies, designating in each case the time when the appointees shall, with the approval of the city council, commence to serve as such deputies, which time shall be long enough before May 1st so that each may, before that day, be assigned to his portion of the work and be properly prepared and instructed to do the same. The city assessor shall also employ such clerks as may be necessary, their number to be reduced or increased as occasion may require or the city council may direct.

Sec. 205. Duties.—The city assessor and his deputies shall qualify in the manner and form prescribed by general law. The city assessor and his deputies shall perform all the duties required by the General Laws of this state respecting the listing of property for taxation.

Sec. 206. Duties of deputies.—Notices may be signed and given and other acts in the line of his duty done by any deputy assessor in the name of the city assessor; provided, however, that in cities situate in counties where there is a county assessor provided for by law, then such city, if accepting the provisions of this act, shall continue to be governed in that respect under such law, and shall not elect a city assessor as provided in this act.

Sec. 207. Board of equalization.—The board of equalization shall consist of the president and four (4) members of the city council, to be chosen by it. Such board shall meet at the city council chamber on the fourth (4th) Monday in June of each year, and the members shall be sworn according to law as such board of equalization, and at such time and from day to day thereafter as they may adjourn to such board shall proceed to amend, revise and equalize the assessments made by the assessor. (Amended 1899, c. 275, s. 1.)

Sec. 208. Powers of board.—Such board shall be vested with all the powers which are or may be vested in county boards of equalization so far as applicable,

but shall not be restricted as to reducing the aggregate sum of real or personal property as returned by the assessor. It shall complete such equalization on or before the second (2d) Monday in July of each year, and when completed the same shall be certified to the county auditor by the board of equalization. (Amended 1899, c. 275, s. 2.)

Sec. 209. Grievances.—Any person deeming himself aggrieved by any assessment may appear before such board personally or by counsel and present his grievance for consideration, and the said board shall have power to compel the attendance of witnesses and the production of papers, and to examine any person as to any taxable property in said city.

#### CHAPTER XIV City Engineer

Sec. 210. Appointments.—In cities containing a population of over fifteen thousand inhabitants, the city council shall, at the meeting for its organization, appoint a city engineer, who shall be a practical civil engineer, and who shall perform and have direction of all civil engineering work for all departments of the city. In cities containing a population of less than fifteen thousand inhabitants the city council shall, at the meeting for its organization, appoint a street commissioner, who shall have, under the direction of the city council, charge and control of the streets of the city, and shall perform such other duties as the city council shall order. The term of office of the city engineer and street commissioner shall be for two (2) years. Any city having a population of less than fifteen thousand inhabitants may also employ from time to time a civil engineer to perform such civil engineering for the city as may be necessary. The city engineer, whose term of office shall be for two years, shall keep his office at some convenient place in said city, and the city council shall prescribe his duties and fix his compensation and the compensation of all the assistants employed by him.

Sec. 211. Assistants.—The city engineer may, with the consent of the city council, appoint an assistant city engineer, who shall act as city engineer in the absence or disability of the city engineer. The city engineer may also employ such permanent and temporary assistants as the city council may deem necessary.

Sec. 212. Duties.—He shall have the supervision and general charge of all the work done for the city and all work done on any street, highway or alley in the city; may direct the manner of performing such work and the manner of the construction of all sidewalks, street crossings, bridges or other structures in or upon said streets; may suspend any such work when the construction thereof shall not conform to, and shall take care that the terms of all contracts for any work or construction on behalf of the city are fully complied with.

Sec. 213. Surveys, etc.—All surveys, profiles, plans and estimates made by him or any of his assistants for the city shall be the property of said city and shall be carefully preserved in the office of the engineer and be public records of the city. All deeds of conveyance to the city shall, after being recorded in the proper office, be filed in the office of the city engineer, and the city engineer shall perform such other duties as are in this act, or may be by the city council required.

#### CHAPTER XV Eminent Domain; Local Improvements and Assessments

##### Division I

Sec. 214. Condemnation, property and rights acquired by.—Any city existing under this act is hereby authorized and empowered by proceedings in condemnation acquire any real property or easement therein, for the purpose of the erection or improvement of any public building or any permanent improvement incident to the operation of any department, and for the opening, widening, laying out, extending, altering or straightening of any street, avenue, alley, highway, levee, lane or public square, park, parkway or boulevard, to acquire land for and the right to raise, lower, divert or change the course of any stream of water, ditch or drain; to acquire an easement in the land over, across or under the property of corporations, for streets, bridges, approaches, culverts, depots, sewers, conduits or water mains; to acquire an easement in any land for the construction of slopes or retaining walls for cuts and fills, upon the real property abutting upon any street, levee, lane, alley or highway, now ordered, or such as shall hereafter be ordered, to be opened, widened, extended, altered, straightened



or graded; to acquire the right to take or divert from any lake, stream, dam, pond, reservoir or any public water, whether the same be public or private property or rights, and all water necessary or convenient for the use of said city and the inhabitants thereof, and for that purpose to construct and maintain dams and in-take pipes, and to acquire land, abate nuisances, to drain swamps, marshes and ponds, and to fill the same in said city, and to acquire any property, real or personal, and rights in property, either within or without the limits of said city, for the purpose of erecting, maintaining, extending or improving water or light works, or that may be needed in connection therewith for the protection of the purity of the water supply, or otherwise, or for other municipal purposes, and to levy assessments for all improvements mentioned above, and for such other local improvements as may be ordered by said city upon property fronting upon such improvements, or upon property to be benefited by such improvement, without regard to cash valuation.

Sec. 215. Improvements for which assessment is made for benefits.—Designation and plat of improvement.—When the city council shall vote to lay out, open, widen, extend, alter or straighten any street, avenue, alley, highway, levee, lane or public square, park or parkway, or boulevard, or to raise, lower, divert or change the course of any stream of water, ditch or drain, or to acquire an easement in the land over, across or under the property of corporations, for streets, bridges, approaches, culverts, depots, sewers, conduits or water mains, or to acquire an easement in any land for the construction of slopes or of retaining walls, for cuts and fills, upon real property abutting upon any street, levee, lane, alley or highway now ordered, or such as shall be hereafter ordered to be opened, altered, extended, straightened or graded; or to acquire land to abate nuisances; or to drain swamps, marshes and ponds, or to fill the same, making it necessary to injure, take or interfere with private property, it shall determine in a general way, as nearly as may be convenient, the character and extent of the proposed improvement; and thereupon it shall be the duty of the city engineer to make and present to the city council a plat and survey of such proposed improvement, showing the character, course and extent of the same, and the property necessary to be taken, injured or interfered with therefor, together with the name of the owner of each parcel of such property, so far as the engineer can ascertain the same, with such statements as may be, in the opinion of the engineer, proper to explain the character of such survey and the character and extent of such proposed improvement. Such plat shall show approximately the amount of land to be taken from each owner, so far as the owners can be readily ascertained, and the lands contiguous to such improvement; and the city council may cause such plat and survey to be modified, amended or changed, as it may deem proper. When such plat and survey shall be finally adopted by the city council, it shall be filed with the city clerk and shall be held to show correctly the character and extent of the improvement actually agreed upon and ordered by the city council.

Sec. 216. Appointment and qualification of commissioners.—The city council shall then or at a subsequent meeting appoint five (5) commissioners (all of whom shall be freeholders and electors of the city and not in any way interested in any property to be taken or affected by the proceedings) to view the premises and ascertain and award the amount of damages and compensation to be paid for the property which is to be taken or injured by such improvement, and to assess the amount of such damages and compensation and the expenses of the improvement so far as the same can be improved in proportion to the benefits to be received by each parcel, without regard to cash valuation. Three or more of the said commissioners shall constitute a quorum and be competent to perform any duties required of the whole number thereof.

Sec. 217. Meeting and qualification. — Said commissioners shall be notified forthwith by the city clerk by a notice served personally or by mail, of their said appointment, and of a time not less than three (3) nor more than seven (7) days from the appointment, when they shall meet at the office of the city clerk. At the time specified in such notice said commissioners shall meet and shall take and subscribe an oath to discharge their duties as such commissioners with fidelity, and to make a just and impartial appraisal and award of damages and assessment of benefits, which oath shall be filed with the city clerk. In case of failure of any said commissioner to qualify, the city council may

appoint others to fill the vacancy, who shall be notified and qualified as those appointed in the first instance.

Sec. 218. Notice given by commissioners. — Said commissioners shall give notice by two publications in the official paper of said city that they will go on a day designated in such notice (which shall be at least ten [10] days after the first publication), meet at a place designated in such notice, and thence proceed to view the property proposed to be taken and appropriated, and ascertain and award therefor compensation and damages, and view the premises to be benefited by such improvement and assess thereon, in proportion to the benefits, the amount necessary to pay such compensation and damages and the expenses of the improvement or such part thereof as can be so assessed, and hear such allegations and proofs as any persons may offer.

Sec. 219. Proceedings and award of damages.—At the time and place specified in such notice, and from day to day thereafter, and at such other places in said city as they may adjourn to, said commissioners shall attend and view the property to be taken and affected by such proceedings, and hear allegations and proofs that may be offered by persons interested herein, and for that purpose may administer oaths. After viewing the premises and taking the evidence offered, such commissioners shall prepare and make a true and impartial appraisal and award of the compensation and damages to be paid for each parcel or piece of property taken or injured by such improvement; but if the remainder of the same property, a part of which only is to be taken or damaged by such improvement, shall be benefited by such improvement, then the commissioners in considering and awarding such compensation or damage shall also consider, estimate and offset the benefits which shall accrue to the remainder of the same property belonging to the same person, and shall award only the excess, if any, of the compensation or damages over and above the benefits; and, in case such benefits are in excess of the compensation or damages, the commissioners shall so state in their report of award, and shall assess such property for benefits in the proportion that such excess of benefits bears to the benefits accruing to other property. In case there are buildings or improvements upon any land proposed to be taken in such proceedings, the awards shall be for the damage to land and improvements separately.

Sec. 220. Assessments for benefits.—The said commissioners shall then assess the amount of such compensation and damages as awarded together with the expenses of the improvement, less such portion thereof as the city council shall order, upon the land and property benefited by such improvement, in proportion to such benefits, but in no case shall the amount of said assessments exceed the actual benefit to the lot or parcel of land so assessed. If in the judgment of said commissioners, the whole amount of such compensation and damages awarded, together with the expenses of the improvement, shall exceed the actual benefit to the property subject to assessment, they shall so indicate in their report, and shall state the amount of such excess.

Sec. 221. Report of commissioners.—Said commissioners shall prepare and report to the city council their appraisal and award, and assessment list containing their assessment for benefits; which list shall contain a brief description of each tract or parcel of property taken or injured or assessed, the name or the names of the owners thereof, so far as known to said commissioners, and the amount of damages awarded to or assessed against each parcel of property; which report shall, upon completion thereof, be filed with the city clerk, by said commissioners, for presentation to the city council.

Sec. 222. Notice of presentation to the city council.—Upon the filing of such report, the city clerk shall give notice to all interested parties, by one publication in the official paper of said city, of the filing of such report and that he will, at the meeting of the city council named in said notice, or as soon thereafter as practicable, present the same to the city council for consideration five (5) days before such presentation. Such published notice shall contain description of the several lots and parcels of land taken for such proposed improvement and the amount of award for taking such lot or parcel, together with the names of the owner or owners of the same, as nearly as they may be readily ascertained; also description of the several lots and parcels of land upon which benefits have been assessed and the amount assessed against each such lot or parcel, together with the names of the owner or owners of



the same as nearly as the same can be readily ascertained.

Sec. 223. Presentation of report and objections thereto.—Such report shall be presented to the city council in accordance with such notice, and shall lie over until the next regular meeting thereof, occurring one week or more thereafter. Any person whose property is proposed to be taken or interfered with or affected, or to be assessed for benefits, may at any time within ten (10) days of the publication of such notice, file with the city clerk, who shall present same to the city council, his objections to such award or compensation or damages or assessment for benefits; which objections shall contain a description of the property affected and shall specify the particular irregularity of which he complains, as to amounts either awarded or assessed, or as to the proceedings of the city council or commissioners.

Sec. 224. Action of city council on report.—At such subsequent meeting the city council may confirm such award or assessment or may annul the same, or may refer the same to a committee to consider the same and the objections thereto, and report thereon, or refer the same back to the same or new commissioners, or abandon the proceedings, and in case of abandonment may institute them anew. In case the same be referred back to the commissioners, notice of such fact and of the time and place of meeting shall be served by the city clerk upon the commissioners, in the same manner as the original notice of the appointment of commissioners was served, and thereupon the commissioners shall meet and proceed to act as though no report had been made and shall make a new report or amend the former report upon such proposed improvement, and all proceedings therein shall be had in like manner as in the first instance. In case the city council shall confirm any such award or assessment, such confirmation shall make such award or assessment final and conclusive upon all parties interested, unless an appeal be taken as hereinafter provided.

Sec. 225. Condemnation without assessment for benefits, designation and plat.—Whenever the city council shall consider it necessary to acquire by condemnation any real property or easement therein for the purpose of erection or improvement of any public building, or any permanent improvement incident to the operation of any department, or to acquire any water power, or right to take or divert any lake, stream, dam, pond, reservoir or any public waters, whether the same be public or private property, or rights, any and all waters necessary or convenient for the use of said city and the inhabitants thereof, and thereto to construct and maintain dams and intake-pipes, or to acquire any other property, real or personal, or rights in property situated within or without the city, it shall designate the same as nearly as may be convenient, and vote to acquire the same, and thereupon it shall be the duty of the city engineer to make and present to the city council such plat or survey or description as may be necessary to show or explain the same and the property necessary to be taken, or interfered with thereby. The city council may cause such plat or survey or description to be modified, amended or changed as it may deem proper, and may adopt the same, and thereupon shall direct the same to be filed in the office of the city clerk.

Sec. 226. Appointment of commissioners.—The city council shall then or afterwards appoint five (5) commissioners having the qualifications prescribed for commissioners as hereinbefore provided in condemnation proceedings, to view the land, property or water power, or to investigate the rights to be acquired, taken or appropriated, and ascertain and award the amount of damages or compensation to be paid for the property or rights to be acquired, taken or appropriated.

Sec. 227. Proceedings and report of commissioners.—Said commissioners shall be notified of their appointment and time of meeting, and shall meet and give like notice thereof, and shall qualify and be governed by the same rules and the same number may act as hereinbefore provided for commissioners in condemnation proceedings. After viewing the premises and hearing the evidence offered, said commissioners shall make a true and impartial appraisal and award of the compensation and damages to be paid for each tract or parcel of land, property or rights to be taken, acquired, appropriated or interfered with, and report the same to the city council. Upon the completion of said report, they shall file the same with the city clerk for presentation by him to the city council.

Sec. 228. Notice by the city clerk of reception of report.—The city clerk shall give notice to all interested parties by one publication in the official paper of said city, of the filing of such report, and that he will, at its first meeting, or as soon thereafter as practicable, present the same to the city council for consideration and action, which publication shall occur at least five (5) days before such presentation; such published notice shall contain a description of the several lots and parcels of land, or the property taken for such proposed improvement, and the amount of award for taking each lot or parcel of property, together with the name of the owner or owners of the same, as nearly as they can be readily ascertained.

Sec. 229. Presentation of report and objections thereto.—Such report shall be presented to the city council in accordance with such notice, and shall lie over until the next regular meeting of the city council occurring at least one week after the reception of such report. Any person whose property is proposed to be taken or interfered with, may at any time within ten (10) days of the publication of such notice, file with the city clerk, who shall present the same to the city council, his objections to such award of compensation of damages, which objection shall contain a description of the property affected, and shall specify the particular irregularity of which he complains, as to the amounts awarded or as to the proceedings of the council or of the commissioners.

Sec. 230. Action of city council on the report.—At such subsequent meeting the city council may act upon such report and award, and may hear any objection thereto, or may refer the matter to a committee to hear such objections and report thereon. The city council may confirm such award or annul the same, or send the same back to the same or new commissioners for further consideration, in which case such commissioners shall give notice and proceed in like manner as herein prescribed in the case of a second reference to commissioners by the city council in condemnation proceedings. When any such report and award shall be confirmed by the city council, the same shall be final and conclusive upon all parties interested, unless an appeal be taken therefrom as hereinafter provided.

Sec. 231. Appeals from confirmation of report.—Any person who shall have objected as aforesaid to the confirmation of any such award or assessment may appeal therefrom to the district court of the county in which the property affected is situated, by filing with the city clerk, within ten (10) days after such confirmation, a notice in writing of such appeal, specifying the grounds thereof and the irregularities in the proceedings complained of, and such appellant shall, within said time, enter into a bond or undertaking with the city in at least the sum of one hundred (100) dollars, conditioned to pay all costs that may be awarded against appellant, which bond shall be executed by two sureties and approved by the city attorney or by the judge of said court, and filed with the city clerk.

Sec. 232. City clerk to transmit record to the district court.—Upon the filing of such notice and bond the city clerk shall, within ten (10) days, make and transmit to the clerk of said district court a certified copy of the report of the commissioners as confirmed by the city council, and of the order of confirmation thereof, and the objections and notice of appeal by the appellant. In case more than one appeal be taken therefrom, upon such subsequent appeal copies of the appellant's objections and notice of appeal only shall be transmitted.

Sec. 233. Proceedings in court of appeal.—There shall be no pleadings on such appeal, but the court shall determine in the first instance whether there were in the proceedings any such irregularities or omission of duty prejudicial to the appellant and specified in both his written objections and notice of appeal, that, as to him, the award or assessment of the commissioners ought not to stand, and whether the commissioners had jurisdiction to take action in the premises. The case may be brought on for a hearing on eight days' notice, at any general or special term of the court, and the judgment of the court shall be to either confirm or annul the proceedings only as the same shall affect the property of the appellant proposed to be taken, damaged or assessed for benefits and described in said written objection. From such determination no appeal nor writ of error shall be allowed.

Sec. 234. Commissioners appointed by the court to determine award or assessment as to the appellant.—In case the amount of damages awarded or assessments made for benefits are complained of by such

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appellant, the court shall, if the proceedings shall be confirmed in other respects, appoint three disinterested freeholders, residents of said city, as commissioners to re-appraise such damages or re-assess such benefits.

The parties to such appeal shall be heard by said court, upon the appointment of such commissioners, and the court shall fix the time and place for meeting of such commissioners. They shall be sworn to the faithful discharge of their duties as such commissioners, and shall proceed to view the premises and hear the parties interested, with their allegations and proofs pertaining to the question as to the amount of such damages or assessments. The commissioners shall be governed by the same provisions in respect to arriving at the amount of damages and the offset thereto of benefits to the remainder of the same property and in all material respects as are in this act made for the government of commissioners appointed by the city council.

They shall, after such hearing and view of the premises, make a report to said court of their appraisal of damages or assessment of benefits in respect to such appellant.

Sec. 235. Report of commissioners, if confirmed, to be final.—Upon the filing of such report, the court may, in its discretion, upon motion, set aside the same or recommit the same to the same commissioners, or appoint a new commission, or it may confirm the same. Upon such confirmation by the court, the award or assessment of such commission shall be final, and no appeal nor writ of errors shall be allowed from any order of the court in the premises. Said court shall allow a reasonable compensation to such commissioners for their services, and make such award of costs on such appeal, including such compensation, as it shall deem just in the premises.

Sec. 236. Right of abandonment.—The city council shall have the right at any time during the pendency of the proceedings for the improvements authorized in this act, or in case an appeal be taken as herein provided, at any time within sixty days after the final order of the court upon such appeal, to abandon all such proceedings whenever it shall deem it for the best interests of the city so to do.

Sec. 237. Effect of final determination of proceedings.—Whenever an award of damages and compensations shall be confirmed by the city council, and not appealed from, and whenever the same, when appealed from, shall not be annulled by the court, and whenever commissioners are appointed on such appeal and the award of such commissioners is confirmed by the court, and the proceedings are not abandoned by the city council, within sixty (60) days thereafter, then the rights of all parties shall be finally determined and fixed thereby, and the same shall constitute a lawful and sufficient condemnation and appropriation to public use of the land, property and rights in property for which compensation and damages are so awarded or determined, and every right, title, interest or lien thereto, and the city shall become vested with the title to the property taken and condemned absolutely for all purposes to which the city may ever have the occasion to use the same, and may forthwith enter upon and use the same; and the city shall be bound to and shall, within one year of such final determination, pay the amount of such award and compensation, with interest thereon at the rate of six (6) per cent per annum from the date of the confirmation of the commissioners' report by the city council.

Sec. 238. City clerk to file plat and certificate.—Within twenty (20) days after such final determination of the condemnation proceedings the city clerk shall file in the office of the register of deeds of the county in which the property is situated an accurate plat, certified by the city engineer, showing the property condemned thereby, and the same shall be there recorded.

Section 239. Payment of awards.—Before payment of any award the owner of such property, or the claimant of the ward, shall furnish an abstract of title, showing himself entitled to all of the compensation and damages claimed. In case of neglect to furnish such abstract, or in case there shall be any doubt as to who is entitled to such compensation or damage, or any part of the same, the amount so awarded shall be by the city council appropriated and set apart in the city treasury for whomsoever shall show clear right to receive the same. The city council may, in its discretion, require of said claimant a bond, with good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded, and all loss, costs or expenses on account of such claims; provided, that

whenever the city attorney shall certify in writing to the city council that, in his opinion, he is in doubt to whom the said awards shall be paid, the city council may order a warrant to be drawn for the same, payable to the clerk of the district court of the county; and the city clerk shall deliver the same to said clerk of the court and take his receipt for the same, which deposit with said clerk of the court shall be deemed a full and sufficient payment of such award under the provisions hereof. The parties entitled to any award so deposited shall establish their right to the same by a petition to the said district court, setting up the facts entitling them thereto, and by proving the same to the satisfaction of the court; and, when so established, the court shall make an order directing to whom the same shall be made.

Sec. 240. Proceedings in case award is annulled by court.—Whenever any portion of any award made by commissioners, and confirmed by the council, under the provisions of this act, shall be annulled by the court upon appeal, as hereinbefore provided for, the city council may again appoint commissioners to view the property which was affected by such appeal and appraise and award the compensation and damages to be paid for the taking or appropriation of the same, and the like proceedings shall be had, so far as practicable, as are prescribed herein to be had in the first instance, except that such commissioners shall make no new assessments of costs and expenses. They shall, however, in arriving at the compensation and damages to be awarded, take into consideration and offset any benefits, which, in their judgment, the contemplated improvement will be to the remainder of the property, part of which may be taken or appropriated, and report their award to the city council, whereupon the same proceedings may be had as far as practicable as upon an original award. If such award shall again, upon appeal, be annulled by the court, still another commission may be appointed and award made in the same manner, and so on, until a valid award shall be made, but no new assessment for benefits shall be made merely by reason of any change in the amount of the sum awarded for compensation and damages, and any sum which may be lacking to pay the award shall be paid from the permanent improvement fund.

Sec. 241. Right of city to have condemnation instituted during pendency of suit.—Whenever the city council shall have made or cause to be made, erected, constructed or laid on, across, through, in or upon any land or real estate to which said city council has not the title or right to enter upon the same, for the purpose of so making, erecting, constructing or laying any water main, sewer, conduits, building, structure, intake-pipe, dam, improvement, pavement, sidewalk, curbstone, gutter or other public work, or street grade, the city council shall have the right at any time in any suit in which the title to said real estate or land, or the right of said city to so be thereon for said purposes, is called in question, may by answer admit and allege the taking of the claimant's land or other real estate for public purposes, and that no compensation has been made for such taking, and that the said city is ready and willing to pay such compensation on having the same assessed and ascertained in the manner in this act provided; provided, the claimant on the trial shall establish his right to recover the land or other real estate in question, and in such case the court shall first determine whether the claimant is entitled to recover the land or other real estate in controversy; and if the court shall first determine that such claimant is so entitled, the city council may, within such time as the court shall limit, appoint commissioners as herein provided in condemnation proceedings, and like proceedings shall be had therein as herein provided in condemnation proceedings; provided, that when it shall appear that the land or other real estate was so taken or appropriated by and with the consent or acquiescence of the owner, such owner shall not be entitled to recover any rents or profits which accrued prior to demand for compensation for such land or other real estate, and he shall be limited in such case to compensation for the land taken and damaged. And the court shall have power to make all the necessary orders and render all the necessary judgments to carry out the provisions of this section.

Sec. 242. City council to adopt assessment roll.—Upon confirmation of any award or assessment by the city council or by the court upon appeal, as herein provided, the city council shall proceed at the same or any subsequent meeting to levy such assessments upon the several parcels of land described in the assessment list reported by the commissioners, in accordance with such assessment list as finally con-

firmed, and cause to be made and adopted an assessment roll of the same.

#### DIVISION II

Sec. 243. Establishment and change of grade.—The city council shall have power to establish the grade of any street within the city limits. It shall cause accurate profiles of the grade of all streets, when so established, to be made and kept in the office of the city engineer. It may, by ordinance passed by the vote of two-thirds ( $\frac{2}{3}$ ) of its members, change the grade of any street after such grades have been established; and the publication of such ordinance shall be deemed notice to all parties interested in the change of such grade. Upon the passage of such ordinance the city council may at once, or at any time thereafter, cause such street to be graded in accordance with such new grade so established.

Sec. 244. Objection to change of grade.—The owner of property abutting upon a street, the grade of which has been once established, shall, within thirty (30) days after the publication of the ordinance changing the grade of such street, file in the office of the city clerk his objection thereto, and make claim for damages to the property caused by such change of street, or be barred from making any claim for damages. Such objection shall contain a description of the property claimed to be damaged and owned by such person, and the amount of damage claimed to be caused to such property by such change of grade, and shall be verified by the owner or his agent.

Sec. 245. Appointment of commissioners.—Upon the filing of any such objection and claim for damages; the city council shall at any time after the expiration of said period limited for the filing of objections, appoint five (5) commissioners of like qualifications as herein prescribed for commissioners in condemnation proceedings, to appraise the damages caused to the property or properties described in such objections, and to award the same to owner or owners of such property, or properties and to assess the amount of damages so awarded upon the property benefited by such change of grade, in proportion to the benefits received by each tract or parcel without regard to the cash valuation thereof, but no property shall be assessed in excess of the benefits accruing to such property; and to report such award and assessment to the city council.

Sec. 246. Hearing of commissioners.—The said commissioners shall be notified of their appointment, shall meet, give notice, perform their duties and act in like manner and shall be governed by the same rules as herein prescribed for commissioners in condemnation proceedings. Said commissioners shall, in making their award of damages, appraise and award damages caused to each parcel or tract of property described in such objections and claim for damages made as herein prescribed by reason of such change of grade, not including in such damages any damage to or interruption of the use of such property caused by the work done or to be done in making such street conform to the grade as so establishing, and in estimating such damages to be awarded as aforesaid, said commissioners shall consider and offset any benefit accruing to the said property by reason of such change of grade, and shall award only the excess of damages over such benefits, if any.

Sec. 247. Report of commissioners.—Said commissioners shall make a report of their award of damages and assessments for benefits, and in case the benefits accruing to the property from such change of grade are not as great as the damages so awarded, they shall so indicate in their report, stating the amount of such excess of damages.

Sec. 248. Action of council on report.—Said report shall be filed and presented to the city council upon like notice, and the city council shall act thereon in like manner as herein prescribed in condemnation proceedings.

Sec. 249. Right of appeal.—Any person aggrieved by such report shall have the same right of appeal upon the filing of objections in the manner prescribed herein in condemnation proceedings, and the proceedings on said appeal shall be the same as are herein prescribed in condemnation proceedings.

Sec. 250. Abandonment.—In case the city council shall not have commenced the work of grading the street to conform to the grade changed, it shall have the right at any time during the pendency of the above proceedings, and until said proceedings are confirmed by it, and in case of any appeal from such confirmation, then within sixty (60) days after the final order of the court upon such appeal, to abandon such proposed change of grade by a resolution passed to that effect, and thereupon all proceedings had shall be

abandoned and annulled, and the city council shall thereupon repeal the ordinance changing such grade.

Sec. 251. Confirmation and assessment.—In case said proceedings are confirmed by the city council or by the order of the court, and not abandoned as herein provided, the same shall be final and conclusive upon all parties interested, and the city council shall proceed to levy any assessment upon the several parcels described in the assessment list reported by the commissioners in accordance with the assessment as finally confirmed, and shall cause to be made, and shall adopt an assessment roll of the same, and shall pay or cause to be paid within one year from the time of the final determination of such proceedings to the owner or owners of the property damaged by such change of grade the amount awarded therefor, upon such owner furnishing an abstract of title to such property, and with the same right to require a bond, or pay the amount of the award to the clerk of the district court, for the party entitled thereto, as herein prescribed in condemnation proceedings.

#### DIVISION III

##### Cost of Improvements Assessed in Proportion to Benefits

Sec. 252. Authority to assess cost of grading, etc.—Any city existing under this act is hereby authorized to fill, grade, level, pave, repave, curb, rail, bridge, gravel, macadamize, sprinkle, plank, clean pavements upon any street, avenue, lane, alley or highway, and to keep the same in repair; also to fill, grade, improve, protect and ornament any public park, square or ground; also to plant and protect shade or ornamental trees in its public parks and along its streets and avenues; also to construct, lay, relay and repair sidewalks, retaining walls, gutters, sewers, water mains, drains and pipes for surface water, and private drains in, over or under any street, lane, alley or highway; also to drain marshes or swamps and low grounds within the city; and the whole or any part of the expense of any such improvement may be defrayed by an assessment upon the real estate benefited thereby in proportion to such benefits without regard to cash valuation, to be determined and levied in the manner hereinafter provided; provided, if the system of sewerage known as "Shone Hydro-Pneumatic System" be adopted and established in and for any city, the city council, when it proposes to cause sewers to be constructed or laid for the drainage of any given portion of the city shall first determine and accurately describe by ordinance or resolution in writing the area of territory to be made tributary to an ejector station to be constructed for such district, and in each instance such territory so defined shall be known as a sewer district and shall be properly designated by number. The expense of material for and of constructing or laying all sewers and sewer pipes in each such district, the expense of material for and constructing all flush tanks, of machinery, ejectors, discharge pipes, compressed air connections, the ejector chamber and adjoining man-hole, and all other man-holes therein, and all other costs, except such portion thereof as shall be ordered paid out of the permanent improvement fund, shall be chargeable to and assessed upon the lots and parcels of land in said district benefited thereby in proportion to such benefits without regard to cash valuation.

Sec. 253. Two or more upon one order.—Two (2) or more of said improvements, or either any of them, upon one or more streets may be done at the same time under one order and may be included in one contract. And the city council may, when any contract is let for paving, grading, graveling or macadamizing any street, lane, alley or highway within said city, include in such contract the laying of sewer pipes or water pipes to the curb, and the cost of the same may be assessed against the lots or parcels for which said sewer pipes or water pipes are laid as a part of, or in connection with the assessment of for such improvement; provided, if two or more improvements are included in one contract, the expense of each improvement shall be separately apportioned and assessed upon the lots and parcels of land benefited by such improvement in proportion to such benefits, but two or more improvements may be included in one assessment proceeding.

Sec. 254. Plans and specifications.—Prior to the passage of any resolution ordering any such improvement the city council shall call for plans and specifications of such proposed work, with an estimate of the probable expenses thereof, to be made by the city engineer of said city and presented to the city council for its approval, and the same shall immediately and upon approval thereof by the city council be filed

with the city engineer of said city for the inspection of all parties interested.

Sec. 255. Notice of proposed improvement and invitation for proposals.—The city council shall then designate a time not less than twelve days distant, and a place at which it will meet and act in relation to the doing of the proposed work, and direct that a notice be given to the city clerk of such meeting and the time and place thereof, and that in the meantime sealed proposals for the doing of such work and the furnishing of all materials therefor will be received by the city clerk. In such notice shall be stated the location of the proposed work and reference shall be made to the plans and specifications and estimates so filed with the city engineer. Said notice shall be given by two publications thereof in the official paper of said city, the last of which publication shall be at least one week prior to the time designated as aforesaid by the city council.

Sec. 256. Ordering improvement and award of contract.—At the time and place designated in such notice opportunity shall be given to any and all parties interested to be heard for or against such proposed work, and the clerk shall, in the presence of the city council, open and read all sealed proposals which may have been received for doing such work and furnishing the material therefor, and the city council may then or thereafter by a two-thirds (2/3) vote of all its members, accept the most favorable proposal (such proposal to be that of the lowest responsible bidder) and by resolution authorize the doing of said work or any part thereof, and may direct that a written contract be made therefor with the person whose proposal shall have been accepted; or they may reject all proposals offered and refuse to authorize the doing of such work or any particular part thereof, or may readvertise for bids therefor; or, if it is deemed by said council to be for the best interests of the city, and the city engineer's estimate is less than the lowest bid aforesaid for work and material, that they may reject all proposals offered, and by resolution, passed by a two-thirds (2/3) vote of the council, authorize the doing of said work under the direction of the city engineer, or said council, in its discretion, from lack of quorum, or for other reason, may postpone the consideration and decision of the whole matter, or any branch thereof, to a future time, of which postponement all parties interested shall be required and deemed to take notice.

At the time of the award of any such contract the city council shall appropriate from the proper fund, to the credit of such contract, a sufficient amount to defray the cost of such work; provided, however, that if at the time of awarding such contract, there shall not be sufficient funds applicable by law thereto in the treasury of such city for the payment of all liabilities arising under such contract, and a majority of the owners of property liable to be specially assessed therefor shall not prior to the time designated in such notice have filed with the city clerk a written protest against such improvement, a fund, specially designated for such contract, shall be created and maintained in such city treasury, to which the city council shall appropriate, at the time of the award of any such contract, from the proper fund the amount of the proportion, if any, of the entire cost of such improvement which the city council may determine, as hereinafter provided, shall be paid from the proper funds of said city and into such specially designated fund shall also be paid all moneys derived from special assessments for the payment of the cost of such improvement and they shall be diverted to no other purpose, and the city council may then or thereafter, authorize the doing of said work or any part thereof, and may direct that written contract be made therefor with the person whose proposals shall have been accepted, but such contract must state that the amount to be paid thereon by the city is to be paid only from such specially designated fund, and that the consideration of such contract is payable only in warrants drawn on such fund, and that the city incurs and assumes no general liability under such contract and the city comptroller, or city clerk, is thereupon expressly authorized to countersign any such contract; but in lieu of an appropriation from the proper fund to the credit of such contract of the amount of the proportion of the entire cost of such improvement which the city council may determine shall be defrayed by an assessment upon the property benefited, as hereinafter provided, when there shall not be sufficient funds, applicable by law thereto in the treasury of such city for such appropriation and in anticipation of the levy, and collection of such special assessments the city may, at any time after the making of such contract, but upon

the filing with the city clerk of the commissioner's report of assessments, as hereinafter provided, shall issue warrants on such specially designated fund, payable at specified times, and in such amounts as, in the judgment of the city council, the taxes and assessments will provide for, which warrants shall bear interest at the rate of not to exceed six per cent per annum, payable annually, and may have coupons attached representing each year's interest. Such warrants shall state upon their face for what purpose they are issued, and the fund from which they are payable, and shall be signed by the mayor and countersigned by the city comptroller, or the city clerk, under the seal of the city, and be in denominations of not more than one thousand dollars each, and shall not be issued for a longer period than fifteen years. Such warrants may be used in making payments on contracts for making such improvements or may be sold for cash, at not less than the par value thereof, and the proceeds thereof credited to such fund, and used for paying for such improvements. It shall be the duty of the city treasurer to pay such warrants and interest coupons as they mature and are presented for payment, out of the specially designated fund on which they are drawn, and to cancel the same when paid. Any indebtedness created by the making of any such contract and any indebtedness created by the issuance of any such warrants, shall not be deemed a part of the total indebtedness of said city, which said city is hereinbefore forbidden to make to exceed five per cent of the total value of the taxable property in such city according to the last preceding assessment for the purpose of taxation.

The city engineer shall allow to the contractor, on the first day of each month an estimate of the amount already earned, which amount shall be due and payable on the tenth day of the month succeeding the month for which the estimate is allowed. (Amended 1909, c. 98, s. 1; 1911, c. 92, s. 1; 1917 c. 165, s. 1.)

Sec. 257. Apportionment of costs.—At the time of the passing of the resolution for the doing of such work the city council may determine by separate resolution, what proportion of the entire cost of such improvement shall be defrayed by an assessment upon the property benefited, and what proportion, if any, shall be paid from the proper funds of said city, the amount of the bid accepted by the council to be taken as the entire cost, and in case no bid is accepted, and in case the city council has authorized the doing of such work under the direction of the city engineer, without contract, then the city engineer's estimate shall be taken as the entire cost of such work for the purpose of assessment. (Amended 1917, c. 165, s. 2.)

Sec. 258. Commissioners to assess benefits.—The city council shall then, or thereafter, appoint commissioners in like manner and with the same qualifications as prescribed in this act for commissioners in condemnation proceedings, to view the property benefited by such proposed improvement, and to assess the cost of such proposed improvement (unless said council shall have determined that a portion only of the expense of such improvement shall be defrayed by assessments for benefits, and in such case they shall assess such portion) upon the property benefited by such improvement in proportion to the benefits actually received and without regard to cash valuation; provided, that in no case shall said commissioners assess upon any lot or parcel of land any greater amount than the amount of the benefit to such lot or parcel; provided, that if the city council shall have determined that such assessment shall be made on the basis of the foot frontage of the property bounding or abutting upon the improvement, then such commissioners shall make such assessment on that basis, without regard to the benefits or value of the property to be assessed. (Amended 1917, c. 165, s. 3.)

Sec. 259. Proceedings of commissioners.—Said commissioners shall meet, give like notice, hear interested parties and proceed in like manner and make like report of their assessments for benefits to the city council, and the city council shall act thereon in like manner, and the proceedings shall be subject, as far as may be, to the provisions herein made for proceedings in condemnation, including the right of appeal from the confirmation thereof by the city council.

Sec. 260. Levy of assessment.—Whenever the city council shall confirm any such assessment, such confirmation shall make the same final and conclusive upon all parties interested, who have not appealed therefrom, and the city council shall proceed at the same or any subsequent meeting, to levy such assess-

ment upon the several parcels of land described in the assessment last reported by the commissioners, in accordance with the assessment so confirmed, and cause to be made and adopted an assessment roll of the same.

#### DIVISION IV

Sec. 261. Collection of assessments.—When any special assessment shall have been confirmed and adopted it shall be the duty of the clerk to issue a warrant for the collection thereof, which shall be under the seal of said city and signed by the mayor and such clerk of said city, and shall contain a printed or written copy of the assessment roll as confirmed and adopted as aforesaid, or so much thereof as describes the real estate and the amount of the assessment in each case.

Sec. 262. Assessment warrants.—In all cities having a city controller the city clerk shall deliver all warrants for collection of special assessments when issued to the city controller, taking his receipt therefor.

Sec. 263. Notice by controller or clerk.—Upon the receipt of any warrant for the collection of any special assessment the city controller shall, or in cities where there is no city controller, upon the issue of the warrant the city clerk shall forthwith give notice by one publication in the official paper of the city that such warrant has been duly issued for the collection of the taxes shown therein, briefly describing its nature and requesting all persons interested to make immediate payment at the office of the city treasurer, and that in default of payment thereof within sixty days after publication of such notice, a five per cent penalty will be added thereto, and the same will be collected at the cost and expense of the person liable for the payment of such assessment. Upon application the city controller, or the city clerk where there is no controller, shall issue a statement of the amount of such special assessment against any lot or parcel of land, and the city treasurer shall, on or before the time above specified for the adding of a penalty, receive payment of the amount shown in such statement, and after said time and until the first Monday of October of that year shall receive payment of the amount shown in such statement, with five per cent added thereto, and give a receipt therefor, and shall keep a correct account of the same, and at the end of each business day shall report to the controller, or if there is no controller, to the city clerk, all assessments paid during the day, and the controller or clerk shall thereupon mark said assessments "paid."

Sec. 264. Lien of assessment.—All assessments levied under the provisions of this act shall be a paramount lien on the real estate on which the same are imposed from the date the warrant issued for the collection thereof is received by the city treasurer for collection.

Sec. 265. If the assessment charged in any special assessment warrant made for any improvement whatsoever, under the provisions of this act, shall not be paid prior to the time when a penalty will be added as specified in the notice of the city controller or clerk, a penalty of five per cent shall be added to and collected with such assessment and each and every item thereof remaining unpaid at such date.

Sec. 266. Return by controller.—Within five days after the first Monday of October of each year the city controller, or if there is no controller, the city clerk, shall transmit to the county auditor of the county in which the property so assessed is situated, a list, duly certified by him, of all unpaid assessments included in any special assessment warrants upon which the notice hereinbefore provided to be given by the city controller shall have been published prior to the first of August of that year, with the penalty hereinbefore provided added thereto. Upon receipt of such list the said county auditor shall enter the several amounts of the said unpaid assessment on the tax list of said city for the ensuing year, and levy the same upon the several lots and parcels, as to which the same are respectively chargeable, and the same shall thereupon be collected and payment thereof enforced as other taxes on real estate are collected and enforced.

Sec. 267. Whenever the amount of any special assessment on any lot or parcel of land so transmitted to the county auditor shall exceed the sum of twenty-five dollars (\$25.00), the city clerk shall, when transmitting to the county auditor the list of unpaid assessments included in any special assessment, accompany said list with a certified copy of the resolution of the city council determining the number of payments into which such assessment shall be divided, and the

county auditor shall then divide each such assessment in as many equal parts as the city council shall have fixed by said resolution, as nearly as the same can be divided, and shall, in proper books to be kept by him, extend the same in proper columns in such manner that said assessments shall extend over the number of successive years so fixed by said council; the first of such installments shall be entered by such auditor on the tax lists of said city for the next ensuing year and each of the said installments shall be entered on such tax list each succeeding year thereafter respectively; said auditor shall at the time of so extending each year's installment of said special assessment on the tax list, add to the amount of each installment after the first installment, interest for one year on the entire amount remaining unpaid, at the rate of six per cent per annum, which said interest in the whole amounts unpaid shall be paid each year at the same time and in the same manner as the installment for that year. (Amended 1917, c. 165, s. 4.)

Sec. 268. Paying deferred installments.—At any time after the first of such installments is payable to the county treasurer the whole of the remaining installments may be paid as follows: The county auditor shall, upon request of the county treasurer, deliver to such county treasurer a statement of the total amount of such assessments not theretofore delivered by him to the county treasurer for collection, and shall charge the county treasurer with the amount shown on such statement, and the county treasurer may thereupon receive payment of the assessment shown on such statement and issue receipts therefor.

Sec. 269. Assessments paid over to city treasurer.—Such assessments, when collected, shall be paid over by the county treasurer to the city treasurer of said city, together with all costs, penalties and interest collected thereon at the time of making payment of city taxes to the city treasurer. Said county treasurer shall submit with such payment a statement showing the accurate distribution of the amount so collected to the several funds on account of which the assessment was made. The statement shall apply to the accurate distribution of costs, penalties and interest, as well as to the amount collected, on the original assessment.

Sec. 270. Numerals used in advertisements.—In all proceedings and advertisements for the levy and collection of such assessments, letters and figures may be used to denote lots, parts of lots, lands and blocks, sections, townships, ranges and parts thereof, the year and the amounts.

#### DIVISION V General Provisions

Sec. 271. Informalities not to vitiate proceedings.—No error or omission which may be made in the order or in the proceedings of the city council, or of any officers of said city in referring, reporting upon, ordering or otherwise acting concerning any local improvement provided for in this act, or in making any assessment therefor, or in levying or collecting such assessment, shall vitiate or in any way affect any such assessment, unless it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved.

Sec. 272. Reassessment.—In all cases where any assessment or any part thereof as to any lot, lots or parcels of lands assessed under any of the provisions of this act, or of any law of any city prior to this act, for any cause whatever, whether jurisdictional or otherwise, shall be set aside or declared void by any court; or in case the city council shall have failed to make any assessment before the doing or ordering of any work, the expense of which could, under the provisions hereof, have been assessed on property, the city council shall, without unnecessary delay, cause a reassessment or new assessment to defray the expense of such improvement to be made, whether such improvement was made under this act or any law of any city prior to this act, and such reassessment or new assessment shall be made as nearly as may be as herein provided for making the assessment therefor in the first instance; and when the same shall have been made and confirmed by the city council it shall be enforced and collected in the same manner that other assessments are enforced and collected under this act. And in all cases where judgments shall hereafter be refused or denied by any court, for collection or enforcement of any special assessment, or where any court shall hereafter set aside or declare void any assessment upon any lot or parcel of land for

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any cause, the said lots or parcels of land may be reassessed or newly assessed from time to time until each separate lot, piece or parcel of land has paid its proportionate part of the costs and expenses of said improvement as near as may be.

Sec. 272½. New assessment warrants.—In all cases where the collection of any special assessment cannot be enforced by reason of irregularity or omission in any proceeding subsequent to the confirmation of such assessment, the clerk and mayor of said city are hereby authorized and empowered to issue a new warrant to the treasurer for the collection of any assessment which by reason of such irregularity or omission remains unpaid or not collected. The treasurer shall proceed under such new warrants to enforce and collect the assessments specified in the same manner, as near as may be, as is prescribed by the provisions of this act for the enforcement and collection of special assessments after the same shall have been confirmed as in this act provided. And as often as any failure shall occur, by reason of such irregularities or omissions, a new warrant may issue and new proceedings be had in like manner, until such special assessments shall be fully collected as to each and every tract or parcel of land charged therewith. And in case any such assessment shall be adjudged and deemed irregular and the collection thereof cannot be enforced after the same shall have been delivered to the county auditor for collection under the provisions of this act, the city council, at the time or prior to the making of such reassessments or the issuance of such new warrants, may, by resolution, direct such county auditor to cancel such special assessment on any record where the same appears, and in any case of the cancellation of any such special assessment, the auditor shall make the necessary credit of the amounts of special assessments so canceled on the proper books and to the proper officers.

Sec. 273. Reletting of unfinished contract.—In all cases where the work for any improvement contemplated by the provisions of this act shall be suspended before final completion, by failure of the contractor to perform the same, or for any other cause, the city council may relet the unfinished portion of such work in the same manner, as nearly as may be, as provided in this act for letting of contracts for public improvements, and in every case of such new contract the work shall be paid for in the same manner as contracts for other like improvements.

Sec. 274. New assessments.—If for any cause the proceedings of the city council or any officer may be found irregular or defective, whether jurisdictional or otherwise, the city council may order a new assessment from time to time as often as need be, until a sufficient sum is realized from the real estate abutting on the street in which such improvement has been or is to be made to pay the costs, damages and expenses incurred thereby, it being the true intent and meaning of this act to make the cost and expense of all local improvements provided for in this act in such city payable by such abutting real estate, except as in this act otherwise provided.

Sec. 275. Form of assessment roll.—Any assessment roll adopted by the city council in accordance with any of the provisions of this act may be substantially in the following form:

The city council of the city of..... do hereby assess and levy upon and against the several lots and parcels of land hereinafter described, the respective sums of money set opposite each lot or parcel. The assessment is levied to defray the expense of..... in the city of..... and said lots and parcels of land are assessed upon the basis.....

Name of Owner, if Known	Description of Land	Lot	Bl'k	Amount	
				Dolls.	Cts.

Done at a meeting of the city council, this..... day of..... A. D.....

.....  
President of the Council.

Attest:

City Clerk.

Sec. 276. Letting of contracts.—The city council may order any improvement and make and levy an assessment therefor and collect the same under and in accordance with the provisions of this act, prior to and without letting a contract for the doing of such work, and the contract for the doing of such work shall be let, or the city council shall direct the doing of such work under the direction of the city engineer

without contract within six (6) months after such assessment, in accordance with the provisions of this act.

Sec. 277. Abandonment of improvements.—The city council may, by a two-thirds (⅔) vote of its members, at any time prior to the execution of a contract therefor, or the beginning of the work under the direction of the city engineer without contract, abandon any improvement ordered by the city council under the provisions of this act, and shall thereupon annul and cancel the special assessment made hereunder to defray the expenses of such improvement, and if any portion of such assessment has been paid it shall be refunded to the person or persons paying the same.

Sec. 278. Moneys derived from assessments.—How held and applied.—In case any assessment for improvement is collected before the making of such improvement the money so collected shall be kept separate from the funds of the city, and not devoted to any other purpose than such improvement.

Sec. 279. Variance in amount of assessment not to invalidate.—No special assessment shall be questioned or held to be invalid because the amount of such special assessment shall happen to be either more or less than the amount of money actually required for the improvement for which such assessment shall be made. If the amount derived by such special assessment shall happen to be less than the amount required for such improvement, the balance shall be paid from the permanent improvement fund; and if there shall be any surplus from any such special assessment the same shall be carried to the credit of the same fund from which a deficiency would have been supplied, or be otherwise disposed of, as to the city council shall seem most just towards the persons upon whom such special assessment has been levied; provided, that when the total cost of any improvement for which special assessments have been made and levied shall be less than ninety (90) per centum of the total special assessments assessed, levied and collected for the same, said city council shall refund, out of the permanent improvement fund, to the person or persons who have paid the same their proportionate share of the excess of such total special assessments so collected over the total cost of such improvements.

Sec. 280. Property owners to construct and repair sidewalk.—It is hereby made the duty of all owners of land adjoining any street, lane or alley in the city to construct, reconstruct and maintain in good repair such sidewalks along the side of the street, lane or alley next to the lands of such owner respectively as may have been heretofore constructed, or as shall hereafter be constructed, or directed by the city council to be built, and the same shall be constructed of such material and width, and upon such plan and grade as the city council may by ordinance or otherwise prescribe.

Sec. 281. Sidewalk—How ordered.—Whenever the city council shall deem it necessary that any sidewalk in the city shall be constructed or reconstructed, it shall by resolution, direct such construction or reconstruction, specifying the width thereof and the material of which the same is to be constructed. Personal notice or the publication of such resolution once in the official paper of the city shall be sufficient notice to the owners of the land along which such sidewalk is to be built, to construct the same, and unless such owners shall each along his respective land construct and fully complete such sidewalk within two weeks after the publication of such resolution, as aforesaid, the city council shall forthwith proceed to ascertain the expense of constructing the same and assess and levy such expense upon and against each lot and parcel of land upon which such sidewalk shall front, in accordance with the provisions herein made. It shall be the duty of the city council, before ordering the construction of any new sidewalk, to cause the ground upon which it is to be built to be properly graded.

Sec. 282. Repair of sidewalks and assessments of costs.—If the owner of any lot or parcel of land shall suffer any sidewalk along the same to become broken, rotten or out of repair it shall be the duty of the proper officer to immediately repair the same in a good, substantial and thorough manner and report to the city council the costs of such repairs in each case, and a description of the lot or parcel of land abutting upon the sidewalk on which such repairs are made, and such report shall be carefully filed and preserved by the city clerk; and the city council shall once in each year at or as near as conveniently may be, the time of levying the yearly city taxes, assess and levy upon each of the lots and parcels of land fronting or



abutting upon sidewalks which have been so repaired by such officers, the cost of making such repairs. In each case such assessments for all such repairs within the year may be combined in one assessment roll, and certified to the county auditor and be collected as provided for in this act in case of assessments transmitted to the county auditor. In case any such sidewalk shall become so out of repair as to become dangerous and cannot be made safe without being rebuilt and there are no funds to defray the expense of such rebuilding it shall be the duty of the proper officer to remove the same entirely, and the expense of such removal shall be added to the cost of rebuilding when the same shall be reconstructed, and collected with the assessment of such reconstruction.

Sec. 283. Credit on former assessment paid.—In case any assessment levied to defray the expense of any improvement herein provided for shall be annulled after any portion of such assessment has been paid, if reassessment is made under the provisions hereof to defray the expense of such improvement, the city clerk shall not on the warrant drawn by him for the collection of such reassessment or new assessment against any piece of land upon which such former assessment for the same improvement has been paid, the words "Paid on former assessment \$....." which shall cancel such assessment on that parcel to the amount as paid.

Sec. 284. Refunding of assessment on abandonment of improvement.—When any improvement for which a special assessment has been levied is abandoned, if any portion of such assessment has been paid, upon the annulling of such special assessment it shall be the duty of the city controller to notify the persons having paid such assessment that the same has been annulled and that the amount paid by them will be refunded; and the city treasurer shall, upon said parties identifying themselves as being the persons entitled to have such assessment refunded, pay to such persons the amount of such assessments so paid by them. Said city controller shall also notify the county treasurer of the annullment of such assessment; and upon receipt of such notice the county treasurer shall forthwith credit the amount of such special assessment so annulled to the lots and parcels of land against which said assessment was made, provided the same has not already been paid.

Sec. 285. Certificate of city comptroller on deeds.—No register of deeds shall record any deeds conveying any lands within the limits of any city unless there is endorsed on such deed a certificate of the city controller of such city that all assessments in his office for collection for local improvements on said lands have been paid, and any violation of this provision by any register of deeds shall be a misdemeanor, and be punished by a fine of not exceeding double the amount of the unpaid assessment. It shall be the duty of the city controller, upon the application of any person interested in such deeds where the assessment has been paid, and not otherwise, to make such certificate free of charge.

Sec. 286. Omission of assessment on corner lots.—The city council shall in case of any corner lot, when one frontage of such lot has been fully assessed for laying any water main or sewer, in case a like improvement is to be made along the street on the other frontage of such lot, omit the assessment on such lot to an extent not exceeding a frontage of sixty (60) feet of any such lot.

Sec. 287. Prior assessments not affected by this act.—Nothing in this act contained shall affect any assessment made by any city prior to this act becoming operative in such city, and all such special assessments and the deferred installment thereof, if any, shall be collected under and in accordance with the provisions of law in force at the time of the levying of such assessment.

Sec. 288. Completion pending assessment proceedings.—Any proceedings instituted for the condemnation of land or other property, or for the assessing of benefits by commissioners for any improvement begun in any city prior to the time of this act becoming operative in such city shall be carried on and fully completed under and in accordance with the provisions of the law then in force in such city at the time such proceedings were instituted, except that upon the adoption of any assessment roll for special assessments in any such proceedings after this act shall have gone into force in such city, proceedings for the collection of the assessments therein levied shall be as herein provided for the collection of such assessments.

## CHAPTER XVI

## Waterworks

Sec. 289. Superintendent.—The city council of any city maintaining waterworks shall, at the time of its organization as herein provided, appoint a superintendent of waterworks. The superintendent of waterworks shall have charge of the operation and repair of all pumps, pumping station and appurtenances, intakes, water mains, pipes and hydrants, and of the putting in and maintaining of all constructions connected with the waterworks of such city, subject to such rules and regulations as the city council may ordain. He shall appoint, by and with the consent of the city council, all engineers and assistants required in the operation of the waterworks of the city, and shall hire and discharge from time to time such subordinate employes as may be provided for by the city council; provided, however, that the city engineer shall perform all the civil, mechanical and hydraulic engineering work of said department. The superintendent shall inspect all water connections, hydrants and faucets through which water is consumed, and examine all water meters and gauges; and shall shut off water from any premises whenever the rent or other dues therefor are delinquent.

Sec. 290. Accounts.—He shall also keep all records and accounts pertaining to the waterworks, and shall receive and receipt for all water rents and moneys accruing to the department, and shall appoint by and with the consent of the city council such collectors and clerical employes of the department as may be necessary, and shall deposit all funds as collected, weekly, with the city treasurer, and report the same to the city council, monthly, provided, that the city council of any city may in its discretion, confer the offices of the city engineer, and superintendent of waterworks upon one and the same person.

Sec. 291. The owner of private property, which property has upon its pipes connected with the city waterworks to convey water thereto, shall, as well as the lessee of the premises, be liable to the city for the rents or rates of all water from said waterworks used upon said premises, which may be recovered in an action against such owner, lessee or occupant, or against any or all of them. The city council may provide for the punishment of all injuries to and interference with said waterworks or anything connected with them, and it shall be a misdemeanor, punishable as such, for any person without authority from the city to wilfully break, remove or in any way injure or damage any main, branch, waterpipes, intakepipes, aqueduct, dam, bulkhead, gate, gatehouse, conduit or vent, box or box cover, main pipe or cover of hydrant, or any part of the machinery or property of the waterworks of said city; or to open without authority from the city any water gate or to perforate or bore or cause to be perforated or bored, any main or pipe, or to make connection with any such main or pipe without proper permit therefor. And the city council may provide by ordinance for the conviction of and punishment for any such offense.

Sec. 292. City council to prescribe rules.—The city council shall, by ordinance, establish such rules and regulations as it may deem necessary for the management of the waterworks of the city and the supplying of water for the use of the inhabitants thereof. And may make all necessary rules and regulations concerning the tapping of any mains or branches, or making connections therewith by any private parties or licensed plumbers, and such council may also provide for the shutting off of water from any premises where rates are payable and remain unpaid.

Sec. 293. In any city in this state having and operating its own light works the provisions of this chapter shall apply thereto, in so far as the same can be made applicable, and said light works can, if the city council shall so determine, be managed and operated under the same officers and as a part of the same department as the waterworks.

## CHAPTER XVII

## Corrections, Hospitals and Charities

Sec. 294. Superintendent of workhouse.—The mayor shall, in any city maintaining a workhouse, appoint a superintendent of the workhouse, who shall have the management and control of the workhouse, subject to such rules and regulations for the management thereof as the city council may ordain. He shall have the custody of all persons confined therein, and shall receive and confine all persons sentenced thereto, and shall appoint all officers, subordinates and employes required in the management of such workhouse, and may discharge the same.

Sec. 295. Place of detention for women or children.—The city council may provide for the management

and control of any place of detention for women or children maintained by the city, and prescribe all necessary rules and regulations therefor, and the mayor shall appoint such officers to manage the same as may seem necessary.

Sec. 296. Superintendent of poor.—The city council may appoint at the time of its organization a superintendent of the poor. The superintendent of the poor shall, subject to the approval of the city council, appoint such subordinate employes as the city council may deem necessary. The superintendent of the poor shall investigate all applications for assistance and relief of every nature, and attend to the distribution of all fuel, food and other supplies to the poor, under such rules and regulations as the city council may ordain. He shall have the management and control of all poorhouses and charitable institutions established or maintained by the city, under the direction of the city council. And he may, by direction of the city council, establish and maintain an employment bureau for the use and benefit of the inhabitants of said city seeking employment; provided, that this section shall not apply to cities where hospitals, almshouses and other public charities are supported by the city and county in common, and where the care and control of such institutions and charities are under a board of control.

Sec. 297. City physician.—The city council shall, at the time of its organization, appoint a city physician, who shall be a regularly licensed physician and surgeon of good standing in his profession. The city physician shall appoint such assistant physicians as the city council may determine, and he shall appoint and may discharge such matrons, nurses and other subordinate employes as may be provided for by the city council. He shall have the management and control, subject to such rules and regulations as the city council may ordain, of all hospitals maintained by the city except the quarantine or pest hospital, and shall act as physician and surgeon of all departments of the city, and attend upon and care for all sick and afflicted among the poor of the city, as directed by the superintendent of the poor; provided, that this section shall not apply to cities where the office of city and county physicians are united in one person.

#### CHAPTER XVIII Department of Health

Sec. 298. How constituted.—The department of health shall consist of a commissioner of health, who shall be a physician regularly licensed to practice as such, and shall be the executive officer of the department, and of such number of assistants, inspectors, quarantine officers and subordinate employes as may be determined by the city council; and of a board of health, which shall be composed of the commissioner of health and three (3) members of the city council to be appointed by the city council.

Sec. 299. Health commissioner.—Appointment and salary.—The commissioner of health shall be appointed by the mayor and he shall hold his office during the pleasure of the mayor. The salaries of the commissioner of health and his assistants shall be fixed by the city council.

Sec. 300. Bonds.—The health commissioner before entering upon the duties of his office, shall execute a bond to the city in such sum, and with such sureties and upon such conditions as the city council may determine; such bond to be approved by the council.

Sec. 301. Duties of health commissioner.—The commissioner of health shall enforce the laws of the state and ordinance and regulations of the city relative to the public health, and shall abate all nuisances injurious thereto, and prevent or exterminate contagious or infectious diseases among animals; control all quarantines; hospitals and morgues maintained by or located in the city; and all cemeteries, crematories, vaults and burial places maintained or regulated by the city, and inspect all such food products exposed for sale in the city as may be required by law or ordinance, and shall grant all burial permits, and regulate the disposition of all dead bodies.

Sec. 302. Subordinates.—The health commissioner shall appoint all assistants, quarantine officers and subordinate employes of the health department; and the health commissioner and all members, inspectors and officers shall have power of police in and about the performance of their official duties relative to the public health, and the health commissioner shall have power to remove any and all assistants, inspectors or subordinate employes, appointed by him, at any time.

Sec. 303. Powers of the board of health.—The board of health shall have such powers and perform

such functions and duties as are prescribed by law for local boards of health, and such further duties as may be prescribed by law or ordinance.

Sec. 304. Reports.—Reports of all births, deaths and of all cases of contagious and infectious diseases in the city shall be reported by the physician or other person in attendance thereon to the commissioner of health, and he shall keep a record of such reports, and no human body shall be buried or deposited in any cemetery or vault in said city, or be removed therefrom or from said city, or otherwise disposed of, without the permit of the commissioner of health.

Sec. 305. The commissioner of health shall give to the mayor, or other city authorities, all such professional advice and information as they may require, with a view to the preservation of the public health, and whenever he shall hear of the existence of any malignant, contagious or pestilential disease, he shall investigate the same and adopt measures to arrest its progress.

Sec. 306. It shall be the duty of the commissioner of health to enforce all laws of the state and ordinances of the city relating to the sanitary regulations of the city, and cause all nuisances to be abated with all reasonable promptness. And for the purpose of carrying out the foregoing requirements, he shall be permitted at all times, from the rising to the setting of the sun, to enter into any house, store, stable or other building, and to cause the floors to be raised, if he shall deem it necessary, in order to make a thorough examination of cellars, vaults, sinks or drains; and to cause all privies to be cleaned and kept in good condition, and to cause all dead animals or other nauseous or unwholesome things or substances to be buried or removed or disposed of, as the commissioner of health may direct.

Sec. 307. In order to the carrying out of the provisions of the foregoing section, it shall be the duty of the commissioner of health to serve a notice, in writing upon the owner, occupant or agent of any lot, building or premises in or upon which any nuisance may be found, or who may be the owner or cause of any such nuisance, requiring them to abate the same in such manner as he may prescribe within reasonable time; provided, that it shall not be necessary in any case for the commissioner to specify in his notice the manner in which any nuisance shall be abated, unless he shall deem it advisable to do so; and such notice may be given or served by any officer who may be directed or deputed to give or make the same; and if such owner, occupant or agent shall neglect or refuse to comply with the requirements of such order within the time specified, they shall be subject to a penalty hereinafter provided, and it shall be the duty of the said officer to proceed at once, upon the expiration of the time specified in said notice, to cause such nuisance to be abated; and provided further, that whenever the owner, occupant or agent of the premises in or upon which any nuisance may be found is unknown or cannot be found, the said commissioner shall proceed to abate the same without notice, and in either case the expense of such abatement shall be collected from the person or persons who may have created, continued and suffered such nuisance to exist.

Sec. 308. Any expense incurred by the health department in enforcing the provisions of the above sections shall be recovered in an action of debt, to be brought in the name of the city against the party offending.

Sec. 309. It shall be the further duty of the commissioner of health to visit and examine or cause to have visited and examined all sick persons who shall be reported to him as laboring or supposed to be laboring under any yellow or ship fever, smallpox, cholera, or any infectious or pestilential disease, and cause all such infected persons to be removed to the cholera, smallpox or other hospitals, or to such other safe and proper place as he may think proper, not exceeding three miles from said city, and cause them to be provided with suitable nurses and medical attendance, at their own expense, if they are able to pay for the same, but if not, then at the expense of the city.

Sec. 310. It shall be the further duty of the commissioner of health to cause a notice, printed or written in large letters, to be placed upon or near any house in which any person may be affected or sick with smallpox, scarlet fever, or any infectious, pestilential or epidemic disease, upon which shall be written or printed the name of such disease, and if any person or persons shall deface, alter, mutilate, destroy or tear down such notice, without the permission of the commissioner of health, or of the health officer, such person or persons shall be subject to the



penalty hereinafter provided, the occupant of any house upon which such notice shall be placed or posted as aforesaid shall be held responsible for the removal of the same, and if the same shall be removed without the permission of the health commissioner, such occupant shall be subject to the penalty hereinafter provided.

Sec. 311. The commissioner of health shall have charge of the smallpox hospital, and shall have power to employ such assistants and nurses as he may deem necessary; and it shall be his duty to see that said hospital is supplied with suitable furniture, nourishment, fuel and medicines, and that persons dying therein or in any other places under the charge of the city are decently and promptly buried at the expense of the city, provided such deceased persons have not the means to defray their own expenses of sickness or burial.

Sec. 312. In case of pestilence or epidemic disease, or of danger from anticipated or impending pestilence or epidemic disease, or in case the sanitary condition of the city should be of such character as to warrant it, it shall be the duty of the said commissioner of health to take such measures and to do and order, and cause to be done, for the preservation of the public health (though not herein, or elsewhere, or otherwise authorized), as he may in good faith declare the public safety and health to demand.

Sec. 313. The commissioner of health may take such measures as he may from time to time deem necessary to prevent the spread of the smallpox, by issuing an order requiring all persons in the city or any part thereof requiring vaccination to be vaccinated within such time as he shall prescribe; and all persons refusing or neglecting to obey such order shall be liable to the penalty hereinafter provided; provided, that it shall be the duty of the commissioner to provide for the vaccination of such persons, as are unable to pay for the same, at the expense of the city.

Sec. 314. He shall have the power to cause any house or premises to be cleansed, disinfected or closed to visitors and prevent persons from resorting thereto while any person is laboring under any pestilential or infectious disease; he may by an order in writing direct any nuisance to be abated, or unwholesome matter or substance, dirt or filth to be removed from any house or premises, and may prescribe the time and mode of doing so, and take any other measures he may deem necessary and proper to prevent the spread of any infectious, pestilential or epidemic diseases; and any person who shall neglect or refuse to obey the orders, directions and instructions of said commissioner of health shall be subject to a penalty hereinafter provided.

Sec. 315. Said commissioner, whenever and at such times as by him it shall be deemed necessary, may, by proclamation (the approval of the city council being first had and obtained), require all boats, vessels, railroad cars or other public conveyances bound for the city, before the same shall land or stop at any wharf, depot or landing or stopping place therein, to touch or stop at any or either of the sites, places or boundaries so selected and established for quarantine purposes, and leave all such emigrants, travelers or persons, with their stores and baggage as in the opinion of the officers stationed at such quarantine sites, places or boundaries shall be deemed proper on account of the existence or general report of cholera, ship fever or any contagious disease, or disease apprehended to endanger the health of the city.

Sec. 316. Whenever it shall be deemed necessary to issue such proclamation, it shall be the duty of the said commissioner to send the same, together with the substance of the regulations for quarantine and the period for which the same shall be in force, unless sooner revoked, to Chicago, Milwaukee, Dubuque, Sioux City and Fargo, the cities of the state, and such other cities and places as by him may be deemed proper.

Sec. 317. He shall also cause to be stationed at such quarantine sites, places and boundaries as he may deem advisable, one (1) or more physicians or health officers, whose duty it shall be to go on board and examine all boats, vessels, cars or other public conveyances so as aforesaid required to touch or stop at said quarantine, respectively, and then and there determine what emigrants, passengers or persons (if any) shall stop at such quarantine; and it shall be the duty of all persons conducting or in charge of any such vessel, boat, car or public conveyance to aid and assist any such physician or health officer in the exercise of his duties.

Sec. 318. Said commissioner or health officer shall attend to all sick persons who may be landed or placed in quarantine, and provide medicine and necessaries

for their use, and shall have general supervision of such quarantines and compel persons therein to purify their bodies, clothes and baggage, and do all such acts and things as shall be proper in the premises, keeping correct accounts of all expenditures and wages which shall be allowed and paid by order of the said commissioner.

Sec. 319. Whenever the physician or officer in charge of any quarantine station or place as aforesaid shall, upon examination, be satisfied that there is no longer occasion for the detention of any boat, vessel, car or conveyance at such quarantine or place, and such boat, vessel, car or conveyance shall have been thoroughly cleansed, and such persons as aforesaid landed and placed in the care of such physician or officer, such physician or officer shall give such vessel, boat, car or conveyance a permit signed by him to enter the city, which shall be ample authority for the entry of said boat, vessel, car or conveyance, and the said officers, respectively, shall discharge all persons in quarantine by their certificate for that purpose whenever they are satisfied that such persons are free of disease and baggage and effects properly purified; provided, however, that the commissioner, in his discretion, by proclamation for that purpose, may, during the prevalence of cholera, ship fever or other contagious or fatal diseases, forbid the emission of emigrants or others peculiarly liable thereto, in any or all of said quarantines or stations, until, in his opinion, the health of the city will justify the same.

Sec. 320. It shall be the duty of the said commissioner, whenever by him it shall be deemed necessary, to keep at the quarantine station or stations a sufficient police force, whose duty it shall be to enforce all regulations by this chapter required, or by said commissioner to be established, and to arrest all persons violating said regulations or committing any breaches of the peace, and bring such person before any court having jurisdiction, for trial, and to arrest and hold for trial all persons disobeying or interfering with or resisting any physician, health officer or other persons in authority at such quarantine site, place or station.

Sec. 321. In case any boat, vessel, car or public conveyance shall leave any quarantine station, place or boundary without a permit, as aforesaid, or shall fail to stop at the same, when so, as aforesaid, required by the issuing of such proclamation, or whenever the person in charge thereof, or any person under his command, shall fail or refuse to obey any regulation or command of the said commissioner of health, physician or person in charge of any quarantine station or place, or of any provision or requirement of this chapter, the said commissioner shall have the power, and it is hereby made his duty, if in his opinion the health of the city requires it, to send sufficient police force to such boat, vessel, car or public conveyance, and cause the same, with the crew and passengers on board, to be landed or stopped or conveyed to the quarantine station or place, and there to remain until properly discharged by the permit aforesaid; and the owner, master or person in charge of any such boat, vessel, car or public conveyance shall be liable to the city for all expenses and costs incurred by reason thereof. If any emigrant, traveler or person so placed in quarantine, as aforesaid, shall leave the same without permission, as aforesaid, he may be arrested and taken back to said quarantine, and there retained until such permission shall be given.

Sec. 322. The said commissioner shall make such rules and regulations for the government of the quarantine or health of the city as, from time to time, he shall deem necessary; and the physicians or health officers in charge of any quarantine station or place shall have power to make and enforce such regulations as may be necessary for the proper conducting and management thereof; and it shall be the duty of all persons in quarantine, and all agents, officers, policemen or others employed by the city in and about said quarantine stations or places to carry out and obey the same.

Sec. 323. The said commissioner may appoint one or more competent physicians as quarantine physicians, who shall be present at such quarantine stations as the said commissioner of health shall designate, and attend to all the duties imposed by this chapter or by the regulations of said commissioner; and who shall receive, each, for actual services rendered, and for such time as such services shall be actually required, not more than five (5) dollars per day, to be allowed by said commissioner; also the said commissioner may employ such agents, servants, nurses or temporary medical assistants for the purpose of carrying into effect the objects and intent

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of this chapter or of any regulations as in his judgment shall, from time to time, be necessary, or authorize the employment thereof by the physicians or health officers in charge of any quarantine or station.

Sec. 324. All the salaries, wages and expenses in this chapter contemplated are to be audited and allowed by the said commissioner; provided, that when practicable the persons taken in such quarantine or stations and receiving the aid and care afforded thereby, shall each pay a sum of money sufficient to meet all expenses, labor and care incurred in his behalf, which said money shall be faithfully kept, reported and accounted for by the physician, health officer or other person in charge of said quarantine or station, to the said commissioner.

Sec. 325. No person, master, captain or conductor in charge of any boat, vessel, railroad car, public or private conveyance shall knowingly bring into the city any person or persons diseased of cholera, smallpox, ship fever, contagious or infectious diseases whatsoever; and no vessel, boat, railroad car, public or private conveyance, at any time covered by the said proclamation, shall pass by any quarantine station or place without stopping, nor shall leave the same without the permit aforesaid; and no person stopping in said quarantine, or so as aforesaid received therein, shall leave the same without first obtaining permission as aforesaid; nor shall any person aid or abet any master, conductor or person in charge of any boat, vessel, railroad car or public conveyance in violating, neglecting or evading any provisions or requirements of this chapter; nor shall any person interfere with, resist, neglect or refuse to obey the orders of any physician, health officer, policeman or other person in authority at any quarantine station or place of quarantine so as aforesaid established; nor to do any act or thing in violation of or in disobedience to any of the provisions, clauses or sections of this chapter; nor shall commit any breach of the peace, nor do any act calculated in any way to defeat or interfere with the provisions or requirements of this chapter or of any regulation of the said commissioner, physician or officer in charge of any quarantine.

Sec. 326. It shall be the duty of the commissioner of health to make a circuit of observation once in every month to every part of the city and its environs, which, from the location, or from any collateral circumstances, may be deemed the cause of disease, and in all cases where he may discover the existence of any agent, the presence of which will prove dangerous to the health of the city, and there is no ordinance competent to the correction of the evil, he shall immediately report the same to the city council, accompanied with his opinion of the necessity of extraordinary or particular action.

Sec. 327. The commissioner of health, by and with the approval of the city council, may select, purchase, lease and establish such sites, places and boundaries for quarantine stations and purposes, and, with the approval of said council, may erect, from time to time, such buildings and hospitals upon such sites and places, and so keep the same in repair as in his judgment may be deemed necessary.

Sec. 328. It shall be the duty of the commissioner of health to provide the necessary books for keeping a record of all transactions of said department, including the proper registration of births and deaths and such other statistical information necessary for efficient working of said department; and shall also keep on hand all necessary blanks, to be used by physicians and midwives, and furnish them with the same on application.

Sec. 329. Said commissioner of health shall always have on hand, as far as practicable, a sufficient quantity of vaccine virus, and he shall vaccinate and revaccinate, without charge, all persons who may apply to him for that purpose; and shall give certificates of vaccination to children who have been vaccinated, and require such certificates to admission to the public schools.

Sec. 330. Any master of a vessel, conductor, captain or any person whatsoever who shall violate any clause, provision, requirement, duty or regulation of this act, or any rule or regulation of the said commissioner of health, or physician, or health officer in the discharge of his duty, or in charge of any quarantine, or any person whatsoever who shall fail or neglect to comply with any such clause, provision, requirement, duty or orders, or who shall interfere with or in any manner resist any officer or agent of the department of health of the city in the discharge of his duty as herein contemplated, or who shall commit any such breach of peace, or be guilty of any act or thing calculated to defeat or interfere with

the carrying into effect any part of this act, or any regulation or order of the said commissioner of health, shall, upon conviction, be subject to a fine not to exceed one hundred (100) dollars nor less than ten (10) dollars for each offense, together with the costs of prosecution.

Sec. 331. Said commissioner of health may order or cause any excavation, erection, vehicle, vessel, water craft, room, building place, sewer pipe, passage, premises, ground matter or thing in the city, or adjacent water, regarded by said commissioner as in a condition dangerous or detrimental to life or health, to be purified, cleansed, disinfected, altered or improved, and may also order any substance, matter or thing being or left in any street, alley, water excavation, building erection, place or grounds (whether such place where the same may be, be public or private), and which said commissioner may regard dangerous or detrimental to life or health, to be speedily removed to some other place; and may designate or provide a place to which the same shall be removed when no such adequate or proper place, in the judgment of said commissioner, is already provided. The said commissioner may require the police force of the city to execute any of the orders referred to in this act, and it shall be the duty of such police force to execute the order of the said commissioners of health.

Sec. 332. It shall be the duty of the said commissioner of health to aid in the enforcement of, and, as far as practicable, to enforce all the laws of this state applicable to the preservation of human life, or to the care, promotion or protection of health; and said commissioner may exercise the authority given by the laws aforesaid to enable him to discharge the duties hereby imposed; and this section is intended to include all laws relative to cleanliness and to the use or sale of poisonous, unwholesome, deleterious or adulterated drugs, medicines or food. And said commissioner is authorized to require reports and information at such times and of such facts and generally of such nature and extent relating to the safety of life and the promotion of health as its by-laws and rules may provide, from all public dispensaries, hospitals, asylums, infirmaries, prisons and schools, and from the managers and principals and officers thereof; and from all other public institutions, their officers and managers, and from the proprietors, managers, lessees and occupants of all theaters and other places of public resort or amusement in said district; and it is hereby made the duty of the officers, institutions and persons so called on, or referred, to promptly give such reports, verbally or in writing, as may be required by said commissioner.

Sec. 333. Every physician, midwife and other person who may professionally assist or advise at any birth shall make and keep a registry of every such birth, and therein enter the time and place, ward and street of such birth, and the sex and color of the child born and the name and residence of each of the parents, so far as the foregoing facts can be ascertained; and every physician or professional adviser, who has attended any person at a late illness, or has been present by request at the death of any person, shall make and preserve a registry of such death, stating the cause thereof and specifying the date, hour, place and street of such death. Proper blanks of the above shall be furnished by the department of health.

Sec. 334. That it shall be the duty of every person mentioned in the last section, or required to make and keep any such registry, to present to the said commissioner of health a copy of such registry, signed by such persons, or a written statement by him or her signed, or all the facts in said register required to be entered within five days after the birth, and within thirty-six hours after the death, of any person to whom such registry may or should relate.

Sec. 335. That it shall be the duty of all coroners within three days after the taking of any inquest to file a written statement with the commissioner of health, signed by the coroner making the same, stating, so far as he is able, where and upon the body of whom such inquest was held, and the cause and date and place of the death of such person.

Sec. 336. That the department of health is authorized, and it shall be its duty, to make such rules and ordinances as to them may seem proper and necessary for the purpose of compelling all physicians practicing within the limits of the city to make report of all cases of contagious and infectious diseases upon which they may be in attendance, and in all keepers of boarding or lodging houses, all inn keepers or hotel keepers, to make report of all cases of contagious and infectious diseases occurring within their respec-

tive houses, and generally to make such regulations and rules as to them may be deemed necessary for the purpose of carrying into effect the objects of this section, and of obliging reports of contagious and infectious diseases to be made to said commissioner of health by persons becoming cognizant of the same.

Sec. 337. And the said department of health is hereby authorized, and it shall be its duty, to make rules and ordinances regulating the interment and removal of dead bodies and their entry into, removal from the passage through the said city; and no body shall be buried within the limits of the city, removed therefrom or received therein, or passed through the city without a written permit first obtained from the said department of health, and to be issued in the manner and under the conditions by them prescribed; and the said department of health shall make all rules and regulations necessary for carrying out the objects of this act.

Sec. 338. That the jurisdiction of the city shall extend to and prevail over, all public cemeteries under the control of organizations established in said city; and it shall be the duty of the department of health to make such rules and regulations as it may deem necessary regarding the interment of dead bodies within the same and prescribe the duties of all sextons and keepers of such cemeteries relative to the reception of and burial of dead bodies.

Sec. 339. Copies of the proceedings of said department, of its rules, regulations, by-laws and books and papers, constituting part of its archives, when authenticated by the commissioner of health, shall be presumptive evidence, and the authentication to be taken as presumptively correct in any court of justice, or judicial proceedings when they may be relevant to the point or matter in controversy of the facts, statements and recitals therein contained, and the action, proceedings, authority and orders of the said department of health shall at all times be regarded as in their nature judicial and be treated as prima facie just and legal.

#### CHAPTER XIX Miscellaneous

Sec. 340. Bonds of contractors.—Before any contract whatsoever for the doing of any work or labor or furnishing any skill or material to or for any city shall be valid and binding against such city, the contractors shall enter into a bond with such city for the use of such city and also for the use of all persons who may perform any work or labor or furnish any skill or material in the execution of such contract, conditioned to pay, as they become due, all just claims for all work and labor performed and all skill and material furnished in the execution of such contract, and also to save such city harmless from any cost, charge and expense that may accrue on account of the doing of the work specified in such contract, and also to complete such contract, according to the terms thereof and the contract price, and to comply with all the requirements of this law; which bond shall be in such an amount as the city council shall determine, not less than the contract price agreed to be paid for the performance of such contract, and shall be duly signed and acknowledged by such contractor and two (2) or more sufficient sureties, and after being approved shall be filed, with the contract, in the office of the city controller, which said bonds shall be prepared by the city attorney and approved by the mayor.

Sec. 341. Sureties.—The sureties of such bond shall each take and subscribe an oath that he is a resident of the State of Minnesota, and that he is seized in fee of real estate situated in said state, and not exempt by law from sale or execution, of the value and worth over and above all incumbrances thereof on the same, for which he is to justify in said bond. More than two (2) sureties may be accepted on such bond, and they may justify in separate and different sums less than the sum specified in such bond; provided, that the aggregate of their justification shall be equal to two (2) sureties, each justifying in a sum equal to the amount of said bond.

Sec. 342. Right of action on bonds.—Whoever shall perform, or cause to be performed, any work or labor, or furnish, or cause to be furnished, any skill or material, including any work, labor, skill or material necessary in the repair of any tool or machine and including the use of any tool or machine or material furnished particularly for such contract and used therefor, in the execution of such contract, at the request of the contractor, his agents, heirs, administrators, executors or assigns, or at the request of any sub-contractor, his agents, heirs, administrators,

executors or assigns, or at the request of such city, in case such city shall have determined such contract and shall have completed the same at the cost of the contractors, shall be considered a party in interest in said bond, and may bring an action thereon for the reasonable value or agreed price, as the case may be, of the work or labor performed or skill or material or tool or machine furnished in the performance of such contract.

Sec. 343. Trust companies may be sureties.—Any company organized under chapter three (3) of the general laws of Minnesota for eighteen hundred and eighty-five, entitled "An act to amend an act entitled an act to authorize the organization and incorporation of annuity, safe deposit and trust companies, approved March fifth, eighteen hundred and eighty-three," approved March fifth, eighteen hundred and eighty-five, and any company referred to in and complying with the provisions of chapter forty-two of the general laws of eighteen hundred and ninety-three, entitled "An act relative to recognizances, stipulations, bonds, obligations and undertakings, and to allow corporations to be accepted as surety thereon," approved April eighteenth, eighteen hundred and ninety-three, may, if satisfactory to the city, become sole surety under any bond required by this act, and in such case so much of the provisions of this act as requires two (2) or more good and sufficient sureties shall be considered to be fully satisfied by the execution of any such bond by such corporation, and none of the provisions hereof relating to sureties or approvals shall be required.

Sec. 344. No action shall be maintained on any such bond unless the same shall be commenced within one year after the cause of action accrues.

Sec. 345. Monthly estimates.—Estimates shall be allowed monthly on all city contracts and the amount thereof shall be due and payable on the tenth day of the month succeeding the month in which the labor was performed or materials were furnished, on account of which the estimate is allowed.

Sec. 346. Board of tax levy.—In any county in this state having a board of tax levy, operating under any special law or amendment thereto, whose election, designation or appointment, and whose powers and duties are prescribed by or in any such law, and who are authorized, empowered and directed thereby to fix the maximum rate or rates of taxation to be levied for certain city purposes, said board of tax levy shall continue to exist and to perform all the duties, and to exercise all the powers now prescribed by law for such board of tax levy, so far as the same affect any city accepting this act; and nothing in this act shall be held or construed to repeal any such law or to authorize or permit any officer or officers, or any person or persons, to exercise or perform any of such powers or duties.

Sec. 347. Limitations of actions.—No action shall be maintained against any city on account of any injuries received in any manner whatsoever, nor on account of any injuries to persons or property by means of any defect in the condition of any bridge, street, sidewalk or thoroughfare, unless such action shall be commenced within one (1) year from the receiving of the personal injuries or the happening of the injury, nor unless notice shall first have been given in writing to the mayor of the city or the city clerk thereof, within thirty (30) days of the receiving of such personal injury, or of the occurrence of such injury to persons or property, stating the place where and the time when the same was received, and that the person injured will claim damages of the city for such injury; but the notice shall not be required when the person injured shall, in consequence thereof, be bereft of reason. Nor shall any such action be maintained for any defect in any street until the same shall have been opened and graded, nor for any insufficiency of the ground where sidewalks are usually constructed when no sidewalk is built. All actions arising ex delicto, including the action provided for by section two of chapter seventy-seven of the general statutes of eighteen hundred and seventy-eight, and including those hereinbefore stated in this section, shall be commenced within one (1) year after the cause of action accrues and not thereafter, and all actions arising ex contractu shall be commenced within two (2) years after the cause of action accrues.

Sec. 348. Statute of limitations.—No right, title, estate or easement of any city in or to any property shall be prejudiced or lost by any adverse possession or occupancy, and no statute of limitation shall run or operate as against any city in favor of any person or persons occupying any of the public or platted streets or public or platted grounds, parks, parkways or boulevards of the city, whether such street or

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grounds or any such property be improved or not.

Sec. 349. Unauthorized obstructions in streets, etc.—If any person or company shall place or leave any obstruction, or make any excavation or opening, or cause any defect in any street, road, alley, public grounds or sidewalk in said city, or leave any obstructions or excavations or openings unguarded or without proper protection, such person or company shall be liable to any person who may be personally injured, or whose property may be injured or destroyed without his fault by means of such obstruction, excavation or opening; and in case any damage shall be recovered in any action against said city for injuries caused by such obstruction, excavation or opening, the city shall have the right to recover the amount of such damages in turn from the person or company placing such obstruction or making such excavation or opening; provided, that, upon the commencement of any such action against the city, notice thereof shall be immediately given in writing to such person or company so liable, with the statement that the city will look to such person or company to pay the amount of any judgment against the city which may be recovered in such action, and an opportunity given such person or company to defend such action; and such person or company may, upon his or its own application or the application of the city, be made a party defendant to such action; in which case, if judgment be recovered against the defendants, execution thereon shall be first issued against such person or company only, and the city shall not be required to pay such judgment until such execution shall be returned unsatisfied.

Sec. 350. In regard to issue of warrants.—In all prosecutions for any violation of this act or of any ordinance of any city, the first process shall be a warrant; provided, that no warrant shall be necessary in case of the arrest of any person or persons while in the act of violating any law of the State of Minnesota or ordinance of any city; but the person or persons so arrested may be proceeded against, tried, convicted and punished or discharged in the same manner as if the arrest had been made by warrant. All warrants, processes, or writs by any court for violation of any ordinance of any city shall run in the name of the city and shall be directed to the superintendent of police or any police officer of said city.

Sec. 351. Affidavit of city printer.—The proprietor of the official paper shall immediately after the publication of any notice, ordinance or resolution or proceedings of the city council or any other matter which is required to be published by any of the provisions of this act, or any ordinance passed in pursuance thereof, file with the city clerk of the city a copy of such publication, with his affidavit, or the affidavit of his foreman, of the time the same has been published, and such affidavit shall be prima facie evidence of the publication of any such notice, ordinance, resolution or council proceeding, or any such other matter required to be published as herein provided; and no account or claim for any publication whatever shall be allowed and adjusted by the city controller until such affidavit shall have been filed with the city clerk and the city clerk shall have certified that fact to the city controller.

Sec. 352. Judgments—How paid.—Whenever any final judgment shall be recovered in any competent court against the city no execution shall issue thereon against such city, but such city shall cause the same to be paid.

Sec. 353. Cities not required to give bonds.—The city shall not be required in taking any appeal, or in serving out any writ or process, or in or about the prosecution of any act or proceeding, to enter into any bond, or to give any security whatever, and all proceedings in such action shall be stayed the same as though such bond had been given.

Sec. 354. Who may administer oaths.—The mayor, acting mayor, president of the city council or presiding officer thereof, the president, chairman or head of any board authorized by this act, shall, by virtue of their office, in all matters and proceedings before them relating to or appertaining to the city, be and are hereby authorized to administer oaths and receive testimony under oath or affirmation.

Sec. 355. Authority to repair roads and bridges.—The city council of any city, by a two-thirds vote of all the members elect, shall have the power to build, repair and maintain roads and bridges beyond the city limits into other towns and counties, whenever they deem it proper, and fix the amount and manner in which the appropriations for such purposes shall be expended.

Sec. 356. The city council shall have the power to, and shall require, before any street is paved, that the gas, water and sewer pipes be laid therein and connections made with the front line of each lot. In the business portion of the city the word "lot" shall be construed to mean a subdivision twenty-two (22) feet front. This provision shall not apply as to gas pipes in cities where there is no system of gas lighting with mains laid in the public streets, nor water pipes in cities where there is no system of public water works with pipes laid in the streets, nor to sewer pipes in cities where there is no system of carrying off sewerage by pipes laid in the streets.

Sec. 357. Library board—Board of education.—Nothing in this act contained shall be construed to affect the powers and duties of any board of education or library board in any city.

Sec. 358. No right to be affected.—That no rights already accrued to any city, or any penalty or forfeiture incurred in favor of any city under the provisions of any act of this state shall be affected by this act, nor shall this act affect any action or other legal proceeding pending at the date of the approval of this act; and all proceedings for the acquirement of parks and parkways and the making of local improvements and the making and collecting of assessments therefor, which improvements have been finally ordered under the provisions of any law of this state, before the date of the approval of this act, shall be proceeded in as though this act has not been passed.

Sec. 359. All general laws and parts thereof inconsistent with the provisions of this act are hereby repealed; provided, nothing in this section shall be taken or construed as in any manner changing the provisions of section twenty-one (21) of this act."

Laws 1913, Chapter 542, entitled "An act to authorize cities of the fourth class incorporated and now or hereafter operating under Chapter 8, Laws of 1895, to transfer funds from the permanent improvement revolving fund to the permanent improvement fund," reads as follows:

Section 1. Any city of the fourth class incorporated and now or hereafter operating under the provisions of Laws 1895, Chapter 8, may, by a resolution adopted by a unanimous vote of its council, transfer funds from the permanent improvement revolving fund to the permanent improvement fund, at any time; provided the permanent improvement revolving fund shall not be so reduced to an amount less than the aggregate of all outstanding certificates of indebtedness and other obligations incurred and payable from the last mentioned fund.

Laws 1921, c. 94, entitled "An act providing for the vacating of public grounds, streets, alleys, highways, or any part thereof, in cities of the fourth class, organized under Chapter 8, Laws 1895, whenever such public ground, street, alley, highway, or any part thereof, has not been used by the public for a period of twenty-five years or more," reads as follows:

"Section 1. When any public ground, street, alley, highway, or any part thereof, in any city of the fourth class, organized under Laws 1895, Chapter 8, has not been used by the public for such public ground, street, alley or highway for a period of 25 years or more, the city council may, by a resolution passed by a three-fourths vote of the members-elect, declare such public ground, street, alley, highway, or any part thereof, vacated, which resolution shall be published as in the case of ordinances.

Sec. 2. A transcript of this resolution, duly certified by the city clerk, shall, before the same shall take effect, be filed for record and duly recorded in the office of the register of deeds of the county wherein the property is situated."

Laws 1941, Chapter 55, entitled "An act relating to the reorganization of wards in cities organized and existing under Chapter 8, Laws of Minnesota for 1895," reads as follows:

"Section 1. Cities may establish wards in certain cases. The city council of any city organized and existing in accordance with the provisions of Laws 1895, Chapter 8, may, after each state and federal census, by resolution by a two-thirds vote, apportion the city into wards of convenient, adjacent, and contiguous territory and each ward shall contain as nearly as practicable an equal number of legal voters, but such apportionment shall be made but once during the period of five consecutive years. When the wards or districts of the city are apportioned anew such apportionment shall take effect at the next ensuing city election, and all members of the city council previously elected shall hold their respective offices for the unexpired portion of their term as representing the wards or districts within which they reside."

## APPENDIX 3

## PRIOR LAWS RELATING TO VILLAGES

The general village law of 1885 (Laws 1885, c. 145) was repealed by R. L. 1905, section 5536. This repeal did not affect villages incorporated and operating thereunder and, as to such villages, is still in force. As amended Laws 1885, c. 145, reads as follows:

"Section 1. Every village which has heretofore been incorporated under a special act of the legislature therefor, shall continue to exist under such act and amendments thereto; and the provisions of this chapter shall in no manner affect or apply to the same except as hereinafter in this chapter specially provided, unless adopted as provided in this section. The trustees thereof may, by resolution, submit at a special village election the question whether such village will so continue, or will become reincorporated under the general statutes. They shall give notice thereof in the manner required in this chapter for notifying special elections. Ballots shall be written or printed 'For re-incorporation,' and 'Against re-incorporation,' and the election shall be conducted and result canvassed as provided for an annual village election by such village. If a majority vote for re-incorporation, the trustees shall make a certificate setting forth the fact of such submission, and the vote thereon in detail, and the result thereof, and cause the same to be recorded in the office of the register of deeds, and thereupon the special act of incorporation shall be deemed surrendered, and such village shall become incorporated under the general statutes, but shall, until the next annual village election herein provided to be held in January following, be governed by the officers then in office. (Amended 1893, c. 187, s. 1.)

Sec. 2. Every village which has been or shall be organized or incorporated under the general statutes, shall be hereafter governed according to the provisions of this chapter, to the end that uniformity of village government and equal privileges to all may be secured.

Sec. 3. Any district, sections or parts of sections not in any incorporated village, and in the State of Minnesota, which has been platted into lots and blocks, also the lands adjacent thereto, when said plat has been duly and legally certified according to the laws of this state, and filed in the office of the register of deeds for the county in which said lands or the larger portion thereof lie, said territory containing a resident population of not less than one hundred forty, may become incorporated as a village under this act in the following manner: (Amended 1887, c. 62; 1903, c. 208 s. 1.)

Sec. 4. Twenty-five or more of the electors then residents upon the lands so to be incorporated, may petition the county commissioners of the county in which the whole or larger part of said lands are situated to appoint a time and place when and where the electors actually residing upon said lands may vote for or against such incorporation, and such petition shall set forth the boundaries of such territory, with their courses and distance, the quantity of land therein embraced, the name of such proposed village, and the number of persons actually residing in said territory, which shall have been duly ascertained by said petitioners, or under their direction, by a census taken of the resident population as it may be on some day not more than eight weeks previous to the time when said petition is presented to said commissioners, and said petition shall be verified by at least three of said petitioners, to the effect that such census has been accurately taken, and that all the facts in said petition contained are true. (Amended 1903, c. 208, s. 2.)

Sec. 5. On delivery of said petition to the county commissioners or to any one of them, it shall be their duty, within ten days therefrom, to post or cause to be posted in five of the most public places within said territory, three copies of such petition together with notices attached thereto, stating the time and place within the limits of said proposed village when and where the electors thereof will vote for or against such incorporation; which time shall be at least thirty days from the posting of said notices; and said commissioners shall appoint by resolution three inspectors, residents of said proposed village who shall preside and act as inspectors at such meetings, and all the laws of this state relating to the election of town officers, shall apply to said meeting so far as the same are applicable and not inconsistent with this act.

Sec. 6. If there be a newspaper printed within said territory, the said petition, verification thereof

and the notice, as hereinbefore provided, shall be printed in full therein for three successive weeks previous to the day specified in said notice for voting on the proposed incorporation.

Sec. 7. Every elector residing in such territory and qualified to vote for town officers in the town in which such lands, or some part thereof lie, may vote at such meeting by a ballot having thereon the word 'For incorporation, yes;' or 'For incorporation, no.'

Sec. 8. Within three days after such meeting the inspectors presiding thereat shall file with the said county commissioners, or some one of them, a certificate showing that the said meeting was held at the time and place specified in said notice; that they have canvassed the ballots cast thereat, giving the whole number of votes cast; the number of those having thereon the word 'yes' and the number having thereon the word 'no,' which said certificate shall be signed by said inspectors, and by them duly verified to the effect that the statements therein contained are true.

Sec. 9. Within five days after receiving said certificate, as in the previous section; provided, if the same shows a majority vote for incorporation, it shall be the duty of the said commissioners to file the same together with the original petition and a true copy of the notice of election, as provided in section five of this act, in the office of the register of deeds, in and for the county wherein lie the whole or the greater part of said lands, and thereupon the said territory mentioned in said petition shall be an incorporated village within the intent of this act from the date of filing said papers in the office of the said register of deeds; and shall, under the name set forth in said petition, be endowed with all the rights, powers and duties incident to municipal corporations at common law with perpetual succession, and shall by said corporate name be capable of contracting and being contracted with, pleading in all courts of law and equity, and have a common seal which may be altered at the pleasure of the village council, and shall have power to take, hold, purchase, lease and convey real estate, or personal property, or mixed estate as the purposes of the corporation may require, either within or without the limits of said corporation.

Sec. 10. It shall be the duty of said register of deeds to record said papers in full, and the papers so filed or the record thereof shall be prima facie evidence in all courts of law and equity that said village is a duly incorporated village under the provisions of this act.

Sec. 11. Within three days of the filing said papers with said register the said commissioners shall post notices in three of the most public places in the village, giving at least ten days' notice to the legal voters residing in said incorporated village, to meet to organize under the provisions of this act, and elect officers for the ensuing year. The action of a majority of said persons shall be considered the action of the whole number, and the electors present at the time and place designated in said call, may organize such meeting by choosing viva voce, two judges of election and one clerk, who, before entering upon the discharge of their duties, shall take and subscribe an oath or affirmation to faithfully discharge the duties required of them, and said judges and clerks, being duly qualified, shall forthwith open the polls by proclamation, and conduct the election in the manner provided by the statutes of the state for the election of township officers, and the judges of election shall give to each person elected a certificate of his election, and such officers shall, after having qualified according to law, forthwith enter upon the discharge of their duties. And all the necessary and proper expenses and charges incident to such incorporation, and the records thereof, shall be paid by such village. (Amended 1893, c. 188, s. 1.)

Sec. 12. Addedition and adjacent territory may be annexed to any village, either originally incorporated or reincorporated under the provisions of this act, by a petition of at least five of the legal voters, residents of such adjacent lands, to the county commissioners in the same manner as hereinbefore provided for the incorporation of villages, and it shall be the duty of such commissioners to proceed thereupon as in sections five, six, seven, eight and nine of this act, to give notices of the time and place within the territory so to be annexed, when and where the electors thereof will vote for or against such annexation, and the ballots used shall have thereon the words: 'For annexation' or 'Against annexation,' and if the majority of the ballots cast shall be 'For annexation,' then the said commissioners shall file with the register of deeds the original petition, notice of election and inspector's certificate, as provided in section nine of this act.

Any territory within the corporate limits of any such village, whether the same is platted or not, may be taken out of such corporation and detached therefrom by petition of at least thirty (30) of the legal voters of such village, including the owner or owners of the land which is proposed to be detached, to the county commissioners in the same manner as provided for the annexation of territory to incorporated villages, and it shall be the duty of such commissioners to proceed thereupon as in sections five (5), six (6), seven (7), eight (8), and nine (9) of chapter one hundred forty-five (145) of the general laws of eighteen hundred eighty-five (1885) and to give notice of the time and place where the electors thereof will vote for or against such detaching, and the ballots used shall have thereon the words 'for detaching' or 'against detaching' and if the majority of the ballots cast shall be for detaching, then the said commissioners shall file with the register of deeds the original petition, notice of election and inspector's certificate as provided in section nine of chapter one hundred forty five (145) of the general laws of eighteen hundred eighty-five (1885). And said territory when so detached shall belong to and be a part of the township in which it is when so detached, unless it shall be reincorporated into a new village or attached to a village or city already incorporated, within one year after being so detached; provided that such territory shall not be detached as herein provided in any case when such detaching would reduce the number of inhabitants of such village below the number now required by law for the incorporation thereof.

Provided further that the detaching of any territory from any incorporated village under the provisions of this act shall not relieve such territory of its share of indebtedness existing against such corporation, but the said territory shall be deemed a part of such village for the purpose of taxation imposed to discharge the principal and interest of such pre-existing indebtedness until the same shall have been fully discharged. (Amended 1893, c. 184; 1895, c. 132.)

Sec. 13. It shall be the further duty of said commissioners, on receiving said petition, to serve a copy thereof upon the president or recorder of the village to which such annexation is proposed, and it shall be the duty of the village council thereof within ten days to call a special election in said village by posting in three of the most public places therein notices thereof which shall contain a description of said territory so to be annexed and stating the time and place when and where the electors of said village will vote for or against such annexation, said election shall be held within thirty days from the time said petition is served on the president or recorder, and ten days' notice thereof shall be given, the ballots used shall have upon them the words: 'For annexation' or 'Against annexation' and the same laws shall apply in said election, as apply in the election of the officers of said village; and if the judges of election shall find on canvassing said ballots that a majority thereof are 'For annexation,' then they shall make a certificate containing a description of the territory as set forth in the notice of election stating the whole number of votes cast, the number 'For annexation' and the number 'Against annexation,' which said certificate shall be signed by said judges and by them verified, to the effect that the statements therein contained are true, and they shall cause the same to be filed with the said register of deeds within ten days after such election.

Sec. 14. Upon filing with the said register, the certificates hereinbefore mentioned showing a majority of votes cast both in the territory to be annexed as well as in the said village to be for annexation then and thereupon the said territory shall be a part of said incorporated village; and all the necessary and proper expenses and charges incident to such annexation and the records thereof shall be paid by such village; provided that the territory thus attached to a village may include another village, in which case the latter shall then and thereby become dissolved and cease to exist, and the corporate indebtedness of such dissolved village shall be added to and become a part of the indebtedness of the village in which it is included. (Amended 1901, c. 358, s. 1.)

Sec. 15. It shall be the duty of the register with whom said papers are filed to record the same together in full, and the original papers so filed or the records thereof shall be prima facie evidence in all courts of law and equity that the territory therein described is a part of said incorporated village.

Sec. 16. After the first election of officers the village council shall within twenty days before the time of holding any election of village officers desig-

nate and appoint two qualified voters of such village who shall act as judges of such election; and in case of the neglect to make such appointment, or if the persons so appointed neglect or refuse to serve, the electors present at the time and place named for opening the polls of any such election may viva voce elect two judges of election and one clerk, who, before entering upon the discharge of their duties, shall take and subscribe an oath or affirmation to faithfully discharge the duties required of them, and the said judges and clerk being qualified, shall forthwith open the polls by proclamation, and conduct the election in the manner provided in this section. The annual meeting shall be on the second Tuesday of March for the election of officers and at such place as may be directed by the village council after giving ten days' notice thereof, either by posting written notices in three of the most public places in the village, or by publishing such notice in the newspaper printed in such village. The polls shall be open at ten o'clock a. m. and close at four o'clock in the afternoon of said day. At the close of the polls the votes shall be counted, and a true statement thereof proclaimed to the voters by some one of the judges of election, and the recorder shall make a true copy thereof in a book kept for such purpose, and within five days notify in writing the person so elected of their election. All elections shall be by ballot, and all votes for elective officers shall be upon one ballot and be deposited in one ballot box; a plurality of votes shall elect, and if two or more persons receive an equal number of votes for the same office, the election shall forthwith be determined by lot, in the presence of the judges of election in such manner as they direct, and every qualified elector, there actually resident in such village, may vote at any election; provided that no candidate for office shall act as judge or clerk at such elections.

Provided, that in all villages having two or more voting precincts the village council shall within twenty days before the time for holding any election in such village, appoint two qualified voters of each such voting precinct who shall act as judges of election, and one qualified voter of each such voting precinct who shall act as clerk of elections; and in case of the neglect to make such an appointment, or if the persons appointed neglect or refuse to serve, the electors present at the time and places named for opening the polls of any such election may viva voce elect two judges of election and one clerk, from among the qualified voters present; and all judges and clerks of election herein provided for, before entering upon the discharge of their duties, shall take and subscribe an oath or affirmation to faithfully discharge the duties required of them, and the said judges and clerk being duly qualified shall forthwith open the polls by proclamation, and conduct the election as hereinbefore and hereinafter provided; provided that no avowed or nominated candidate for office shall act as judge or clerk at such election.

Provided further, that when any election shall be closed in any such village having two or more voting precincts, the judges shall make return thereof to the village recorder within twenty-four hours after such election in the same manner provided by law for the return of state and county officers to the county auditor, and within two days thereafter the village council, who are hereby declared to be the village canvassing board in all villages having two or more voting precincts, shall meet and canvass the returns thereof, and declare the result as appears from said returns, and the village recorder shall forthwith give notice to the persons elected to their respective offices. A plurality of votes shall elect, and if two or more persons receive an equal number of votes for the same office the election shall forthwith be determined by lot in the presence of the canvassing board in such manner as they shall direct. (Amended 1889 c. 125 s. 1; 1901 c. 60 s. 1.)

Sec. 17. Special elections may be ordered by the council, but no special election shall be held unless ten days' notice thereof is given, nor shall any subject or question be considered or acted upon, unless its objects are clearly set forth and stated in the notice for the call of such meeting. All village elections shall be, except as hereinbefore provided, conducted and the result canvassed and certified as in the case of town meetings; and, except as modified in this chapter, every statute relating to holding town meetings, canvassing and certifying the result thereof, and relating or applicable to the duties of judges of election and clerks, the challenging votes and to voting thereat, and every statute prescribing and punishing offenses for illegal voting, bribery, fraud, corruption, official delinquency or other offense at or concerning



elections, which is applicable to town meetings, is hereby extended and applied to village elections.

Sec. 18. The village assessor shall perform all the duties in relation to the assessment of property for the purpose of levying all village, county and state taxes, and upon the completion of the assessment roll, he shall return the same to the village council, who may alter, revise and equalize the same as they may deem it just and proper. Provided, that unless said village is a separate election district, the assessors of the township in which said village is situated shall assess the property in the village in the same manner as property situated in the township. (Amended 1887, c. 62; 1889, c. 122; 1899, c. 33.)

Sec. 19. The inhabitants of said village having the qualifications of electors of members of the legislature of the State of Minnesota, as hereinafter provided, may elect a president, three trustees, a treasurer, a recorder, and, if said village is a separate election district, an assessor, who shall hold their respective offices for one year or until their successors are elected and qualified; also two justices of the peace, and two constables, who shall hold their respective offices for two years, or until their successors are elected and qualified; and, before entering upon the duties of their respective offices, they shall each take an oath or affirmation to support the constitution and laws of the State of Minnesota, and faithfully discharge the duties of his office. The treasurer shall give bonds for twice the amount of funds collected. The treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided for that purpose, and shall exhibit such account, together with his vouchers to the village council at its annual meeting, or at any time when called for by resolution of said council for adjustment, and shall deliver all books and papers belonging to his office, and the balance of all moneys, as such treasurer, to his successor in office; provided, that the treasurer shall not pay out any moneys in his hands except upon the written order of the president of the council, attested by the recorder. The treasurer shall, from time to time, draw from the county treasury such moneys as may be due said corporation, for the use of said village, and upon receipt of such moneys, give proper vouchers therefor; provided, that the treasurer shall not pay out any moneys in his hands except upon the written order of the president of the council, attested by the recorder. The treasurer shall, from time to time, draw from the county treasury such moneys as may be due said corporation, for the use of said village, and, on receipt of said moneys, give proper vouchers therefor. And provided further, that each and every village treasurer in the state shall keep a suitable book, to be provided at the expense of the village, in which he shall enter the village orders which he cannot pay for want of funds when presented to him for payment, which orders when presented shall be indorsed by such treasurer by putting on the back of the same the words 'not paid for want of funds,' giving the date of such indorsement, signing the same as village treasurer. Every such order shall bear interest at the rate of six per cent per annum from the date of presenting same to the treasurer until the treasurer serves a written notice upon the payee, or his assignee, personally or by mail, that he is prepared to pay such order, such notice may be directed to the payee or his assignee at the address given in writing by such payee or assignee to such treasurer at any time prior to the service of such notice. No order shall draw any interest if such address is not given when the same is not known to the treasurer.

All village orders shall be paid in the order that they are now or may hereafter be registered out of the first moneys that come into the treasurer's hands for such purpose. (Amended 1887, c. 53; 1889, c. 104; 1899, c. 33; 1903, c. 190.)

Sec. 20. (Repealed by Laws 1911, Chapter 352, Section 3.)

Sec. 21. The president, the three trustees and the recorder shall be the village council of said village, any three of whom shall constitute a quorum for the transaction of any business, and shall have full power and authority to enact, adopt, modify, enforce, and from time to time, amend or repeal all such ordinances, rules and by-laws as they shall deem expedient, for the following purposes, viz.:

First—To regulate the mode of, and establish rules for, their proceedings.

Second—To adopt a corporate seal, and alter the same at pleasure.

Third—To receive, purchase and hold for the use of said village any estate, real and personal, and to sell,

convey, lease or otherwise dispose of the same, and to dispose of, for any purpose and in any manner, all surplus light, heat, steam, water or electricity which may be had or produced after providing for the streets and the furnishing of water for the use of the village and its inhabitants. (Amended 1891, c. 149, s. 1.)

Fourth—To limit and define the duties and powers of officers and agents of the village, fix their compensation, and fill vacancies when no other provision is made by law; to call special elections, and to designate trustees to act as judges of elections.

Fifth—To procure the books and records required herein to be kept by village officers, and such other furniture, property, stationery and printing as shall be necessary for village purposes.

Sixth—To provide for the prosecution or defense of all actions or proceedings in which the village is interested, and employ counsel therefor.

Seventh—To appoint a village attorney, a pound-master, one or more sextons or keepers of cemeteries, one or more fire wardens, and one or more street commissioners, whenever they deem necessary. Every street commissioner, when, by resolution, the village board shall require it, shall take and file his oath of office, and execute a bond conditioned for the faithful discharge of his duties and the proper application and payment of all moneys that may come into his hands by virtue of his office.

Eighth—To control and protect the public buildings, property and records, and insure the same.

Ninth—To renumber the lots and blocks of the village or any part thereof, and to cause a revised and consolidated plat of the same to be recorded in the office of the register of deeds.

Tenth—To establish a fire department, to appoint the officers and members thereof, and prescribe and regulate their duties; to provide protection from fire by the purchase of fire engines and all necessary apparatus for the extinguishment of fires, and by the erection or construction of pumps, water mains, reservoirs or other water works; to erect engine houses; to compel the inhabitants of the village to aid in the extinguishment of fires, and to pull down and raze such buildings in the vicinity of fire as shall be directed by them, or any two of them who may be at the fire, for the purpose of preventing its communication to other buildings, to establish fire limits or the limits within which wooden or other combustible buildings shall not be erected; to require the owners or occupants of buildings to provide and keep suitable ladders and fire buckets, which shall be appurtenances to the realty and exempt from seizure and forced sale; and after reasonable notice to such owner or occupant, and refusal or neglect by him, to procure and deliver the same to him, and in default of payment thereof, to levy the cost thereof as a special tax upon such real estate, to be assessed and collected as other taxes in such village; to regulate the storage of gunpowder and other dangerous materials; to require the construction of safe places for the deposit of ashes; to regulate the manner of putting up stove pipes, and the construction and cleaning of chimneys, to prevent bonfires and the use of fireworks and firearms in the village, or any part thereof; to authorize fire wardens at all reasonable times to enter into and examine all dwelling houses, lots, yards, inclosures and buildings of every description, in order to discover whether any of them are in a dangerous condition, and to cause such as may be dangerous to be put in safe condition; and generally to establish such necessary measures for the prevention or extinguishment of fires as may be necessary and proper.

Eleventh—To lay out, open, change, widen or extend streets, lanes, alleys, sewers, parks, squares or other public grounds, and to grade, pave, improve, repair or discontinue the same, or any part thereof, or to establish and open drains, canals or sewers, or alter, widen, or straighten watercourses; to make, alter, widen or otherwise improve, keep in repairs, vacate or discontinue sidewalks and crosswalks; to prevent the incumbering of streets, sidewalks and alleys with carriages, carts, wagons, sleighs, sleds, buggies, railway cars, engines, boxes, lumber, firewood or other substances or materials; to prevent horse racing or immoderate riding or driving in the streets of the village, to prevent the riding or driving of animals or the driving of vehicles of any kind on the sidewalks of such village, or the doing of damage in any way to such sidewalks; and to require the owners or occupants of buildings to remove snow, dirt, or rubbish from the sidewalks adjacent thereto; and in default thereof, to authorize the removal of the same at the expense of such owner or occupant.

Twelfth—To restrain the running at large of cattle, horses, mules, sheep, swine, poultry and other



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## APPENDIX 3. LAWS 1885, CHAPTER 145

animals, and to authorize the distraining, impounding and sale of the same; to establish pounds and regulate and protect the same; to require the owners or drivers of horses, oxen or other animals, attached to vehicles or otherwise, to fasten the same while in the streets or alleys of such village; to prohibit the hitching of horses, teams or animals to any fence, tree, or pump, and to prevent injury to the same; to regulate and control the running of engines and cars through the village, and rate of speed of the same; to prevent the running at large of dogs, and to authorize the destruction of the same in a summary manner when at large contrary to the ordinances; to license public porters, solicitors or runners, cartmen, hackmen, omnibus drivers and guides, and to establish rules and regulations in regard to their conduct as such, and to prevent any unnecessary noise or disturbance during the arrival or departure of persons in public conveyances.

Thirteenth—To establish and regulate markets, provide scales, appoint a weighmaster and restrain sales in streets. (Amended 1891, c. 102.)

Fourteenth—To purchase and hold cemetery grounds within or without the village limits; inclose, lay out and ornament the same, and to sell and convey lots therein by deed; to establish public parks and walks, inclose, improve and ornament the same, and prevent the incumbering or obstruction thereof; and provide for and regulate the setting out of shade and ornamental trees in the streets, and in and around the cemeteries and public parks and walks of the village, and for the protection thereof.

Fifteenth—To prevent or license and regulate the exhibition of caravans, circuses, mountebanks, theatrical performances or shows of any kind; to prevent or license and regulate the keeping of billiard tables, pool tables, pigeon hole tables, bowling saloons and all other games and devices; to restrain or license, regulate and tax auctioneers, hawkers and peddlers; and in all such cases they may fix the price of said license or tax, and prescribe the term of continuance of such license, and may revoke such license when in the opinion of the village council the good order of the public interests of the village require it; provided, that the council may in any case where in their opinion the public interests of the citizens of the village require it, refuse to grant any license for the above purposes, and provided, also, that twenty-five (\$25) dollars a day shall be construed by the courts of said state as a reasonable price per day for an auctioneer's license issued under the above provision. The term of no such license shall extend beyond the annual election of officers next after the granting thereof. (Amended 1889, c. 122; 1905, c. 138, s. 1.)

Sixteenth—To provide for the planting and protection of shade trees and monuments in said village.

Seventeenth—To restrain and prohibit gift enterprises, all description of gaming, and all playing of cards, dice, and other games of chance, for the purpose of gaming; to restrain and punish vagrants, tramps, mendicants, street beggars, prostitutes and persons guilty of lewd conduct; and to license and regulate, or restrain and prohibit any person from selling, bartering, disposing of or dealing in spirituous, malt, fermented, vinous, or mixed intoxicating liquors of any kind, and to punish any violation of law, or of the village ordinances relating thereto, and to revoke, for any cause, any license for the sale of intoxicating liquors granted by the village council, whenever the council, after a hearing of the case, shall deem proper. (Amended 1897, c. 25.)

Eighteenth—To choose a village marshal and to remove him at will; to prescribe his duties and to fix his compensation for services.

Nineteenth—To establish and maintain public libraries and reading rooms, purchase books, papers and magazines therefor, and make all needful rules and regulations for the safe keeping and handling of the same.

Twentieth—To appoint a street commissioner, regular and special policemen, and a chief of police, and to fix their compensation and prescribe their duties.

Twenty-first—To remove any officer appointed or elected by such council, whenever, in the judgment of such council, the public welfare will be thereby promoted.

Twenty-second—To purchase, build or lease and maintain, and regulate a watchhouse, or place for the confinement of offenders against the ordinances and by-laws, and for temporary detention of suspected persons.

Twenty-third—To appoint a board of health, which shall have all the powers of such board under the

general laws of the state; to provide hospitals, and regulate the burial of the dead, and return of bills of mortality; to declare what are nuisances, and to prevent or abate the same; to require the owner or occupant of any grocery, cellar, tallow chandler's shop, factory, tannery, stable, barn, privy, sewer or other unwholesome or nauseous house, building or place to remove or abate the same, or to cleanse it as often as may be deemed necessary for the public health; to direct the location and management of slaughter houses, and to prevent the erection, use or occupation of the same, except as authorized by them, to prevent persons from bringing, depositing or leaving within the village any putrid carcass, or other unwholesome substance; to require the owners or occupants of lands to remove dead animals, stagnant water, or other unwholesome substance from their premises and to provide for the cleaning and removal of obstructions from any river, stream, slough, or water course within the limits of the village, and to prevent the obstruction or retarding of the flow of waters therein, or the putting of anything into the same which may be prejudicial to the health of the village.

Twenty-fourth—To make and regulate the use of public wells, cisterns and reservoirs.

Twenty-fifth—To erect lamp posts and lamps, and provide for lighting any portion of the village or streets thereof, by gas or otherwise.

Twenty-sixth—To establish harbor and dock limits, and to regulate the location and construction and use of all piers, docks, wharves and boat-houses on any navigable waters, and fix rates of wharfage.

Twenty-seventh—To levy and provide for the collection of taxes, including poll taxes and assessments, audit claims and demands against the village, and direct orders to issue therefor in the manner prescribed in this chapter; to refund any tax or special assessment paid; or any part thereof, when satisfied that the same was unjust or illegal; to authorize bonds of the village to be issued in the cases provided by law, and generally to manage the financial concerns of the village; and they shall cause to be prepared and read, at each annual village election, a true, detailed and itemized statement by them of the finances of the village, showing the amount in the treasury at the commencement of the year, when and from what sources all moneys paid into the treasury during the preceding year were derived, and the whole amount thereof, and when, to whom and for what purpose all money paid from the treasury during the same period was paid and the whole amount thereof, with the balance then in the treasury; which statement shall be recorded in the minute book, and filed and preserved in the clerk's [recorder's] office.

Twenty-eighth—To ordain and establish all such ordinances and by-laws for the government and good order of the village, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of trade and commerce, and the promotion of health, not inconsistent with the constitution and laws of the United States or of this state, as they shall deem expedient; and to determine and establish by ordinance the mode of procedure, and what it shall be sufficient to allege and prove, in order to make out a prima facie case of violation of any ordinance.

Twenty-ninth—To prescribe penalties for the violation of any ordinance or by-law, to be not less than one dollar nor more than one hundred dollars, in any case, besides the cost of suit in all cases; and in default of payment provide for committing the persons convicted to the watchhouse or place of confinement in the village, or to the county jail, until payment be made, but not to exceed ninety days in all; and to modify, amend or repeal any ordinances, resolution, by-law or other former determination of the board.

Thirtieth—To appoint a cemetery board to consist of not less than three members; to prescribe, by ordinance, the term of office and the powers and duties of such board. (Added by 1903, c. 353.)

Sec. 22. No account or demand against such village shall be paid until it has been audited and allowed, and an order drawn on the treasurer therefor. Every such account shall be made out in items, and verified by affidavit indorsed or annexed that the same is just and correct and no part thereof paid. After auditing the board shall cause to be indorsed by the clerk, over his hand, on each account, the words "allowed" or "disallowed," as the fact is, adding the amount allowed, if any, and specifying the items or parts of items disallowed, if disallowed in part only. The minutes of the proceedings of the board shall show the amount. Every such account or

demand allowed, in whole or in part, shall, with the affidavit thereto, be filed by the clerk, and those of each year consecutively numbered and have indorsed the number of the order on the treasurer issued in payment; and the clerk shall take a receipt thereon for such order. No village, or any officer thereof, shall have power to issue at any time any negotiable order or borrow money, except in the manner and for the purposes expressly declared by statute. Provided, however, that any village of this state shall have the power to issue negotiable certificates of indebtedness for the purpose of purchasing fire engines and necessary apparatus for the extinguishment of fires, for the use of said village; but no certificates of indebtedness shall be issued for said purpose unless the amount of certificates that may be issued has been submitted to a vote of the legal voters of the village, and a majority of the legal voters voting at such election have voted in favor of issuing said certificates. Said certificates so authorized may be for such time and of such denomination, and of such form, and bear such rate of interest, payable annually not exceeding, however, six (6) per cent per annum, as the village council may by resolution determine; provided, however, that the amount of such certificates outstanding at any one time shall never be in excess of five (5) per cent of the assessed valuation of the real and personal property of the village issuing the same, including all other indebtedness of such village. (Amended 1891, c. 100, s. 1.)

Sec. 23. Whenever the village council shall intend to erect or construct any pumps, water mains, reservoirs, engine houses, or other water works, or to lay out, open, change, widen or extend any street, land, alley, public grounds, square or other places, or to construct, open, alter, enlarge or extend drains, canals or sewers, or to construct, open, alter, widen or straighten water courses, water works, or water supplies within or without the corporate limits, or take ground for the use or improvement of a harbor, and it shall be necessary to take private property therefor, they shall cause an accurate survey and plat thereof to be made and filed with the recorder, and they may purchase or take by donation such grounds as shall be needed, by agreement with the owners, and take from them conveyances thereof to the village for such use or in fee; but otherwise they shall by resolution, declare their purpose to take the same, and therein describe by metes and bounds the location of the proposed improvements and the land proposed to be taken therefor, defining separately each parcel and the amount thereof owned by each distinct owner, mentioning the names of owners or occupants so far as known, and therein fix a day, hour and place when and where they will apply to a justice of the peace, resident in such village, for a jury to appraise and condemn the same. They shall thereupon cause to be made, by the recorder, a notice of the adoption of such resolution, embracing a copy thereof, and notifying all parties interested that the council will, at the time and place named, apply to the justice named for the appointment of a jury to condemn and appraise such land. A copy of such notice shall be served by any constable on the owner of each such parcel of land to be taken, if known and resident within the county; such service to be made in the manner prescribed for serving a summons in a justice court, and the return of the officer shall be conclusive evidence of the fact stated therein. If the notice cannot be so given as to all the parcels, then the same shall be also published, once each week for three successive weeks, in a newspaper published in such village or county; and the affidavit of the printer or foreman of such newspaper shall be conclusive evidence of such publication. If any person so served with notice shall be a minor, or of unsound mind, the justice, before proceeding, shall, on the day fixed for hearing such application, appoint for him a guardian for the purpose of such proceeding, who shall give security, to the satisfaction of such magistrate, and act for such ward. (Amended 1903, c. 28, s. 1; 1903, c. 388.)

Sec. 24. At the time and place fixed for such hearing, the application, accompanied by a copy of such resolution and such survey, and by proof of service of the notice, as provided in the last section, shall be filed with the justice, who shall thereupon make a list of twenty-four competent jurors, not interested, but residents of the village shall not be disqualified. He shall hear and decide any challenges for cause or favor, made to any one, and, if sustained, shall replace his name with an unobjectionable juror, until the list shall be perfected. Thereupon, under direction of such magistrate, each party,—the village council by its representative on one side, and owners of land or their agents present, or if none be present,

or if they disagree, a disinterested person appointed by the justice, on the other—shall challenge six names, one at a time, alternately, the village council beginning. To the twelve jurors remaining, the said justice shall issue a venire, requiring them at an hour on a day named, not more than ten nor less than three days thereafter, to appear before him to be sworn and serve as a jury to view lands, and appraise damages, and at the same time shall publicly adjourn the proceedings to the time and place so named; such venire shall be served by any constable, at least one day before such appointed time, by reading the same to each such juror, or by leaving a copy at his usual place of abode, in the presence of a member of his family. The jurors summoned shall appear at the time and place named; and if any be excused by the justice, or fail to attend, he shall direct other disinterested persons to be forthwith summoned in their stead until twelve be obtained. The magistrate shall then administer to them an oath that they shall well and truly inquire into and determine the necessity for taking the lands mentioned in the resolution, and if found necessary, the damages occasioned thereby, and faithfully discharge their duties as jurors according to law.

Sec. 25. Under the direction of such magistrate the jury shall view the lands to be taken, and shall then sit before him, to hear such competent evidence as shall be produced by any party; and for such purposes such magistrate shall possess the same powers as a court in session with a jury, and if there be a necessity, may adjourn the sitting from day to day. The jury shall render a separate verdict in writing, signed by them, in which they shall find whether it be necessary to take such lands or any part thereof for such purposes, describing such as they find necessary to be taken; and if any be found necessary to be taken, then a verdict or appraisal for damages, specifying therein the damages of each owner, and separately the value of the land taken for each, and the damage otherwise sustained by each by reason of the taking thereof, in estimating which they shall deduct therefrom any special benefit, if any, to be enjoyed by each from such improvements; and a majority of such jury may render such verdict or appraisal of damages and shall sign the same. Any technical error in such verdict may be immediately corrected, with the assent of the jury, and they shall be thereupon discharged, and their verdict filed by the magistrate. In case the jury shall fail to find a verdict, another jury shall be selected, summoned, sworn and proceed in the same manner.

Sec. 26. Within ten (10) days after verdict any land owner whose land it has been found necessary to take may appeal from the action of the common council in determining to condemn any such land and from the award of damages to him, in such verdict, to the district court, and the village may likewise appeal from the award of damages to any owner, by filing with such magistrate a notice of appeal, specifying whether the appeal is from the whole award to him or a part, and if a part, what part and therewith an undertaking with two (2) sufficient sureties to be approved by the magistrate, to pay all costs that may be awarded against such appellant on the appeal, and paying the magistrate for his return thereof. Any party not so appealing shall be forever concluded by such verdict or appraisal. Upon an appeal being taken, the magistrate shall transmit to the clerk of the district court within ten (10) days the notice of appeal and undertaking, and thereto annexed a copy of all papers and proceedings before him, with his certificate thereof. He shall, after the time for appealing has expired, file with the village recorder, annexed together, all the original papers, including the verdict, with a certificate by him thereof, and that no appeal has been taken from such verdict, except as the facts are, which he shall briefly specify; and the clerk shall record all such proceedings. Upon filing such transcript in the district court, the appeal shall be considered an action pending in such court, and be so entered, the land owner as plaintiff, the village as defendant, and be subject to trial and appeal to the supreme court. The case shall be tried by a jury, unless waived, and the costs shall be awarded against the appellant, if more favorable verdict be not obtained; otherwise against the respondent. Upon entry of judgment, the clerk of the district court shall transmit a certified copy thereof to the village recorder. (Amended 1889, c. 123 s. 1.)

Sec. 27. If the verdict of the jury first called find it necessary to take such land or any part thereof, the village board may, upon return thereof to the recorder, enact an ordinance in accordance therewith, for erecting or constructing any such pumps,

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water mains, reservoirs, engine houses or other waterworks, or for laying-out, changing, widening or extending and opening any such street, lane, alley, public ground, square or other public place, or constructing and opening, altering, enlarging or extending any such drains, canals, or sewers, or altering, widening or straightening any such water course, or for the use or improvement of a harbor, but shall not enter upon any such land therefor until the owner be paid in full or the damages be set apart for him in the hands of the treasurer, and an order therefor lawfully executed to him be deposited with the clerk to permanently remain subject to his order. At any time before causing any such land to be actually taken or put to public use, and before the rendition of a judgment in the district court for damages, the village board may discontinue all proceedings theretofore taken, and the village shall in such event be liable for the costs only. All the costs of every such proceedings shall be paid by the village, except when it recover costs in the district court. (Amended 1903, c. 28, s. 2.)

Sec. 28. For the purpose of payment of the expenses, including all damages and costs incurred for the taking of private property, and of making any improvement mentioned in the last preceding section, the village council may, by resolution, levy and assess the whole, or any part not less than half of such expenses as a tax upon such property as they shall determine is specially benefitted thereby, making therein a list thereof, in which shall be described every lot or parcel of land so assessed, with the name of the owner thereof if known, and the amount levied thereon set opposite. Such resolution, signed by the president and recorder, shall be published once in each week for two weeks in a newspaper printed regularly in such village, or if there be no such newspaper, three copies thereof shall be posted by the recorder in three of the most public places in such village, and a notice therewith that at a certain time, therein stated, the said council will meet at their usual place of meeting and hear all objections which may be made to such assessment, or to any part thereof. At the time so fixed the said council shall meet and hear all such objections, and for that purpose may adjourn from day to day not more than three days, and may by resolution modify such assessment in whole or in part. At any time before the first day of September thereafter any party liable may pay any such tax to the village treasurer. On such first day of September if any such tax remains unpaid, the recorder shall certify a copy of such resolution to the county auditor, showing what taxes thereby levied remain unpaid; and the county auditor shall put the same upon the tax roll, in addition to and as a part of all other village taxes therein levied on such land, to be collected therewith.

Sec. 29. The village Council or Board of Trustees of any village shall have power to vacate or discontinue streets, avenues, alleys and highways within such village. No such vacation or discontinuance shall be granted or ordered by the village Council or Board of Trustees except upon a petition of the majority of the owners of the property on the line of such street, avenue, alley or highway. Such petition shall set forth the facts and reasons for such application, accompanied by a plat of such street, avenue or highway proposed to be vacated, and shall be verified by the oath of at least two petitioners. The village council shall thereafter order the petition to be filed on record with the village recorder who shall cause the same to be published in some paper of general circulation in the village, or a paper published in some adjacent village or city which shall have a general circulation in the village, and also cause a written or printed notice to be posted in three public places in said village at least one week before acting on such petition, stating when the petition will be acted on, and what street, avenue, alley or highway is to be vacated. The village Council or Board of Trustees or such committee as may be appointed by them for the purpose, at the time and place appointed, shall investigate and consider the said matter and shall hear the testimony and evidence on the part of the parties interested. (Amended Ex. 1902, c. 57.)

Sec. 30. The village council may cause any street or any part of any street, not less than sixteen (16) rods in length, to be graded, paved, macadamized or otherwise improved, or any sidewalk, sewer or gutter to be built, upon a petition therefor in writing, signed by three-fourths ( $\frac{3}{4}$ ) of all the owners of real estate bounding both sides, or of the owners of at least one-half ( $\frac{1}{2}$ ) the frontage of such street or part of street to be improved; or order any sidewalk, sewer or gutter on one side of a street to be built, on the

petition of three-fourths ( $\frac{3}{4}$ ) of such owners, or of the owners of at least one-half ( $\frac{1}{2}$ ) of the frontage on such side; and may order any sidewalk, sewer or gutter previously built to be put in repair when necessary without petition. For the purpose of so improving any street or building or repairing any sidewalk, sewer or gutter, the village council may levy and cause to be collected upon the lots, tracts, or parcels of ground on such street or part of street improved, or on the side thereof, where only such sidewalk, sewer or gutter is to be built, and upon the owners thereof, a tax sufficient to pay the expense of constructing such improvement as ordered opposite such property to the center of the street, or such proportion thereof, not less than one-half ( $\frac{1}{2}$ ) as they shall deem justly assessable to such property, if they shall think the whole ought not to be so assessed, in which case the remainder shall be paid from the village treasury.

Every such tax for repair shall be for the entire cost of repairs in front of the property so assessed. If any tax levied under this section shall prove insufficient to pay the cost or proportion thereof assessed to such property, the village council may levy an additional tax thereon to make good such deficiency. Provided, that if the petitioners for any such local improvement so request in said petition, the village council may and they are hereby authorized to make such assessment payable in five annual installments, and to issue local improvement bonds in payment for such local improvements as provided for in chapter one hundred and forty-six (146) of the general laws of one thousand eight hundred and ninety-one (1891) for villages of over three thousand (3,000) inhabitants; and all such proceedings for the assessment and collection of such local improvement tax and the issue of bonds thereon shall in such case be in accordance with said chapter one hundred and forty-six (146) of the general laws of one thousand eight hundred and ninety-one (1891) which is hereby made applicable to and of force herein. (Amended 1893, c. 185; 1895, c. 72; 1899, c. 90.)

Sec. 31. Whenever the council shall levy any such tax as specified in the preceding section, they shall make out and deliver to a street commissioner of such village a list of the persons and a description of the property taxed, together with a warrant for the collection and expenditure of said tax, and thereupon the street commissioner shall notify the persons named in such tax list, by publishing a notice two weeks in some newspaper published in said village, if there be one, or by posting up notices in three or more public places in such village, and shall specify in such notice a time or times, not less than twenty days nor more than forty days from the date thereof, when the persons charged with taxes in such list may pay their taxes in labor, materials or money; and the persons charged with such tax may, at such time and place as may be required by the said street commissioner, pay their taxes in labor or materials; provided, the labor and materials offered in payment of such taxes are such as may be required by the said street commissioner, and done and furnished to his satisfaction. The street commissioner shall be provided with a book memorandum by the village recorder, in which he shall keep an accurate account of all moneys coming into his hands by virtue of his office; the amount received and disbursed by him, the name of every person from whom money or labor is due, the amount paid in money or labor, and a correct account of all expenditures by him made as a street commissioner. The book containing the account so kept shall, at all times when required, be furnished for the inspection of the village council and ten days before the expiration of his term of office shall be handed to the village recorder, to be filed in his office for the inspection of the taxpayers in his district.

Sec. 32. At the expiration of forty days from the date of said notice given by said street commissioner, he shall make out and deliver to the recorder of such village a certified list of the lots, pieces or tracts of land in said village upon which any such tax remains unpaid, with the amount of such delinquent taxes upon each of said lots or parcels of land, and thereupon there shall be added to the amount of such tax a penalty of ten per cent of the amount thereof, which shall thenceforth be deemed to be a part of such tax, and from the time of the delivery of such certified list to said recorder, the said tax shall draw interest at the rate of ten per cent per annum until paid; and at any time before the first day of September any party liable may pay any such tax and interest thereon as aforesaid to the village recorder, who shall thereupon pay the same over to the village treasurer taking his receipt therefor. And such recorder on

the first day of September, or within five days thereafter, if any such tax remains unpaid, shall certify a copy of such delinquent taxes to the county auditor of his county, and the said auditor shall upon the receipt of said statement and list, enter and carry out the same upon the proper tax lists and they shall be collected the same as other taxes are collected, and when collected, pay over the same to the village treasurer. Every county treasurer who shall collect or receive any moneys on account of such delinquent taxes shall pay the same to the treasurer of the proper village, and take duplicate receipts therefor, and file one of said receipts with the records of said village. (Amended 1889, c. 123, s. 2.)

Sec. 33. No part of the streets or highways of any village shall be in any road district established by the town board, nor be under the control of town officers, nor shall the town be liable for any damages occasioned by the insufficiency or want of repair thereof; and all bridges in said village shall be built, maintained and repaired by the village in which the same are situated.

Provided, however, that the boards of county commissioners and the boards of township supervisors of the respective counties and towns within which any village is situated may make such appropriations from the road funds under their control for the purpose of constructing and repairing bridges located within villages as they are authorized to make for purpose of constructing and repairing bridges not built within the limits of any incorporated village. No overseers of highways shall be elected in or for any such village, but the poll tax shall be collected as hereinafter provided, and shall be expended, and the streets, highways and public places governed by the village council and officers of their appointment. (Amended 1897, c. 234, s. 1.)

Sec. 34. The village council shall on or before the fifteenth day of August in each year, by resolution, to be entered of record, determine the amount of corporation taxes to be levied and assessed on the taxable property in such village for the current year, which shall not exceed on any one year two per centum of the assessed valuation of such property. Before levying any tax for any specific purpose, the board may, in their discretion, submit the question of levying the same to the village electors, at any special or general election, and in such manner as they may prescribe; when so submitted they shall be bound by the vote thereon. On or before the first day of September in each year, the village recorder shall deliver to the county auditor a copy of all such resolutions, certified under his hand and the corporate seal of such village, and such auditor shall enter such taxes upon the tax books in the same manner as he is required to do in levying town taxes.

Sec. 35. All prosecutions for violating any of the ordinances, rules, or by-laws enacted under the provisions of this act, shall be brought in the corporate name of said village, and shall be commenced by warrant, upon complaint being made as required by law in criminal cases before justices of the peace; and the same proceedings shall be had therein as are required to be had by the laws of this state in criminal or civil actions before justices of the peace; Provided, that no warrant shall be necessary in any case of the arrest of the person or persons while in the act of violating any law of the state of Minnesota, or ordinance of said village; but in such cases a complaint shall be made, which the justice shall reduce to writing, and the party be required to plead thereto, as to warrant in other cases; and the person or persons so arrested may be proceeded against in the same manner as if the arrest had been made by warrant. All processes issued by the justice of the peace of said village shall be directed to any constable of said village or county or to the marshal of said village. Provided, that said marshal shall serve said process only within the limits of said village. It shall be a sufficient pleading of the by-laws or ordinances of said village to refer to the chapter and section thereof, which are hereby declared to have all the force and effect of general laws within the jurisdiction of said village, and it shall not be necessary to read or give them in evidence upon the trial of any proceeding or action, criminal or civil. (Amended 1887, c. 82, s. 1.)

Sec. 36. Judgment shall be given, if for the plaintiff, for the amount of fine, penalty or forfeiture fixed by such ordinance, resolution or by-law, or such part thereof, if a discretion be given, as the court shall deem proportionate to the offense, together with the costs of suit; and shall in all cases further adjudge and order that in default of payment thereof the defendant be committed to the common jail of such county for such time not exceeding ninety days as

the court shall think fit. If such payment be not forthwith made the justice shall make out a commitment stating the amount of judgment and costs and the time for which committed, and in the usual form of commitments by justices of the peace. Every person so committed shall be received and committed to prison by the keeper of the county jail, and kept at the expense of the county until the expiration of the time; but he shall be released by order of the justice on payment to him of such fine and costs or by due course of law.

Sec. 37. Appeal may be taken to the district court in the same manner as from judgments in civil actions by justices of the peace, except that if taken by the defendant, he shall, as a part thereof, execute a bond to the village with surety to be approved by such justice, conditioned that if judgment be affirmed in whole or in part, he will pay the same and all costs and damages awarded against him on such appeal; and in case such judgment shall be affirmed in whole or in part, execution may issue against both defendant and his surety. Upon perfection of such appeal, the defendant shall be discharged from custody.

Sec. 38. All fines, forfeitures, and penalties recovered for the violation of any ordinance, rule regulation, resolution or by-law of any such village, and all moneys paid for licenses and permits shall be paid into the village treasury for the use of such village. The justices of the peace shall report and pay into the treasury quarterly, all moneys collected by them belonging to such village; which reports shall be verified by affidavit, and filed in the office of the treasurer; and such justice shall be entitled to duplicate receipts for such moneys, one of which such justice shall take and file with the village recorder.

Sec. 39. Whenever any final judgment shall be obtained against any village, the judgment creditor, his assignee or attorney, may file with the village recorder a certified transcript of such judgment, or of the docket thereof, together with his affidavit, showing the amount due thereon and all payments, if any, and that the judgment has not been appealed from or removed to another court, or if so appealed or removed, has been affirmed; and thereupon the village council shall assess the amount thereof, with interest from date of rendition to the time when the same shall be paid, as near as may be, upon the taxable property of such village, and the village recorder shall return and certify the amount of such tax to the county auditor to be collected the same as other taxes levied upon said village.

Sec. 40. All fines and penalties imposed under or by virtue of the provisions of this act, shall belong to the village, and shall constitute a fund to pay the expenses incurred under the provisions of this chapter.

Sec. 41. The justices of the peace and constables of said village shall have and may exercise, in addition to the powers and authority herein specially granted to such officers, all the powers, authority and jurisdiction in any case possessed by a justice of the peace or a constable elected in the county or counties in which such village is situated.

They shall take the same oath of office as is now required of township justices of the peace and constables and shall before entering upon the discharge of their duties as such officer severally execute a bond to said village in its corporate name in the penal sum of not less than five hundred dollars (\$500.00) or such larger sum as the village council of said village may direct, with one or more sufficient sureties to be approved by the president or recorder of said village, conditioned for the faithful discharge of his duties as such officer.

Said president or recorder shall, if such bond is approved, indorse his approval thereon, and the recorder of said village shall certify thereon that the penal sum named in such bond is in accordance with the requirements of said village council.

Said recorder shall file the bonds of such constables in his office for the benefit of any person aggrieved by acts or omissions of said constables and any person so aggrieved or the said village may maintain an action on said bond against said constables and sureties.

The said justices of the peace shall severally cause their official bonds together with their oaths of office duly certified to be filed with the clerk of the district court of the proper county for the benefit of any persons aggrieved by the acts of said justices and any person so aggrieved may maintain an action on said bonds in his own name against said justices and the sureties.

The said officers shall receive the same fees for their services as justices of the peace and constables,

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elected elsewhere in this state, are allowed under the general statutes of the state now or hereafter in force.

And in all cases where a village is situated in more than one county the justices of the peace and constables of such village shall have and possess all the powers and jurisdiction conferred by this act in each of the counties in which such village is situated and shall file their bonds in each of said counties. (Amended 1887, c. 53; 1895, c. 53.)

Sec. 42. Should a vacancy at any time occur in any of the offices provided for in this act, the village council, or the remaining members thereof, may fill the same by appointment, and the person so appointed may hold his office until his successor is elected and qualified. (Amended 1891, c. 100, s. 2.)

Sec. 43. The village so organized shall constitute one road district, and the street commissioner or road-master thereof be appointed by the village council, and all taxes raised within the limits of said village for road purposes, shall be expended under the direction of the village council.

Sec. 44. The village council shall constitute a board of auditors for the purpose of auditing all accounts payable by said village. Said board shall draw up a report, stating in detail the items of accounts audited and allowed, the nature of each account, and the name of the person to whom the account was allowed, and also including a detailed statement of the financial concerns. Such report shall be filed with the recorder, and a copy thereof shall be posted at the time and place of holding the annual election, or published in a newspaper of general circulation in said village, two weeks before such election.

Sec. 45. The legal voters of said village may, at any annual or special meeting, authorize the village to levy a tax for any legitimate object, but in no case shall the tax so levied exceed the sum of five mills upon the dollar valuation in any one year; and all taxes levied, except for improvement of streets, sidewalks and crossings, shall be levied and collected as prescribed by the statutes of this state, for the levying and collection of township taxes; provided, that the village council shall, on or before the first day of September in each year, make and certify to the county auditor of the county in which any of the lands or village lots within the corporate limits of such village are situate, a statement of all taxes levied and assessed by them, and shall also, at the same time, make and certify to the auditor of the proper county a list of the names of the owners of personal property subject to taxation within such village; and the county auditor shall, upon the receipt of said statement and list, enter and carry out the said tax or taxes against the property within such village, and the same shall be collected, and when collected, paid over to the village treasurer.

Sec. 46. The village recorder may administer oaths and take acknowledgments, and he shall give a bond in form similar to that required of town clerks. It shall be his duty:

First—To perform the duties of clerk of election, and keep a record of all proceedings at the annual and special elections of the village; to give notice of such elections as required by law, and to notify persons elected or appointed to offices thereof.

Second—To transmit to the clerk of the district court, within ten days after election and qualification, a certified statement of the name and term for which elected of all the officers elected at such election; and in case of the appointment or election of any justice of the peace, constable, treasurer or recorder of said village to fill a vacancy, a like notice shall be so filed within ten days after such election or appointment.

Third—To attend all meetings of the village board; to record and sign the proceedings thereof, and all ordinances, rules, resolutions and regulations adopted, and to countersign and keep a record of all licenses, commissions and permits granted or authorized by them, and for such purposes keep the following books:

A minute book, in which shall be recorded in chronological order all the papers mentioned in section twenty-two of this act; full minutes of all elections, general or special, and the statements of the judges thereof; full minutes of all proceedings of the village council; the titles of all ordinances, rules, regulations and by-laws, with a reference to the book and page where the same may be found.

An ordinance book, in which shall be recorded at length in chronological order, all ordinances, rules, regulations and by-laws.

A finance book, in which shall be kept a full and complete record of the finances of the village, including the receipts, the date, amount and source thereof, and

the disbursements, with the date, amount and object for which paid out; and to enter in it such other matters as the council shall prescribe; and keep such other books as the council direct.

Fourth—To countersign and cause to be published or posted every ordinance, by-law or resolution, as required by law, and to have proper proof thereof made and filed.

Fifth—To be the custodian of the corporate seal, and to file, as required by law, and to safely keep, all records, books, papers or property belonging to, filed, or deposited in his office, and deliver the same to his successor when qualified; to permit any person, with proper care, to examine and copy any of the same, and to make and certify a copy of any thereof, when required, on payment of the same fees allowed town clerks thereof.

Sixth—To draw and countersign all orders on the village treasury ordered by the council, and none other.

Seventh—To file, when presented, all chattel mortgages and affidavits relating thereto, and to enter at the time of filing, in a book properly ruled and kept therefor, the names of all the parties, arranging mortgages alphabetically; the date of said mortgage, and the date of filing the same and each affidavit relating to it; for which he shall receive the same fees allowed town clerks.

Eighth—To perform all other duties required by law or by any ordinance or other directions of the village council.

For the performance of all of the duties hereinabove set forth, except such as are enumerated in subdivisions "fifth" (5th) and "seventh" (7th) of this section, the village recorder shall receive such compensation as shall be fixed and determined by the village council of his village; and the village council shall fix his compensation by resolution thereof at their first regular meeting after the annual village election in each and every year. (Amended 1899, c. 115, s. 1.)

Sec. 47. The constable shall give a bond similar to that required of constables elected by towns, and shall be deemed included and governed in every respect by the law prescribed to them. It shall be his duty to obey all lawful written orders of the village council, to arrest with or without process, and with reasonable diligence to take before the village justice every person found in such village in a state of intoxication, or engaged in any disturbance of the peace, or violating any law of the state or ordinance of such village. He may command all persons present in such case to assist him therein, and if any person being so commanded shall refuse or neglect to render such assistance, he shall forfeit not exceeding ten dollars. He shall be entitled to the same fees allowed to constables for similar services; for other service rendered the village, such compensation as the council may fix.

Sec. 48. (Relates to liquor local option. Superseceded by 18th Am. to Const. U. S.)

Sec. 49. All ordinances, rules, and by-laws shall be enacted by a majority of all the members of the village council, and shall be signed by the president, attested by the recorder, and published once in a newspaper published in said village; and if there be no newspaper published in said village, then such ordinances shall be published once in a newspaper published in the county in which said village, or the larger part of its territory, shall be situated; and if there be no newspaper published in said village, or in said county, then by posting them conspicuously in three of the most public places in said village for ten days, and shall be recorded in a book kept for that purpose. Proof of such publication by the affidavit of the printer or foreman in the office of such newspaper, or of such posting by the certificate of the village recorder, shall be attached to and filed with such ordinance or by-laws, and noted on the record thereof, and shall be conclusive evidence of the facts stated. All ordinances shall be suitably entitled, and in this style: "The village council of..... do ordain as follows:" All authorized ordinances and by-laws shall have the force of law, and remain in force until repealed. (Amended 1905, c. 26.)

Sec. 50. Said village council shall have power and authority to declare and impose fines, penalties and punishments, and to enforce the same against any person or persons who may violate any of the provisions of any ordinance, rule or by-law enacted by them; and all such ordinances, rules and by-laws are hereby declared to have the force of law: Provided, They are not repugnant to the constitution and laws of the United States and the state of Minnesota.

Sec. 51. No member of the village council shall become a party to or interested, directly or indirectly,

in any contract made by the village council of which he may be a member; and every contract or payment voted for, or made contrary to the provisions hereof, is void; and any violation of the provisions of this section, hereafter committed, shall be a malfeasance in office, which shall subject the officer so offending to removal from office. All contracts for village improvements, except expenditures of road and poll tax, shall be let to the lowest responsible bidder, after public notice of time and place of receiving bids therefor.

Sec. 52. The president and each trustee shall be officers of the peace, and may suppress in a summary manner any riotous or disorderly conduct in the streets or public places of the village, and may command assistance of all persons under such penalty as may be prescribed by the by-laws and ordinances.

Sec. 53. Every village officer shall deliver to his successor, when qualified, all the books, records, papers, property and money in his hands as such officer; and if a vacancy happen before such successor is appointed or elected and qualified, then to the village clerk [recorder?], who shall demand and receive all such property, and deliver the same to the person who shall be selected to fill such vacancy, when qualified.

Sec. 54. The president shall preside at all meetings when present; in his absence the council may select another trustee to preside. Regular meetings shall be held at such times as may be prescribed by their by-laws. Special meetings may be called by any two trustees in writing, filed with the recorder, who shall thereupon seasonably notify all trustees of the time and place thereof, in the manner directed by the by-laws. All meetings shall be open to the public. The council shall keep a record of all its proceedings; shall have power to preserve order at its meetings, compel the attendance of trustees and punish non-attendance; and it shall be the judge of the election and qualifications of its members; the president and trustees shall be entitled to receive as compensation, the sum of one dollar each day for the time actually employed as such officers, not to exceed ten each in any one year. (Amended 1889, c. 125, s. 2.)

Sec. 55. Every contract, conveyance, commission, license or other written instrument, shall be executed on the part of the village by the president and clerk [recorder], sealed with the corporate seal, and in pursuance only of authority therefor from the village council.

Sec. 56. Whenever an application, in writing, signed by one-third as many electors of any such village as voted for village officers at the last preceding election therefor, shall be presented to the village council, praying for a dissolution of the village corporation, such council shall submit to the electors of such village, at an annual election, or special election called by them therefor, the question whether or not such village corporation shall be dissolved; the form of the ballot shall be "For dissolution," or "Against dissolution;" said ballots shall be deposited in a separate box and such election shall be conducted, the vote thereat canvassed and a statement thereof made, filed and recorded as in other cases.

Sec. 57. If a majority of the ballots cast at such election, on such proposition, shall be for dissolution, such village shall, at the expiration of six months from the date of such election, cease to be an incorporated village. Within six months, the village council shall dispose of the village property and settle, audit and allow all just claims against the village. They shall settle with the village treasurer and other officers of the village, and shall cause the assets of the village to be used in paying the debts thereof. If anything remain after paying the village debts, they may designate the manner in which the same shall be used. If they have not sufficiency of funds to pay the debts of the village, they may levy a tax to cover such deficiency, which shall be collected as other taxes and shall be paid out by the town treasurer in payment of the outstanding village orders or bonds.

Whenever the electors of any incorporated village shall vote to dissolve the same, nothing in this act shall be construed to prevent the requisite number of electors of any district, section or parts of sections contained in said village, from taking the steps provided in sections four, five, six and seven of this act to incorporate a new village prior to the expiration of six months from such voting, but the county commissioners shall fix a date for the voting for or against incorporation of such new village, to occur subsequent to the expiration of said six months. (Amended 1893, c. 186.)

Laws 1891, c. 146, sub-chapter 9, was repealed by R. L. 1905, s. 55401; but is set forth below for the reason that it relates to villages incorporated under

Laws 1885, c. 145. Sub-chapter 9 reads as follows:

Section 1. Every such village is authorized to levy assessments for local improvements upon the property fronting upon such improvements, or upon the property to be benefited by such improvements, without regard to cash valuation.

Sec. 2. Such assessments may be made by such village for filling; grading, leveling, paving, curbing, railing, bridging, graveling, macadamizing, planking, opening, extending, widening, contracting, altering or straightening any street, avenue, lane, alley or highway, and for keeping the same in repair; also for filling, grading, protecting, improving or ornamenting any public park, square or grounds now or hereafter laid out; also for planting and protecting shade and ornamental trees in its public parks and along its streets and avenues; and also for constructing, laying and repairing crosswalks and sidewalks, retaining walls, gutters, sewers and private drains; Provided, That the village council may, when any contract is let for paving, include therein the expense of laying sewer pipe to the lot line and cause the expense of same to be assessed against the lot to which the sewer pipes are supplied, as a part of the cost of such paving.

Sec. 3. The expense of any improvement mentioned in the foregoing section may be defrayed, save as herein otherwise provided, by an assessment upon the real estate benefited thereby, or by an assessment upon the real estate fronting thereon, in the discretion of the village council, to be levied in the manner hereinafter provided.

No assessment, however, to defray the cost of any improvement mentioned in section two (2) of this chapter shall be levied upon the property abutting upon such improvement or upon the property to be benefited thereby, unless a petition for such improvement, in writing, shall have been presented to said village council, signed by at least one-half ( $\frac{1}{2}$ ) of the owners of property that would be liable to such assessment, or by the owners of at least one-half ( $\frac{1}{2}$ ) of the property which would be so liable, except by an affirmative vote of at least three-fourths ( $\frac{3}{4}$ ) of the village council elect, by yeas and nays, to be entered on the minutes.

Sec. 4. Before ordering any improvement mentioned in section two (2) of this chapter, the village council shall cause plans and specifications and an estimate of the cost of the proposed improvement to be made and filed in the office of the village recorder, and, when the same is to be done by contract, shall give at least ten (10) days' notice, in the official newspaper of the village, that at a time stated the village council will meet at its usual place of meeting and receive sealed bids for the performance of such work. Such sealed bids shall be accompanied by a certified check to the amount of ten (10) per cent of the estimated cost of such improvement, or by a bond with two (2) sufficient sureties to the like amount, conditioned that he will, within ten (10) days after notice that his bid has been accepted, enter into the contract, if awarded to him, to be provided by the village council, and furnish a bond with sufficient sureties in a penal sum of at least thirty (30) per cent of the estimated cost of the improvement, conditioned to fulfill the terms of the contract; and if the contract shall be awarded to him, and he shall fail to enter into the said contract within the time limited and furnish the bond aforesaid, then the said bidder shall be liable to such village for all damages and costs that the said village may sustain by reason thereof; and the measure of damages shall be the difference between the bid made, which was accepted, and the amount the village may annually be compelled to pay for making the improvement, and the same may be retained from the amount of the certified check, if said check shall be deposited as aforesaid, or recover by action on the bond, in the name of such village, in any court having jurisdiction of the amount.

Whenever the village council shall award to any person upon his bid the contract for making any of the improvements herein mentioned, he shall at the time of the execution of said contract furnish to such village a bond, with sufficient sureties, to be approved by said council, for an amount at least thirty (30) per cent of the estimated cost of such improvement, conditioned that he will execute the work for the price mentioned in his bid and according to the plans and specifications; and said bond shall contain a further condition that he will pay for all labor done and material furnished for or on account of said improvement, and the contract to be executed shall also contain a covenant or agreement to pay for all labor done and materials furnished for or on account of



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said improvement. In case of default on his part to execute and fulfill the terms of the contract and perform the work, said bond may be sued upon and judgment recovered thereon by the said village for all damages sustained in the premises, in any court having jurisdiction of the amount. No extension of the time for fulfilling any contract by the village council shall have the effect to release the sureties upon said bond. Said bids shall be opened by the council at the meeting specified in the published notice calling for bids, or such other time thereafter as said council may appoint. All contracts shall be let to the lowest responsible bidders who shall have complied with the above requisitions and who shall guarantee to the satisfaction of the council the performance of said work, except in case of paving streets with patent pavement or pavements; In such case notice for bids may call for wood, stone or other kinds of pavements, and when all the proposals therefor are in, the council may select the one which is relatively the lowest or most satisfactory, all things considered. If the pavement selected is patented, the council shall require a license from the patentee to lay and relay the same for all time thereafter free from all claims of royalty. A copy of said contract shall be filed in the office of the village recorder and registered by him in a book kept for that purpose. The said council shall reserve the right in their said contract, in case of improper construction, to suspend the work at any time and relet the same, or to order the entire reconstruction of said work, if improperly done. In cases where the contractor shall proceed to properly perform and complete the said contract, said council may from time to time, in their discretion, as the work progresses, grant to said contractor an estimate of the amount already earned, reserving fifteen (15) per cent therefrom, which shall entitle said contractor to receive the amount due thereon. When the whole work has been done by said contractor to the satisfaction of the village council, the amount or balance due him shall be audited and allowed by said council and shall be payable out of the moneys applicable to the payment of such work, except upon paving and sewer contracts, when five (5) per cent may be retained for six (6) months to provide for the expense of back-filling and repairing streets.

Sec. 5. After the work shall have been placed under contract as herein provided the council shall assess upon the property fronting upon such improvement, or upon the property to be benefited thereby, seventy-five (75) per cent of the estimated cost of such improvement, and in addition thereto ten (10) per cent of such estimated cost, which shall be added to the assessment to defray necessary expense of making surveys, plans, specifications and superintendence, in proportion to the frontage on such improvement, or in proportion to the benefits to be derived therefrom, as they shall decide. If the amount so assessed shall be insufficient to complete the work, the village council shall, after the completion of the work, make a final assessment in the manner to pay the same.

Sec. 6. When in any case any portion of the improvements mentioned in this chapter shall, by virtue of any law or ordinance, or by virtue of any valid contract, be chargeable upon any railroad company, the amount so chargeable may be assessed upon such railroad company and collected by distress and sale of personal property in the manner provided for by the general laws of the state, in the cases of taxes levied upon personal property or by suit brought for that purpose; Provided, That any real estate belonging to said railroad company and being benefited by said improvement shall be assessed as in other cases.

Sec. 7. Upon making any assessment the village council shall direct the village assessor to make an assessment roll describing each lot or parcel of land with reasonable certainty liable to such assessment, the amount for which each lot or parcel is liable, and the names of the supposed owners thereof. Such assessment roll, with a notice in substantially the following form, shall be published in the official paper at least three (3) times before the same is confirmed, the first of which publications shall be at least ten (10) days before such confirmation. Such notice and assessment roll shall be substantially as follows:

"Village of.....

Notice is hereby given that, whereas, a contract has been let for (herein describe the nature and locality of the improvement), and the expense of such improvement to be assessed to each lot or tract of land fronting on such improvement (or to be benefited by such improvement) having been determined by the village council of said village, Now, therefore, said village council will, at their council chamber in

said village, at.....M. of....., the..... day of....., 19....., meet to review and confirm such assessment, at which time and place all persons interested may appear and make objections to the same.

It is proposed to issue bonds, chargeable to the abutting real estate (or the real estate to be benefited by such improvement), to pay such assessment, and such bonds will be issued covering all such assessments, except in cases where the owners of the property shall pay to the village treasurer, within thirty (30) days after the confirmation of such assessment, the amount thereof assessed against their property.

The following is a list of the supposed owners' names, a description of the property liable to such assessment, and the amount assessed against the same, to-wit:

Names of supposed owners.....  
Description of property.....  
Amount assessed.....  
Dated.....

.....President of  
the Village of.....

Attest:.....Village Recorder."

At the time and place mentioned in such notice, or at such time and place as they may adjourn to, said village council shall meet and review and confirm such assessment, which confirmation shall be final, except as hereinafter provided.

Sec. 8. After the expiration of said thirty (30) days the council shall issue improvement bonds covering all the assessments except such as the owners shall have already paid, as provided in the preceding section. Such bonds shall be signed by the president and recorder, be sealed with the corporate seal of the village, and contain such recitals as may be necessary to show for the payment of which improvement they were issued, and the number and amounts of such bonds. Said bonds shall be semi-annual interest coupon bonds, divided into five (5) equal series, payable respectively in one (1), two (2), three (3), four (4) and five (5) years from date, and shall draw interest at a rate not exceeding seven (7) per cent per annum, payable semi-annually. Said bonds shall be semi-annual interest coupon bonds, payable at the option of the village after five (5) years, and absolutely at the expiration of seven (7) years from their date, and shall draw interest at a rate not exceeding seven (7) per cent per annum.

The village recorder shall carefully prepare a statement of the special assessments on which the bonds are issued, and record the same, together with a copy of said bonds, in his office.

Sec. 9. In each year after the issuing of said bonds the village recorder shall certify to the county auditor, in the same manner and at the same time that other village taxes are certified to such auditor, one-fifth (1/5) of the special assessment on each parcel of property covered by said bonds, with eight (8) per cent interest on the amount of such special assessment then unpaid, as a special tax on said property; and the said auditor on receipt thereof shall enter and carry out the same upon the proper tax lists, and they shall be collected the same as other taxes are collected, and when collected paid over to the village treasurer.

Provided, That the owner or any party interested in any piece or parcel of land against which said assessment is levied may pay the full amount or any part thereof, with interest thereon at the rate of eight (8) per cent per annum to the date of payment, to the village treasurer at any time before the roll is delivered to the county treasurer; and the village treasurer shall thereupon give his receipt in duplicate for the same, which shall be sufficient authority, upon presentation to the village recorder or to the county auditor, for the cancellation of said assessment, or of so much thereof as has been paid, upon the said assessment roll and upon the certified copy of the roll filed with the county auditor. Upon the presentation of such receipt the village recorder and county auditor shall cancel the same on the said roll and copy respectively, and from and after that time the lien on said land shall cease to the amount of such payment. After the said assessment roll has been delivered to the county treasurer, the assessment, or such part as has been certified to the county auditor, must be paid to said county treasurer with interest and subject to all the penalties allowed by law, and the county treasurer shall report all such payment to the county auditor and village treasurer, giving items of assessment, interest and penalty thereon.

The county auditor shall not issue his certificate that taxes are paid on any piece of land upon which any such assessment has been certified to him until



such assessment, interest and penalties thereon, as aforesaid, have been paid and canceled as aforesaid or paid to the county treasurer.

Sec. 10. No action shall be maintained to avoid any of the special assessments of taxes levied pursuant to this chapter after bonds have been issued covering such special assessments, and said bonds shall be conclusive proof of all the proceedings on which the same are based.

Sec. 11. Any person paying his assessment within thirty (30) days of the date of the confirmation of the same, shall be entitled to a deduction of ten (10) per cent added for survey, plans, specifications and superintendence, and the village treasurer is authorized to allow such deduction. Upon presentation to the village recorder of the treasurer's receipt, it shall be his duty to mark "Canceled" the assessment on his books, opposite the description in said receipt.

Sec. 12. All deeds of conveyance of the land affected by any assessment mentioned in this chapter shall be subject to the lien of such assessment from and after the time such assessment has been confirmed by the village council and certified to the county auditor.

Sec. 13. The village council may require the payment of all assessments within thirty (30) days after the date of the confirmation of the same, when the estimated cost of the improvement for which the assessment is levied does not exceed fifty (50) cents per front foot of the property to be assessed therefor; and may require the payment within such time of all assessments for the construction of sidewalks. In such cases the notice published with the assessment roll shall state that payment must be paid within such time.

Sec. 14. Any person feeling himself aggrieved by such assessment may, by notice in writing served on the president or recorder of said village, a copy whereof with proof of service shall be filed in the office of the clerk of the district court of the proper county within twenty (20) days of the confirmation of such assessment, appeal from such assessment to the district court aforesaid, when such appeal shall be tried by the court as in ordinary cases; but no pleadings shall be required, and the party appealing shall specify in the notice of appeal the grounds of objection to such assessment, and shall not be entitled to have any other grounds than those specified considered; and a copy of the assessment roll in question and of the resolution of the village council confirming the same, certified by the village recorder, of the originals thereof, shall be prima facie evidence of the facts therein stated, and that such assessment was regular and just and made in conformity to law, and the judgment of such court therein shall be final. Such appeal shall be entered and brought on for trial and be governed by the same rules as appeals from justices of the peace in civil actions, and like bonds shall be given to such village by the person appealing as are required of appellants in such actions.

Sec. 15. The said council may at any time authorize the sale and assignment of said bonds at a price not less than their par value, and may apply the proceeds thereof to the payment of the cost of the improvement for which they are respectively issued, and the village recorder shall keep a record of all such assignments.

Sec. 16. Said bonds shall be substantially in the following form:

"Public Improvement Bonds of the Village of..... Series No. .... Amount ..... Date ..... To Whom It May Concern: This is to certify that the sum of..... Dollars has been duly assessed against the lots and parcels of land mentioned in the assessment roll for the improvement of....., which said assessment is a valid and substantial lien and charged against the lots and parcels of land therein described, and that the said sum has been by said village divided into five (5) series or installments; that this bond represents the sum of..... Dollars, the same being series No. ...., which is due and payable to the said village of....., out of the property pledged by law for its payment, on or before....., and is issued pursuant to the provisions of the laws of the State of Minnesota therefor; and the said village of..... hereby guarantees to the holder of this bond that it will cause the said assessment to be collected and will pay, upon surrender of this bond to the village treasurer, at his office in said village of.....

on the first (1st) day of July in the....., the said sum of..... Dollars, with interest thereon, from the date hereof to the time mentioned herein for payment, at the rate of..... per cent per annum.

In Testimony Whereof, the said Village of..... has caused this bond to be signed by its president and attested by its recorder, and its corporate seal affixed thereto, this..... day of..... A. D.....

President  
Attest:  
Recorder."

Laws 1919, c. 376 reads as follows: In all villages organized under and governed by Chapter 145, General Laws of Minnesota 1885, and the amendments thereto, at the annual election held in March 1920, three trustees shall be elected, one for a term of one year, one for a term of two years, and one for a term of three years, the term for which each is elected to be designated on the ballot, and thereafter one trustee shall be elected annually for the term of three years.

Laws 1933, Chapter 343, entitled "An act permitting villages organized and existing under Chapter 145 of the General Laws of Minnesota for 1885, and the amendments thereto, having a population of 10,000 or more, to establish election districts therein; to provide for the election of the president and two trustees in each district; appointment of the recorder, and to fix the salaries of certain officers," reads as follows:

Section 1. Villages may provide for election districts.—That any village organized and existing under Chapter 145 of the General Laws of Minnesota for 1885, and the amendments thereto, having a population of 10,000 or more, may, by adopting the provisions of this Act, at a special election called therefor, as hereinafter provided, divide such village into six election districts, provide for the election of two trustees in and for each election district, the election of the president for two year terms, and the appointment of the village recorder by the council.

Sec. 2. Terms of officers.—That at the first annual village election held after the adoption of the provisions of this Act in the manner hereinafter set forth the village president shall be elected for a term of two years; one trustee shall be elected in each district for a term of one year and one trustee shall be elected in each district for a term of two years, and at each second annual election thereafter the president shall be elected for a term of two years and at each annual election thereafter one trustee shall be elected in each district for a term of two years and a majority of the members of the council shall constitute a quorum.

Sec. 3. Salaries of officers.—The salaries of the president and trustees shall be fixed by the council and the president's salary shall not exceed two hundred (\$200.00) dollars per month, and each trustee's salary shall not exceed fifty (\$50.00) dollars per month, and the recorder shall be appointed by the council and may be removed at any time by a majority vote of all members of the council. The salary of the recorder shall be determined and allowed by the council.

Sec. 4. Submission to vote of people.—Upon the filing of a petition for an election for the adoption of the provisions of this Act, signed by five per cent of the voters duly registered at the time of the preceding annual village election, the village council shall provide for the submission of the provisions of this Act to the voters at the next annual village election, and if a majority of those voting on the question shall vote in favor of the adoption of the provisions of this Act, the council shall declare the same duly adopted, provided, however, that if the provisions of this Act are not adopted at such election, the question may be submitted at a subsequent annual village election in the manner provided herein for such elections.

Sec. 5. Judges to appoint commission.—On the adoption of the provisions of this Act, the judges of the District Court of the district in which such village is located, shall, upon receiving due notice thereof, appoint a commission of fifteen free holders of such village which shall, within thirty days after their appointment, divide such village into six election districts, each to contain not less than five hundred legal voters, all such districts to have approximately the

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## APPENDIX 3: LAWS 1885, CHAPTER 145

same number of legal voters, as near as may be, and the certificate describing the election districts established by said commissioners, or a majority of them, shall be forthwith filed with the village recorder. The council shall provide sufficient voting precincts in each election district.

Sec. 6. Officers to serve unexpired term.—On the adoption of the provisions of this Act the village president and the village recorder may each serve the unexpired term to which he was elected, and each trustee, now serving on said village council may

serve as a trustee at large during his respective unexpired term at the rate of compensation as then received as by law provided.

Sec. 7. Application of act.—This Act shall not be construed as abridging, restricting or in any other manner changing the powers of any such village which is now organized and operating under Chapter 145 of the General Laws of 1885 or any other Acts supplementary thereto or amendatory thereof.

APPENDIX 4

SUPREME COURT OF MINNESOTA

Name	Title	Term Expires
Henry M. Gallagher.....	Chief Justice.....	1945
Andrew Holt .....	Associate Justice.....	1943
Royal A. Stone.....	Associate Justice.....	1943
Clifford L. Hilton.....	Associate Justice.....	1947
Charles Loring .....	Associate Justice.....	1945
Julius J. Olson.....	Associate Justice.....	1947
Harry H. Peterson.....	Associate Justice.....	1945

COURT OFFICIALS

Grace Kaercher Davis.....	Clerk .....	1943
Mae Sherman .....	Deputy Clerk .....	
Ethel M. Martin.....	Court Reporter.....	
Paul Dansingberg.....	Librarian.....	1943
Josephine Ann Norval.....	Assistant Librarian.....	
Katherine Greene.....	Assistant Librarian.....	

# MINNESOTA STATUTES 1941

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## APPENDIX 5. DISTRICT COURTS

### APPENDIX 5

#### DISTRICT COURTS

#### JUDGES

Term six years — Expires first Tuesday in January of year stated.

Dist.	Judge	Term	Post-Office	Reporter	Address
1	W. A. Schultz.....	1943	South St. Paul.....	Mabel Vanderseen.....	Hastings
	Charles P. Hall.....	1947	Red Wing.....	Mrs. Ethel R. Risse.....	Red Wing
2	Hugo O. Hanft.....	1945	St. Paul.....	Eva E. Greer.....	St. Paul
	James C. Michael.....	1947	St. Paul.....	Paul Geer.....	St. Paul
	John W. Boerner.....	1947	St. Paul.....	Andrew Hanson.....	St. Paul
	Carlton McNally.....	1945	St. Paul.....	Roy F. Morgan.....	St. Paul
	Kenneth Gray Brill.....	1943	St. Paul.....	Chas. P. Murray.....	St. Paul
	Gustavus Loevinger.....	1945	St. Paul.....	Frank A. Massey.....	St. Paul
	Clayton Parks.....	1945	St. Paul.....	Arthur P. Moore.....	St. Paul
	Albin S. Pearson.....	1947	St. Paul.....	Gates McAllister.....	St. Paul
3	Vernon Gates.....	1945	Rochester.....	Harry S. Murphy.....	Rochester
	Karl Finkelnburg.....	1945	Winona.....	Ralph Pickart.....	Winona
4	Winfield W. Bardwell.....	1943	Minneapolis.....	Clifford H. Ward.....	Minneapolis
	Edmund A. Montgomery.....	1945	Minneapolis.....	William C. Ward.....	Minneapolis
	Mathias Baldwin.....	1947	Minneapolis.....	Paul Ness.....	Minneapolis
	Frank E. Reed.....	1943	Minneapolis.....	Robert H. Biron.....	Minneapolis
	Arthur W. Selover.....	1945	Minneapolis.....	Frank H. Ford.....	Minneapolis
	Levi M. Hall.....	1945	Minneapolis.....	Frank Bowler.....	Minneapolis
	Lars O. Rue.....	1945	Minneapolis.....	P. J. Ahern.....	Minneapolis
	Vince A. Day.....	1945	Minneapolis.....	George Schnepfer.....	Minneapolis
	Paul S. Carroll.....	1943	Minneapolis.....	Wayne Howard.....	Minneapolis
	Luther Youngdahl.....	1943	Minneapolis.....	Emery Caton.....	Minneapolis
	Fred B. Wright.....	1943	Minneapolis.....	Ray J. Lerschen.....	Minneapolis
5	Axel B. Anderson.....	1947	Owatonna.....	Frank G. Kiesler.....	Waseca
6	Harry A. Johnson.....	1945	Mankato.....	A. E. Knaub.....	Mankato
7	Don M. Cameron.....	1947	Little Falls.....	Eugene Diercks.....	Little Falls
	Anton Thompson.....	1945	Fergus Falls.....	Mrs. Maude E. Carter.....	Fergus Falls
	Byron R. Wilson.....	1943	Moorhead.....	W. A. Grantham.....	Moorhead
	J. B. Himsl.....	1945	St. Cloud.....	Wm. J. Lerschen.....	St. Cloud
8	Jos. J. Moriarty.....	1945	Shakopee.....	Richard Brindmore.....	Shakopee
9	A. B. Gislason.....	1945	Marshall.....	Keith Scheid.....	New Ulm
	Albert H. Enderon.....	1947	New Ulm.....	Walter W. White.....	Marshall
10	Norman E. Peterson.....	1943	Albert Lea.....	Julius S. Knievel.....	Albert Lea
11	Martin Hughes.....	1947	Hibbing.....	C. E. Dwyer.....	Hibbing
	Bert Fesler.....	1945	Duluth.....	Lyon H. Fowler.....	Duluth
	Edward Freeman.....	1943	Virginia.....	Roy E. Gordon.....	Virginia
	C. R. Magney.....	1945	Duluth.....	Lee A. LaBaw.....	Duluth
	Edwin J. Kenny.....	1943	Duluth.....	Edward J. Egan.....	Duluth
	Mark Nolan.....	1943	Gilbert.....	Winfield Thunstedt.....	Duluth
12	G. E. Qvale.....	1947	Willmar.....	Leonard Blom.....	Willmar
	Harold Baker.....	1947	Renville.....	O. W. Nordbye.....	Renville
13	Charles A. Flinn.....	1945	Windom.....	Joseph F. Dolan.....	Windom
14	James E. Montague.....	1947	Crookston.....	William H. Montague.....	Crookston
	Oscar R. Knutson.....	1943	Warren.....	Arnold Pearson.....	Warren
15	Graham M. Torrance.....	1947	Bemidji.....	Ferris K. Gordon.....	Bemidji
	Alfred L. Thwing.....	1943	Grand Rapids.....	E. A. Hall.....	Grand Rapids
	D. H. Fullerton.....	1945	Brainerd.....	Harley G. Swenson.....	Brainerd
16	E. R. Selnes.....	1943	Glenwood.....	Chas. McNamara.....	Morris
17	Julius E. Haycraft.....	1945	Fairmont.....	Harold J. Wright.....	Fairmont
18	Leonard Keyes.....	1947	Columbia Heights.....	Gordon Griffiths.....	Minneapolis
19	Alfred P. Stolberg.....	1943	Center City.....	W. E. Maunsell.....	Stillwater

#### CLERKS

District	County	Name	Address	Term Expires
1	Dakota	Eugene Casserly	Hastings	1943
	Goodhue	Eliff W. Olson	Red Wing	1943
2	Ramsey	J. J. Fitzgerald	St. Paul	1945
3	Houston	Alvin E. Pieper	Caledonia	1943
	Olmsted	Ernest A. Jensen	Rochester	1943
	Wabasha	Luke C. Beaver	Wabasha	1943
	Winona	Joseph C. Page	Winona	1943
4	Hennepin	George H. Hemperley	Minneapolis	1943
5	Dodge	Oliver J. Holtan	Mantorville	1943
	Rice	Elmer N. Heck	Faribault	1945
	Steele	S. C. Goff	Owatonna	1945
	Waseca	Frank S. Papke	Waseca	1945
6	Blue Earth	Harry W. Haedt	Mankato	1945
	Watonwan	Harry W. Gibbs	St. James	1943
7	Becker	C. B. Connell	Detroit Lakes	1945
	Benton	A. J. Bible	Foley	1943
	Clay	B. B. Rusness	Moorhead	1945
	Douglas	Albert T. Olson	Alexandria	1943
	Mille Lacs	Carl Eckdall	Milaca	1943
	Morrison	R. L. Meyers	Little Falls	1943
	Otter Tail	H. W. Glorvigen	Fergus Falls	1945
	Stearns	John L. Dominik	St. Cloud	1943
	Todd	Maude Gutches	Long Prairie	1945
	Wadena	Florence Clayton	Wadena	1943
8	Carver	O. L. Lundstrom	Chaska	1943
	LeSueur	George J. Krava	LeCenter	1943
	McLeod	Heston Benson	Glencoe	1943
	Scott	Hugo P. Hentges	Shakopee	1943
	Sibley	Grover C. Beatty	Gaylord	1945

# MINNESOTA STATUTES 1941

## APPENDIX 5. DISTRICT COURTS

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### CLERKS

District	County	Name	Address	Term Expires
9	Brown	Carl A. Witt	New Ulm	1943
	Lincoln	Chris Simonson	Ivanhoe	1943
	Lyon	H. E. Persons	Marshall	1943
	Nicollet	Frank P. Hughes	St. Peter	1943
10	Redwood	Frank Baldwin	Redwood Falls	1945
	Fillmore	Carl G. Johnson	Preston	1945
	Freeborn	Ole A. Swanson	Albert Lea	1945
11	Mower	L. A. Sherman	Austin	1943
	Carlton	Joe P. Poirier	Carlton	1943
	Cook	E. F. Lindquist	Grand Marais	1943
12	Lake	W. F. Lawrence	Two Harbors	1945
	St. Louis	Fred D. Ash	Duluth	1945
	Chippewa	E. H. Nelson	Montevideo	1943
	Kandiyohi	A. A. C. Bloomquist	Willmar	1943
13	Lac qui Parle	Samuel O. Jarshaw	Madison	1943
	Meeker	Albert Koerner	Litchfield	1943
	Renville	H. J. Robertson	Olivia	1943
	Swift	K. J. Rodberg	Benson	1943
	Yellow Medicine	Edwy O. Dibble	Granite Falls	1943
	Cottonwood	M. B. Severson	Windom	1945
	Murray	Fred W. Helweg	Slayton	1943
	Nobles	Stanley Nelson	Worthington	1943
	Pipestone	O. T. Johnson	Pipestone	1943
	Rock	Chas. W. Soutar	Luverne	1943
	Kittson	C. A. Erickson	Hallock	1943
	Mahnomen	Camilla Hardy	Mahnomen	1945
	14	Marshall	A. C. Swandby	Warren
Norman		Oscar H. Nordby	Ada	1943
Pennington		Henry Storhaug	Thief River Falls	1945
Polk		Raymond H. Espe	Crookston	1943
Red Lake		P. F. Pouliot	Red Lake Falls	1943
Roseau		P. O. Fryklund	Roseau	1945
Aitkin		Paul Huff	Aitkin	1943
Beltrami		Beatrice Haley	Bemidji	1945
Cass		A. K. McPherson	Walker	1943
Clearwater		E. H. Reff	Bagley	1945
15	Crow Wing	W. A. M. Johnstone	Brainerd	1943
	Hubbard	C. L. Bradt	Park Rapids	1945
	Itasca	John E. McMahon	Grand Rapids	1945
	Koochiching	J. H. Drummond	International Falls	1945
	Lake of the Woods	J. U. Williams	Baudette	1943
	Big Stone	H. A. Larkin	Ortonville	1945
	Grant	Walter R. Summers	Elbow Lake	1945
	Pope	L. G. Solhaug	Glenwood	1943
	Stevens	Harry Peterson	Morris	1945
	Traverse	Ben Cunningham	Wheaton	1945
	Wilkin	David J. Jones	Breckenridge	1943
	17	Faribault	Paul Belau	Blue Earth
Jackson		John S. Fiddes	Jackson	1943
Martin		E. H. Flygare	Fairmont	1943
18	Anoka	Theo. A. E. Nelson	Anoka	1945
	Isanti	M. V. Peterson	Cambridge	1945
	Sherburne	C. W. Guptill	Elk River	1943
	Wright	F. M. Leahy	Buffalo	1945
19	Chisago	Theodore Johnson	Center City	1943
	Kanabec	Albert E. Anderson	Mora	1945
	Pine	William Mista	Pine City	1945
	Washington	Reuben Peterson	Stillwater	1945

# MINNESOTA STATUTES 1941

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## APPENDIX 6. MUNICIPAL COURTS

### APPENDIX 6 MUNICIPAL COURTS

Municipality	Judge	Practice Is Under
Ada, city	E. J. Herringer	Justice court
Adrian, village	F. J. Pridéau	District court
Alexandria, city	Frank A. Weed	Laws 1895, Chapter 229
Anoka, city	J. W. Rogers	District court
Austin, city	Clifford E. Enger	District court
Bemidji, city	Thayer C. Bailey	District court (civil) Justice court (criminal)
Benson, city	W. E. Paulson	
Brainerd, city	Richard C. Ebert J. H. Warner	District court
Buhl, village	Dan Kinsman	Justice court
Cambridge, village	A. G. Engberg	Justice court
Canby, city	A. C. Severson	Laws 1895, Chapter 229
Chisholm, city	Royal C. Huber	
Cloquet, city	J. E. Diesen	District court
Columbia Heights, city	Clyde C. Johnson	District court
Crookston, city	Wm. P. Murphy	
Crosby, village	Elmer G. Anderson	District court
Dawson, city	W. P. Ridgway	Justice court
Detroit Lakes, city	Fred Dennis	Laws 1895, Chapter 229
Duluth, city	Royal C. Bouschor Richard M. Funck Wm. E. Tracy	Laws 1923, Chapter 238, as amended
East Grand Forks, city	J. C. Sherlock	Section 488.16 as modified
Ely, city	Edwin W. Toms	Special Laws 1891, Chapter 59, as amended
Eveleth, city	Frank H. Raumer	District court
Faribault, city	James H. Caswell	District court (Established by Laws 1925, Chap. 120)
Fergus Falls, city	Frank C. Barnes	Justice court
Gaylord, village	R. H. Mathwick	(Established by Laws 1941, Chapter 187)
Gilbert, village	Frank J. Erchul	District court
Glencoe, city	Otto E. Leistico	Laws 1895, Chapter 229, and partly under justice and district court
Granite Falls, city	H. A. Hamre	District court
Hibbing, village	Christ Holm	Laws 1929, Chapter 253
Hutchinson, city	Grant W. Dwinell	Special Statute
International Falls, city	John H. Brown	District court (Governed by G. S. 1923, Chapter 5)
Jordan, city	Theo. F. Pekarna	Justice court
Keewatin, village	Sverre Omtvedt	District court
Lake City, city	G. H. Lange	Special Statute
LeSueur, city	John P. Block	
Little Falls, city	Phil S. Randall	District court
Luverne, city	D. M. Main	District court
Madison, city	M. T. Hoff	Justice court
Mahnomen, village		(Established Extra Session Laws 1937, Chapter 72)
Mankato, city	Leslie H. Morse	Laws 1927, Chapter 61
Marshall, city	A. L. Soucy	Laws 1895, Chapter 229
Melrose, city	Ignatius Lemm	
Minneapolis, city	Wm. A. Anderson Paul W. Gullford Wm. C. Larson Earl J. Lyons Joseph A. Poirier	Special Laws 1889, Chapter 34, as amended
Montevideo, city	B. J. Oyen	District court
Montgomery, city	J. L. Marek	Justice court
Morris, city	George Beise	
Nashauk, village	Lawrence Bonaventura	District court
New Prague, city	Frank R. Frolik	Justice court
New York Mills, village	A. E. Anderson	Justice court (Established by Laws 1935, Chap. 253)
New Ulm, city	Russell L. Johnson	District court
Northfield, city	T. R. McGuire	Justice court
North Mankato, city	A. J. Berndt	District court
Ortonville, city	C. E. Schofield	Laws 1895, Chapter 229
Owatonna, city	F. A. Alexander	District court
Pipestone, city	T. E. Fellows	Justice court
Proctor, village	E. A. Anderson	Justice court
Red Wing, city	Francis H. Watson	District court
Redwood Falls, city	A. T. Janes, Sr.	District court
Rochester, city	Burt Elliott Eaton Wm. S. LaPlante	Minnesota Statutes
St. Charles, city	S. H. McElhaney	Laws 1895, Chapter 229
St. Cloud, city	Wendell Y. Henning	District court (Established by Laws 1941, Chap. 223)
St. Paul, city	John W. Finehout Robert V. Rensch John L. Rounds	Special Laws 1889, Chapter 351, as amended
Sauk Centre, city	W. M. Parker	Laws 1895, Chapter 229
Shakopee, city	P. J. Schwartz	Laws 1895, Chapter 229
Sleepy Eye, city	Thomas J. Lang	Laws 1895, Chapter 229
South St. Paul, city	Lewis C. Shepley	District court
Springfield, city	B. M. Frantz	Justice court
Staples, city	H. J. Dower	Justice court
Stillwater, city	Wm. P. Nolan	Justice court and Special Laws 1876, Chapter 200, and Special Laws 1881, Chapter 92
Thief River Falls, city	Lincoln Arnold	Justice court
Tower, city	Fred Johnson	(Established by Laws 1929, Chapter 4)
Tracy, city	Wm. Frederichs	Justice court
Two Harbors, city	Charles Wilkinson	
Virginia, city	James P. Carey	District court
Waseca, city	Leon J. B. Sexton	
Waterville, city	Arthur F. Scheid	Laws 1895, Chapter 229
Willmar, city	Vendale W. Lundquist	District court
Winona, city	Edward D. Libera	(Established by Special Laws 1895, Chapter 115)
Worthington, city	Oscar A. Kunzman	Laws 1895, Chapter 229

# MINNESOTA STATUTES 1941

## APPENDIX 7. JUDGES OF PROBATE

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### APPENDIX 7

#### JUDGES OF PROBATE

County	Name	Post-Office Address	Term Expires
Aitkin	L. E. Johnson	McGregor	1945
Anoka	Lawrence J. Green	Anoka	1943
Becker	E. O. Hanson	Detroit Lakes	1945
Beltrami	S. M. Koefod	Bemidji	1943
Benton	Charles W. Walker	Foley	1945
Big Stone	W. T. Utley	Ortonville	1943
Blue Earth	J. R. Klaseus	Mankato	1945
Brown	William B. Mather	New Ulm	1945
Carlton	Ed. J. Johnson	Carlton	1943
Carver	Henry Truwe	Chaska	1943
Cass	A. B. Oliver	Walker	1945
Chippewa	Douglas P. Hunt	Montevideo	1945
Chisago	Charles G. Burns	Center City	1943
Clay	P. F. Fountain	Moorhead	1945
Clearwater	Elvin Sorenson	Bagley	1943
Cook	James V. Creech	Grand Marais	1945
Cottonwood	J. H. Dudley	Windom	1945
Crow Wing	L. B. Kinder	Brainerd	1945
Dakota	E. J. Hiniker	Hastings	1945
Dodge	Lee R. Rohrer	Mantorville	1945
Douglas	Ben Hallberg	Alexandria	1945
Faribault	Oscar M. Mundale	Blue Earth	1945
Fillmore	Ludvig Gullickson	Preston	1945
Freeborn	Norris O. Peterson	Albert Lea	1945
Goodhue	Wm. M. Ericson	Red Wing	1945
Grant	W. H. Goetzinger	Elbow Lake	1945
Hennepin	Manley L. Fosseen	Minneapolis	1945
Houston	Jas. C. Evans	Caledonia	1945
Hubbard	Peter A. Christoson	Park Rapids	1945
Isanti	Raymond T. Olsen	Cambridge	1945
Itasca	John W. Gardner	Grand Rapids	1945
Jackson	Warren P. Adams	Jackson	1945
Kanabec	Frank M. Ziegler	Ogilvie	1945
Kandiyohi	Nels S. Swenson	Willmar	1945
Kittson	Levi E. Johnson	Hallock	1945
Koochiching	John Berg	International Falls	1945
Lac qui Parle	A. J. Olson	Madison	1945
Lake	William E. Scott	Two Harbors	1945
Lake of the Woods	Albert Childgren	Baudette	1943
LeSueur	C. J. Brown	LeCenter	1945
Lincoln	Francis Fennessey	Ivanhoe	1945
Lyon	R. N. Anderson	Marshall	1943
McLeod	J. A. Morrison	Hutchinson	1943
Mahnomen	B. J. Reck	Mahnomen	1945
Marshall	Nels M. Engen	Warren	1945
Martin	A. R. Fancher	Fairmont	1945
Meeker	Reuben C. Erickson	Litchfield	1945
Mille Lacs	D. W. Luchsinger	Milaca	1945
Morrison	A. A. Fueger	Little Falls	1943
Mower	Carl Baudler	Austin	1945
Murray	G. J. Kolander	Slayton	1943
Nicollet	Sam Abrahamson	St. Peter	1943
Nobles	Vincent Hollaren	Worthington	1945
Norman	Oscar H. Bakke	Ada	1945
Olmsted	Bunn T. Willson	Rochester	1943
Otter Tail	J. N. Haagenenson	Fergus Falls	1945
Pennington	H. A. Kjos	Thief River Falls	1945
Pine	Robert Wilcox	Pine City	1945
Pipestone	Francis O'Neill	Pipestone	1945
Polk	Nels Ben Hansen	Crookston	1943
Pope	Edw. E. Barsness	Glenwood	1945
Ramsey	Michael F. Kinkead	St. Paul	1945
Red Lake	Glen N. Fellman	Red Lake Falls	1943
Redwood	R. V. Ochs	Redwood Falls	1945
Renville	Robert Beach Henton	Olivia	1945
Rice	Francis J. Hanzel	Faribault	1945
Rock	Helga Skyberg	Luverne	1943
Roseau	Henry Hagen	Roseau	1945
St. Louis	Wm. J. Archer	Duluth	1943
Scott	F. J. Connolly	Shakopee	1945
Sherburne	M. K. Iliff	Elk River	1945
Sibley	Einar A. Rogstad	Gaylord	1945
Stearns	E. J. Ruegemer	St. Cloud	1945
Steele	Benard McGovern	Owatonna	1945
Stevens	E. L. Cress	Morris	1945
Swift	Marlon E. Hollenbeck	Benson	1943
Todd	Mert E. Gutches	Long Prairie	1943
Traverse	Albin C. Hofstedt	Wheaton	1945
Wabasha	Frank C. Goss	Wabasha	1943
Wadena	Lynn H. Pettit	Wadena	1945
Waseca	Chas. Spillane	Waseca	1945
Washington	Edward Thelen	Stillwater	1945
Watsonwan	George W. Seager	St. James	1945
Wilkin	E. C. Parker	Breckenridge	1945
Winona	Leo F. Murphy	Winona	1943
Wright	O. J. Anderson	Buffalo	1945
Yellow Medicine	Wm. Lee	Granite Falls	1945



# MINNESOTA STATUTES 1941

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## APPENDIX 8. UNITED STATES COURTS IN MINNESOTA

### APPENDIX 8

#### UNITED STATES COURTS IN MINNESOTA

UNITED STATES CIRCUIT COURT OF APPEALS (Eighth Circuit)

and

UNITED STATES DISTRICT COURT

#### CIRCUIT JUSTICE

Stanley Reed, Associate Justice, United States Supreme Court, Washington, D. C.

#### CIRCUIT JUDGES (Eighth Circuit)

Kimbrough Stone, Kansas City, Mo.  
Archibald K. Gardner, Huron, S. D.  
John B. Sanborn, St. Paul, Minn.  
Walter G. Riddick, Little Rock, Ark.

Joseph W. Woodrough, Omaha, Nebr.  
Seth Thomas, Fort Dodge, Iowa  
Harvey M. Johnsen, Kansas City, Mo.

#### DISTRICT JUDGES

Gunnar H. Nordbye, Minneapolis, Minn.  
Matthew M. Joyce, Minneapolis, Minn.

Robert C. Bell, St. Paul, Minn.  
George F. Sullivan, St. Paul, Minn.

#### CLERK DISTRICT COURT Thomas H. Howard, St. Paul, Minn.

#### DEPUTY CLERKS OF COURT

Chell M. Smith (Chief Deputy), Minneapolis, Minn.      Kathryn F. O'Connor, St. Paul, Minn.  
Mamie A. Bredeson, Winona, Minn.                      E. Catherine Neff, Duluth, Minn.  
John L. Ketten, Mankato, Minn.                          Louise W. Smith, Fergus Falls, Minn.

#### UNITED STATES ATTORNEY

Victor E. Anderson, St. Paul, Minn.

#### ASSISTANT UNITED STATES ATTORNEYS

James J. Gibling (First Assistant), St. Paul, Minn.      Russell C. Rosenquest, St. Paul, Minn.  
John W. Graff, St. Paul, Minn.                              William P. Murphy, St. Paul, Minn.  
Linus J. Hammond, St. Paul, Minn.                        Earl R. Larson, St. Paul, Minn.

#### SPECIAL ASSISTANT UNITED STATES ATTORNEY

Clarence U. Landrum, Detroit Lakes, Minn.

#### SPECIAL ASSISTANT ATTORNEY GENERAL

John J. Courtney, St. Paul, Minn.

#### DEPARTMENT OF JUSTICE, BUREAU OF INVESTIGATION

A. G. Berens, Special Agent in Charge, St. Paul, Minn.

#### UNITED STATES MARSHAL

John J. Farrell, St. Paul, Minn.

#### CHIEF DEPUTY UNITED STATES MARSHAL

Elmer J. Kennedy, St. Paul, Minn.

#### TERMS OF COURT — DISTRICT OF MINNESOTA

First Division (Winona): Fourth Tuesday in January and third Tuesday in June.  
Second Division (Mankato): Third Tuesday in January and second Tuesday in June.  
Third Division (St. Paul): First Tuesday in April and first Tuesday in November.  
Fourth Division (Minneapolis): First Tuesday in March and fourth Tuesday in September.  
Fifth Division (Duluth): First Tuesday in May and first Tuesday in December.  
Sixth Division (Fergus Falls): First Tuesday in January and fourth Tuesday in May.

#### COUNTIES IN THE DISTRICT

First Division: Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha, and Winona.  
Second Division: Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, LeSueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.

Third Division: Chisago, Dakota, Goodhue, Ramsey, Rice, Scott, and Washington.

Fourth Division: Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift, and Wright.

Fifth Division: Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine, and St. Louis.

Sixth Division: Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomon, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin.

#### REFEREES IN BANKRUPTCY

Herbert M. Bierce.....Winona, Minn.                      Horace H. Glenn.....Minneapolis, Minn.  
Horace W. Robert.....Mankato, Minn.                      Nicolai F. Field.....Fergus Falls, Minn.  
Horace H. Glenn.....St. Paul, Minn.                        George A. E. Finlayson.....Duluth, Minn.

#### MASTERS IN CHANCERY

United States Commissioner Howard S. Abbott.....Minneapolis, Minn.  
(Masters appointed by the court when deemed necessary)

#### UNITED STATES COMMISSIONERS

First Division:    Loyd J. Palmer.....Duluth, Minn.  
Martin A. Beatty.....Winona, Minn.                      George F. Shea.....Virginia, Minn.  
Second Division:    Adolph S. Larson.....Sandstone, Minn.  
E. Raymond Hughes.....Mankato, Minn.                      Sixth Division:    Bert Hansen.....Warroad, Minn.  
A. B. Hughes.....Worthington, Minn.                      Anton O. Hagen.....Roseau, Minn.  
Third Division:    Philip S. Smith.....Oak Island, Minn.  
Wm. T. Goddard.....St. Paul, Minn.                      Albert Chilgren.....Baudette, Minn.  
Fourth Division:    Frank C. Barnes.....Fergus Falls, Minn.  
Howard S. Abbott.....Minneapolis, Minn.                      Lucius S. Miller.....Crookston, Minn.  
Harry D. Irwin.....Minneapolis, Minn.                      Clifford L. Easton.....Humboldt, Minn.  
H. Leigh Ronning.....Willmar, Minn.                      Fred Dennis.....Detroit Lakes, Minn.  
Fifth Division:    Fred J. Hughes.....St. Cloud, Minn.  
M. Eleanor Nolan.....Brainerd, Minn.                      Herbert Olson.....Bemidji, Minn.  
John H. Brown.....International Falls, Minn.

# MINNESOTA STATUTES 1941

## APPENDIX 9. FEDERAL OFFICIALS IN MINNESOTA

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### APPENDIX 9

#### FEDERAL OFFICERS IN MINNESOTA

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INTERNAL REVENUE DEPARTMENT  
Collector—Arthur D. Reynolds  
Assistant to Collector—A. R. Knox

CUSTOMS SERVICE, MINNEAPOLIS  
Collector—Agnes M. Hodge  
Assistant Collector—Edw. F. Flynn

CUSTOMS SERVICE, ST. PAUL  
Deputy Collector in Charge—Sylvester J. Quinn

CUSTOMS SERVICE, DULUTH  
Collector—Frank Russell

NATURALIZATION SERVICE  
District Director—O. B. Holton, St. Paul

POST-OFFICE INSPECTION SERVICE  
Inspector in Charge—Maurice I. Ryan, St. Paul  
Chief Clerk—M. P. Moroney, St. Paul

RAILWAY MAIL SERVICE  
Division Superintendent—Frank Schoenfeld, St. Paul  
Assistant Superintendent—

CIVIL SERVICE COMMISSION  
Manager 8th District, St. Paul—Rena B. Smith  
Assistant Manager—Daniel C. Whalen, St. Paul

INTERSTATE COMMERCE COMMISSION  
Land Section Bureau of Valuation  
Appraiser in Charge—David Douglas, St. Paul

# MINNESOTA STATUTES 1941

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## APPENDIX 10. COURT RULES

### APPENDIX 10

#### COURT RULES

##### FEDERAL COURT RULES

##### SUPREME COURT OF THE UNITED STATES

REVISED RULES ADOPTED FEBRUARY 13, 1939, EFFECTIVE FEBRUARY 27, 1939

#### Rule

1. Clerk.
2. Attorneys and counselors.
3. Clerks to justices not to practice.
4. Library.
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8. Bills of exception; charge to jury; omission of unnecessary evidence.
9. Assignment of errors.
10. Appeal; citation; record; designation of parts to be included in transcript.
11. Docketing cases.
12. Jurisdictional statements.
13. Printing records; designation of points intended to be relied upon and of parts of record to be printed.
14. Translations.
15. Further proof.
16. Objections to evidence in record.
17. Certiorari to correct diminution of record.
18. Models, diagrams, and exhibits of material.
19. Death of party; revivor; substitution.
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21. No appearance of appellant or petitioner.
22. No appearance of appellee or respondent.
23. No appearance of either party.
24. Neither party ready at second term.
25. Submission on briefs by one or both parties without oral argument.
26. Form of printed records, petitions, briefs, etc.
27. Briefs.
28. Oral argument.
29. Opinions of the court.
30. Interest and damages.
31. Procedendo to issue on dismissal.
32. Costs.
33. Rehearing.
34. Mandates.
35. Dismissing cases in vacation.
36. Appeals; by whom allowed; supersedeas.
37. Questions certified by a Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia.
38. Review on writ of certiorari of decisions of State Courts, Circuit Courts of Appeals, and the United States Court of Appeals for the District of Columbia.
39. Certiorari to a Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia before judgment.
40. Questions certified by the Court of Claims.
41. Judgments of Court of Claims; petitions for review on certiorari.

#### Rule

42. Judgments of Court of Customs and Patent Appeals or of Supreme Court of the Commonwealth of the Philippines; petitions for review on certiorari.
43. Order granting certiorari.
44. Rules, costs, fees, and interest on certiorari.
45. Custody of prisoners pending a review of proceedings in habeas corpus.
46. Review on appeal.
47. Appeals under Act of August 24, 1937.
48. Joint or several appeals or petitions for writs of certiorari; summons and severance abolished.
49. No session on Saturday.
50. Adjournment of term.
51. Abrogation of prior rules.

**Rule 1. CLERK.** (1) The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice as attorney or counselor in any court, while he continues in office.

(2) The clerk shall not permit any original record or paper to be taken from the office without an order from the court or one of the justices, except as provided by Rule 13, paragraph 4.

**2. ATTORNEYS AND COUNSELORS.** (1) It shall be requisite to the admission of attorneys or counselors to practice in this court, that they shall have been such for three years past in the highest court of a State, Territory, District, or Insular Possession, and that their private and professional characters shall appear to be good.

(2) Not less than two weeks in advance of application for admission, each applicant shall file with the clerk (1) a certificate from the presiding judge or clerk of the proper court showing that he possesses the foregoing qualifications, (2) his personal statement under oath setting out the date and place of his birth, the names of his parents, his place of residence and office address, the courts of last resort to which he has been admitted, the places where he has been a practitioner, and, if he is not a native-born citizen, the date and place of his naturalization, and information respecting any reprimand of any court pertaining to his conduct or fitness as a member of the bar, and (3) two letters or signed statements of members of the bar of this court, not related to the applicant, who are resident practitioners within the State, Territory, District, or Insular Possession (to which the application refers as provided in paragraph 1 of this rule) stating that the applicant is personally known to them, that he possesses all the qualifications required for admission to the bar of this court, that they have examined his personal statement and that they affirm that his personal and professional character and standing are good.

(3) Admissions will be granted only upon oral motion by a member of the bar in open court, and upon his assurance that he has examined the credentials of the applicant filed in the office of the clerk in accordance with the foregoing requirement and that he is satisfied that the applicant possesses the necessary qualifications. (Paragraphs 1, 2 and 3 of Rule 2, as amended Dec. 7, 1936, effective Feb. 1, 1937.)

(4) Upon being admitted, each applicant shall take and subscribe the following oath or affirmation, viz.:

I, ....., do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

(5) Where it is shown to the court that any member of its bar has been disbarred from practice in any State, Territory, District, or Insular Possession, or has been guilty of conduct unbecoming a member of the bar of this court, he will be forthwith suspended from practice before this court, and unless, upon notice mailed to him at the address shown in the clerk's records and to the clerk of the highest court of the State, Territory, District, or Insular Possession, to which he belongs, he shows good cause to the contrary within forty days he will be disbarred. (As amended May 31, 1932, effective September 1, 1932.)

**3. CLERKS TO JUSTICES NOT TO PRACTICE.** No one serving as a law clerk or secretary to a member of this court shall practice as an attorney or counselor in any court while continuing in that position; nor shall he after separating from that position practice as an attorney or counselor in this court, or permit his name to appear on a brief filed in this court, until two years shall have elapsed after such separation.

**4. LIBRARY.** (1) The library for the bar shall be open to members of the bar of this court; to members of Congress and to law officers of the executive or other departments of the Government, but books may not be removed from the building.

(2) The library shall be open during such times as the reasonable needs of the bar require and be governed by such regulations as the librarian, with the approval of the court, may make effective.

**5. ORIGINAL ACTIONS.** Cases on the original docket shall be governed, as far as may be, by the rules applicable to cases on the appellate docket.

The initial pleading in any such action may be accompanied by a brief and shall be prefaced by a motion for leave to file, which motion will be presented to the court by the clerk on the first motion day following its lodgment in the clerk's office. If leave to file is granted the case will be placed on the original docket and the parties shall make such cash deposit with the clerk for the payment of his fees as he may require.

Additional pleadings shall be filed as the court directs.

**6. PROCESS.** (1) All process of this court shall be in the name of the President of the United States, and shall contain the given names, as well as the surnames, of the parties.

(2) When process at common law or in equity shall issue against a state, the same shall be served on the governor, or chief executive magistrate, and attorney general, of such state.

(3) Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of such process; and if the defendant, on such service of the subpoena, shall not appear at the return day, the complainant shall be at liberty to proceed ex parte.

**7. MOTIONS, INCLUDING THOSE TO DISMISS OR AFFIRM; SUMMARY DOCKET; MOTION DAY.**

(1) Every motion to the court shall be printed, and shall state clearly its object and the facts on which it is based.

(2) Oral argument will not be heard on any motion unless the court specially assigns it therefor, when not exceeding one-half hour on each side will be allowed.

(3) No motion by respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant writs of certiorari may be included in briefs in opposition to petitions therefor.

A motion by appellee to dismiss an appeal will be received in advance of the court's ruling upon the jurisdictional statements only when presented in the manner provided by Rule 12, paragraph 3. When such a motion is made, the appellant shall have 20 days after service upon him within which to file in this court forty printed copies of a brief opposing the motion, except that where his counsel resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be twenty-five days.

A motion by respondent to dismiss a writ of certiorari or by appellee to dismiss an appeal, after the court has ruled upon the jurisdictional statements and accompanying motions, if any (Rule 12, paragraph 5), will be received if not based upon grounds already advanced in opposition to the granting of the writ of certiorari or to the noting of jurisdiction of the appeal. Such motions, together with motions to dismiss certificates in case of questions certified, must be printed and forty copies thereof must be filed with the clerk, accompanied by proof that a copy of the motion, and accompanying brief, if any, have been served upon counsel of record for the opposing party. The opposing party shall have twenty days from the date of such service within which to file a printed brief opposing the motion. When counsel for the opposing party resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be twenty-five days. Upon the filing of the opposing brief, or the expiration of the time allowed therefor, or express waiver of the right to file, the motion and briefs thereon shall be distributed by the clerk to the court for its consideration.

The pendency of a motion to dismiss or affirm shall not preclude the placing of the cause upon the calendar of the court for oral argument or its being called for argument when reached.

(4) The court will receive a motion to affirm on the ground that it is manifest that the appeal was taken for delay only, or that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. The procedure provided in paragraph 3 of this rule for motions to dismiss shall apply to and control motions to affirm. A motion to affirm may be united in the alternative with a motion to dismiss.

(5) Although the court upon consideration of a motion to dismiss or a motion to affirm may refuse to grant the motion, it may, if it concludes that the case is of such a character as not to justify extended argument, order the cause transferred for hearing to the summary docket. The hearing of causes on such docket will be expedited from time to time as the regular order of business may permit. A cause may be transferred to the summary docket on application, or on the court's own motion.

(6) Monday of each week, when the court is in session, shall be motion day; and motions specially assigned for oral argument shall be entitled to preference over other cases. (As amended May 31, 1932.)

**8. BILLS OF EXCEPTION; CHARGE TO JURY; OMISSION OF UNNECESSARY EVIDENCE.** The judges of the district courts in allowing bills of exception shall give effect to the following rules:

(1) No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in trials at common law. The party excepting shall be required before the jury retires to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions.

(2) Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein may be set forth in full or in condensed and narrative form.

**9. ASSIGNMENT OF ERRORS.** Where an appeal is taken to this court from any court, the appellant shall file with the clerk of the court below, with his petition for appeal, an assignment of errors, which shall set out separately and particularly each error asserted. No appeal shall be allowed unless such an assignment of errors shall accompany the petition.

**10. APPEAL; CITATION; RECORD; DESIGNATION OF PARTS TO BE INCLUDED IN TRANSCRIPT.** (1) When an appeal is allowed a citation to the appellee shall be signed by the judge or justice allowing the appeal and shall be made returnable not exceeding forty days from the day of signing the citation, whether the return day fall in vacation or in term time, except in appeals from California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming and Montana, when the time shall be sixty days. The citation must be served before the return day.

(2) The clerk of the court from which an appeal to this court may be allowed, shall make and transmit

to this court under his hand and the seal of the court a true copy of the material parts of the record, always including the assignment of errors, and any opinions delivered in the case. The papers comprising the transcript shall be fastened together in one or more volumes of convenient size, paged consecutively and indexed.

To enable the clerk to perform such duty and for the purpose of reducing the size of transcripts and eliminating all papers not necessary to the consideration of the questions to be reviewed, it shall be the duty of the appellant, or his counsel, to file with the clerk of the lower court, promptly after an appeal is taken, together with proof or acknowledgment of service of a copy on the appellee, or his counsel, a praecipe indicating the portions of the record to be incorporated into the transcript. Within ten days thereafter (unless the time be enlarged by a judge of the lower court or a justice of this court), any other party to the appeal may serve and file a designation of additional portions of the record desired to be included. Sections (c), (e), and (h) of Rule 75 and Rule 76 of the Rules of Civil Procedure are incorporated herein by reference and are made applicable to an appeal to this court from a federal district court.

The clerk of the lower court shall transmit to this court as the transcript of the record only the portions of the record covered by such designations.

The parties or their counsel may by written stipulation filed with the clerk of the lower court indicate the portions of the record to be included in the transcript, and the clerk shall then transmit only the parts designated in such stipulation.

In all cases the clerk shall include in the transcript all papers filed under authority of Rule 12.

If this court shall find that any portion of the record unnecessary to a proper presentation of the case has been incorporated into the transcript at the instance of either party, the whole or any part of the cost of printing and the clerk's fee for supervising the printing may be ordered to be paid by the offending party.

(3) No case will be heard until a record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing, shall be filed.

(4) Whenever it shall be necessary or proper, in the opinion of the presiding judge in the court from which the appeal is taken that original papers of any kind should be inspected in this court, such presiding judge may make such rule or order for the safekeeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers along with the usual transcript.

(5) The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, findings of fact and conclusions of law thereon, opinions of the court, final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper determination of such questions.

**11. DOCKETING CASES.** (1) It shall be the duty of the appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, before its expiration, the order of enlargement to be filed with the clerk of this court. If the appellant shall fail to comply with this rule, the appellee may have the cause docketed and the appeal dismissed upon producing a certificate, whether in term or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such appeal has been duly allowed. And in no case shall the appellant be entitled to docket the cause and file the record after the appeal shall have been dismissed under this rule, unless by special leave of the court.

(2) But the appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed by the appellant within the period of time prescribed by this rule, or by the appellee within forty days thereafter, the case shall stand for argument.

(3) Upon the filing of the record brought up by appeal, the appearance of the counsel for the party docketing the case shall be entered.

**12. JURISDICTIONAL STATEMENTS.** (1) Upon the presentation of a petition for the allowance of an appeal to this court, from any court, to any judge or justice empowered by law to allow it, there shall be presented by the applicant a separate typewritten statement particularly disclosing the basis upon which it is contended that this court has jurisdiction upon appeal to review the judgment or decree in question. The statement shall refer distinctly (a) to the statutory provision believed to sustain the jurisdiction, (b) to the statute of the state, or statute or treaty of the United States, the validity of which is involved (giving the volume and page where the statute or treaty may be found in the official edition), setting it out verbatim or appropriately summarizing its pertinent provisions; and (c) to the date of judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.

The statement shall show that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied on and shall cite the cases believed to sustain the jurisdiction.

If the appeal is from a state court the statement shall include a statement of the grounds upon which it is contended the questions involved are substantial (*Zucht v. King*, 260 U. S. 174, 176, 177); specify the stage in the proceedings in the court of the first instance, and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears, (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court. The provisions of this paragraph, with appropriate record page references, must be complied with when review of a state court judgment is sought by petition for writ of certiorari.

The applicant shall append to the statement a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including earlier opinions in the same case, or opinions in companion cases, reference to which may be necessary to ascertain the grounds of the judgment or decree.

If the appeal is from an interlocutory decree of a specially constituted district court of the United States, the statement must also include a showing of the matters in which it is claimed that the court has abused its discretion in granting or denying the interlocutory injunction. (*Alabama v. United States*, 279 U. S. 229.)

(2) If the appeal is allowed, the appellant shall serve upon the appellee within 5 days after such allowance (a) a copy of the petition for and order allowing the appeal, together with a copy of the assignments of error and of the statement required by paragraph 1 of this rule, and (b) a statement directing attention to the provisions of paragraph 3 of this rule. Proof of service of the papers required by this paragraph to be served shall be filed forthwith with the clerk of the court possessed of the record, and shall be incorporated by him in the transcript of record prepared for this court upon the appeal.

(3) Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3.

(4) The clerk of the court possessed of the record shall include the statements and motions, required and permitted to be filed under the provisions of this rule, in the transcript of record prepared for the use of this court on the appeal, anything in the praecipes or stipulations of the parties (Rule 10, par. 2) to the contrary notwithstanding.

(5) After the case shall have been docketed in this court by the appellant, and the transcript of record filed (Rule 11, par. 1), the clerk of this court shall forthwith print the appellant's statement required by paragraph 1 of this rule and the opposing statement, and motions, if any, permitted by paragraph 3 of this rule, and the clerk shall thereupon distribute such printed papers to the court for its consideration.

At the time of docketing the case the appellant shall make such cash deposit with the clerk, in addition to such deposit as may be required under Rule 13, paragraph 1, as shall be necessary to defray the cost of printing 40 copies of his statement filed pursuant to paragraph 1 of this rule; and the appellee, upon demand, shall forthwith deposit with the clerk a sum sufficient to cover the cost of printing 40 copies of any statement or motions filed under paragraph 3 of this rule.

(6) If either appellant or appellee fails to comply with the provisions of this rule, the clerk of this court shall report such failure to the court immediately so that this court may take such action as it deems proper.

**13. PRINTING RECORDS; DESIGNATION OF POINTS INTENDED TO BE RELIED UPON AND OF PARTS OF RECORD TO BE PRINTED.** (1) In all cases the appellant, on docketing a case and filing the record, shall make such cash deposit with the clerk for the payment of his fees as he may require, or otherwise satisfy him in that behalf.

(2) Immediately after the designation of the parts of the record to be printed or the expiration of the time allotted therefor (see par. 9 of this rule), the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising the printing, and other probable fees, and shall furnish the same to the party docketing the case. If such estimated sum be not paid on or before a date designated by the clerk of this court in each case, it shall be the duty of the clerk to report that fact to the court, whereupon the cause will be dismissed, unless good cause to the contrary is shown.

(3) Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

(4) In cases of appellate jurisdiction the original transcript on file shall be delivered by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 10, paragraph 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

(5) The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties. He shall also deposit in the law library of Congress to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions and briefs therein.

(6) If the actual cost of printing the record, together with the fees of the clerk, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fees shall exceed the estimate, the excess shall be paid to the clerk within forty days after notice thereof, and if it be not paid the matter shall be dealt with as if it were a default under paragraph 2 of this rule, as well as by rendering a judgment against the defaulting party for such excess.

(7) In case of reversal, affirmance, or dismissal, with costs, the cost of printing the record and the clerk's fees shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other process.

(8) Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of a party or his surety, of having served on such party or surety a copy of the bill of fees due by him in this court, and showing that payment has not been made, an attachment shall issue against such party or surety to compel payment of such fees.

(9) When the record is filed, or within fifteen days thereafter, the appellant shall file with the clerk a definite statement of the points on which he intends to rely and a designation of the parts of the record which he thinks necessary for the consideration thereof or a designation of those parts considered unnecessary, whichever is more convenient, with proof of service of the same on the adverse party. The adverse party, within ten days after service of the statement

and designation required to be filed by appellant may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the appellant. The parts of the record so designated by one or both of the parties, and only those parts, shall be printed by the clerk. The statement of points intended to be relied upon and the designations of the parts of the record to be printed shall be printed by the clerk with the record. He shall, however, omit all duplication, all repetition of titles and all other obviously unimportant matter, and make proper note thereof. The court will consider nothing but the points of law so stated. If at the hearing it shall appear that any material part of the record has not been printed, the appeal may be dismissed or such other order made as the circumstances may appear to the court to require. If either party shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 32, paragraph 6, shall be computed on the folios in the record as filed, and shall be in full for the performance of his duties in that regard.

**14. TRANSLATIONS.** Whenever any record transmitted to this court upon appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, without a translation of such document, paper, testimony, or other proceedings, made under the authority of the lower court, or admitted to be correct, the case shall be reported by the clerk, to the end that this court may order that a translation be supplied and printed with the record.

**15. FURTHER PROOF.** (1) In all cases where further proof is ordered by this court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any district court of the United States.

(2) In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any district court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, requiring him to file cross-interrogatories within twenty days from the service of such notice.

**16. OBJECTIONS TO EVIDENCE IN RECORD.** In all cases of equity or admiralty jurisdiction, heard in this court, no objection to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence shall be entertained, unless such objection was taken in the court below and entered of record. Where objection was not so taken the evidence shall be deemed to have been admitted by consent.

**17. CERTIORARI TO CORRECT DIMINUTION OF RECORD.** No certiorari to correct diminution of the record will be awarded in any case, unless a printed motion therefor shall be made, and the facts on which the same is founded shall be shown, if not admitted by the other party, by affidavit. All such motions must be made not later than the first motion day after the expiration of sixty days from the printing of the record, unless for special cause shown the court receives the motion at a later time.

**18. MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.** (1) Models, diagrams, and exhibits of material forming part of the evidence taken in a case, and brought up to this court for its inspection, shall be placed in the custody of the marshal at least one week before the case is heard or submitted.

(2) All such models, diagrams, and exhibits of material, placed in the custody of the marshal must be taken away by the parties within forty days after the case is decided. When this is not done, it shall be the duty of the marshal to notify counsel to remove the articles forthwith; and if they are not removed within a reasonable time after such notice, the marshal shall destroy them, or make such other disposition of them as to him may seem best.

**19. DEATH OF PARTY; REVIVOR; SUBSTITUTION.** (1) Whenever, pending an appeal or writ of certiorari in this court, either party shall die, the proper representative in the personality or realty of the deceased, according to the nature of the case, may voluntarily come in and be admitted as a party

to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representative shall not voluntarily become a party, the other party may suggest the death on the record, and on motion obtain an order that, unless such representative shall become a party within a designated time, the party moving for such order, if appellee or respondent, shall be entitled to have the appeal or writ of certiorari dismissed; and if the party so moving be appellant or petitioner he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, District or Insular Possession, in which the case originated, for three successive weeks, at least sixty days before the expiration of the time designated for the representative of the deceased party to appear.

(2) When the death of a party is suggested, and the representative of the deceased does not appear by the second day of the term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their [his] appearance, the case shall abate.

(3) When either party to a suit in a court of the United States shall desire to prosecute an appeal or writ of certiorari to this court from any final judgment or decree, rendered in that court, and at the time of applying for such appeal or writ of certiorari the other party to the suit shall be dead and have no proper representative within the jurisdiction of that court, so that the suit can not be revived in that court, but shall have a proper representative in some State, Territory or District of the United States, the party desiring such appeal or writ of certiorari may procure the same, if otherwise entitled thereto, and may have proceedings on such judgment or decree superseded or stayed in the manner allowed by law and shall thereupon proceed with such appeal or writ of certiorari as in other cases. And within thirty days after the time when such appeal or writ of certiorari is returnable, or if the court be not then in session within ten days after it next convenes, the appellant or petitioner shall make a suggestion to the court, supported by affidavit, that such party was dead when the appeal or writ of certiorari was allowed, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that such deceased party had a proper representative in some State, Territory, or District of the United States—giving the name and character of such representative, and his place of residence; and, upon such suggestion and a motion therefor, an order may be obtained that, unless such representative shall make himself a party within a designated time the appellant or petitioner shall be entitled to open the record, and, on hearing have the judgment or decree reversed, if the same be erroneous: Provided, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the expiration of the time designated: And provided, also, That in every such case if the representative of the deceased party does not appear by the second day of the term next succeeding said suggestion, and the measures above provided to compel his appearance have not been taken as above required, by the opposite party, the case shall abate: And provided, also, That the representative may at any time before or after the suggestion, but before such abatement, come in and be made a party and thereupon the case shall be heard and determined as in other cases.

(4) Where a public officer, by or against whom a suit is brought, dies or ceases to hold the office while a suit is pending in a federal court, either of first instance or appellate, the matter of abatement and substitution is covered by section 11 of the Act of February 13, 1925 [Title 28, s. 780]. Under that section a substitution of the successor in office may be effected only where a satisfactory showing is made within six months after the death or separation from office. (a) When the court is in vacation the motion papers may be filed with the clerk but must be presented to the court promptly after it reconvenes.

**20. CALL AND ORDER OF THE DOCKET; MOTIONS TO ADVANCE.** (1) Unless it otherwise orders, the court, on the second Monday of each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order

(except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed with the argument, the case shall be continued to the next term or otherwise dealt with as provided in these rules.

(2) Ten cases only shall be subject to call on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

(3) All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons supporting the motion.

(4) Criminal cases may be advanced by leave of the court on motion of either party.

(5) Cases once adjudicated by this court upon the merits, and again brought up, may be advanced by leave of the court.

(6) Revenue and other cases in which the United States is concerned, which also involve or affect some matter of general public interest, or which may be entitled to precedence under the provisions of any act of Congress, may be advanced by leave of the court on motion of the Attorney General.

(7) Other cases may be advanced for special cause shown. When a case is advanced, under this or any other paragraph, it will be subject to hearing with any other case subsequently advanced and involving a like question, as if they were one case.

(8) Two or more cases, involving the same question, may, by order of the court, be heard together, and argued as one case or on such terms as may be prescribed.

(9) If, after a case has been continued under paragraph 1 of this rule, both parties desire to have it heard at the term of the continuance, they may file with the clerk their joint request to that effect accompanied by their affidavits or those of their counsel giving the reasons why they failed to present their argument when the case was called and why it should be reinstated. Such a request will be granted only when it appears to the court that there was good reason for the previous failure to proceed and that the request can be granted without prejudice to parties in other cases coming on regularly for hearing.

(10) No stipulation to pass a case will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

(11) Cases on the summary docket will be heard specially as provided in paragraph 5 of Rule 7.

**21. NO APPEARANCE OF APPELLANT OR PETITIONER.** Where no counsel appears and no brief has been filed for the appellant or petitioner when the case is called for hearing, the adverse party may have the appellant or petitioner called and the appeal or writ of certiorari dismissed, or may open the record and pray for an affirmance.

**22. NO APPEARANCE OF APPELLEE OR RESPONDENT.** Where the appellee or respondent fails to appear when the case is called for hearing, the court may hear argument on behalf of the party appearing and give judgment according to the right of the case.

**23. NO APPEARANCE OF EITHER PARTY.** When a case is reached in the regular call, and there is no brief or appearance for either party, the case shall be dismissed at the cost of the appellant or petitioner.

**24. NEITHER PARTY READY AT SECOND TERM.** When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the appellant or petitioner, unless strong cause is shown for further postponement.

**25. SUBMISSION ON BRIEFS BY ONE OR BOTH PARTIES WITHOUT ORAL ARGUMENT.**

(1) Any case may be submitted on printed briefs regardless of its place on the docket, if the counsel on both sides choose to submit the same in that manner, before the first Monday in May of any term. After that date cases may be submitted on briefs alone only as they are reached on the regular call.

(2) When a case is reached on the regular call, if a printed brief has been filed for only one of the parties and no counsel appears to present oral argument for either party, the case will be regarded as submitted on that brief.

(3) When a case is reached on the regular call and argued orally in behalf of only one of the parties,



no brief for the opposite party will be received after the oral argument begins, except as provided in the next paragraph of this rule.

(4) No brief will be received through the clerk or otherwise after a case has been argued or submitted, except upon special leave granted in open court after notice to opposing counsel.

**26. FORM OF PRINTED RECORDS, PETITIONS, BRIEFS, ETC.** All records, petitions, motions and briefs, printed for the use of the court must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume, having pages 6½ by 9¼ inches and type matter 4¼ by 7½ inches, except that records in patent cases may be printed in such size as is necessary to utilize copies of patent documents. They and all quotations contained therein, and the matter appearing on the covers, must be printed in clear type (never smaller than small pica or 11-point type) adequately leaded; and the paper must be opaque and unglazed. The clerk shall refuse to receive any petition, motion or brief which has been printed otherwise than in substantial conformity to this rule.

**27. BRIEFS.** (1) The counsel for appellant or petitioner shall file with the clerk, at least three weeks before the case is called for hearing, forty copies of a printed brief.

(2) This brief shall be printed as prescribed in Rule 26 and shall contain in the order here indicated—

(a) A subject index of the matter in the brief, with page references, and a table of the cases (alphabetically arranged), text books and statutes cited, with references to the pages where they are cited.

(b) A reference to the official report of the opinions delivered in the courts below, if there were such and they have been reported.

(c) A concise statement of the grounds on which the jurisdiction of this court is invoked.

(d) A concise statement of the case containing all that is material to the consideration of the questions presented, with appropriate page references to the printed record, e.g., (R. 12).

(e) A specification of such of the assigned errors as are intended to be urged. (See Rule 38, par. 2.)

(f) The argument (preferably preceded by a summary) exhibiting clearly the points of fact and of law being presented, citing the authorities and statutes relied upon, and quoting the relevant parts of such statutes, federal and state, as are deemed to have an important bearing. If the statutes are long they should be set out in an appendix.

(3) Whenever, in the brief of any party, a reference is made to the record, it must be accompanied by the record page number. When the reference is to a part of the evidence, the page citation must be specific and if the reference is to an exhibit both the page number at which the exhibit appears and at which it was offered in evidence must be indicated.

(4) The counsel for an appellee or respondent shall file with the clerk forty printed copies of his brief, at least one week before the case is called for hearing—such brief to be of like character with that required of the other party, except that no specification of errors need be given, and that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the statement of the other side.

(5) Reply briefs will be received up to the time the case is called for hearing.

(6) When there is no assignment of errors, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded, save as the court, at its option, may notice a plain error not assigned or specified.

(7) When, under this rule, an appellant or petitioner is in default, the court may dismiss the cause; and when an appellee or respondent is in default, the court may decline to hear oral argument in his behalf.

(8) No brief, required by this rule, shall be filed by the clerk unless the same shall be accompanied by satisfactory proof of service upon counsel for the adverse party.

(9) A brief of an amicus curiae may be filed when accompanied by written consent of all parties to the case, except that consent need not be had when the brief is presented by the United States or an officer or agency thereof and sponsored by the Solicitor General, or by a State or a political subdivision thereof. Such brief must bear the name of a member of the bar of this court.

**28. ORAL ARGUMENT.** (1) The appellant or petitioner shall be entitled to open and conclude the argument. But when there are cross-appeals or cross-writs of certiorari they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

(2) When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

(3) Two counsel, and no more, will be heard for each party, save that in cases on the summary docket (see Rule 7, paragraph 5) only one counsel will be heard on the same side.

(4) In cases on the regular docket (except where questions have been certified) one hour on each side, and no more, will be allowed for the argument, unless more time be granted before the argument begins. The time allowed may be apportioned between counsel on the same side, at their discretion; but a fair opening of the case shall be made by the party having the opening and closing.

(5) In cases where questions have been certified to this court three-quarters of an hour shall be allowed to each side for oral argument.

(6) In cases on the summary docket one-half hour on each side, and no more, will be allowed for the argument.

**29. OPINIONS OF THE COURT.** (1) All opinions of the court shall be handed to the clerk immediately upon the delivery thereof. He shall cause the same to be printed and shall deliver a copy to the reporter.

(2) The original opinions shall be filed by the clerk for preservation.

(3) Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term he shall cause them to be bound in a substantial manner, and when so bound they shall be deemed to have been recorded.

**30. INTEREST AND DAMAGES.** (1) Where judgments for the payment of money are affirmed, and interest is properly allowable, it shall be calculated from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the state where such judgment was rendered.

(2) In all cases where an appeal delays proceedings on the judgment of the lower court, and appears to have been sued out merely for delay, damages at a rate not exceeding 10 per cent, in addition to interest, may be awarded upon the amount of the judgment.

(3) Paragraphs 1 and 2 of this rule shall be applicable to decrees for the payment of money in cases in equity, unless otherwise specially ordered by this court.

(4) In cases in admiralty, damages and interest may be allowed only if specially directed by the court.

**31. PROCEDENDO TO ISSUE ON DISMISSAL.** In all cases of the dismissal of any appeal or writ of certiorari in this court, the clerk shall issue a mandate, or other proper process, in the nature of a procedendo, to the court below, so that further proceedings may be had in such court as to law and justice may appertain.

**32. COSTS.** (1) In all cases where any appeal or writ of certiorari shall be dismissed in this court, costs shall be allowed to the appellee or respondent unless otherwise agreed by the parties, except where the dismissal shall be for want of jurisdiction, when only the costs incident to the motion to dismiss shall be allowed.

(2) In all cases of affirmation of any judgment or decree by this court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court.

(3) In cases of reversal of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

(4) In cases where questions have been certified costs shall be equally divided unless otherwise ordered by the court, but where the entire record has been sent up (Rule 37, par. 2), and a decision is rendered on the whole matter in controversy, costs shall be allowed as provided in paragraphs 2 and 3 of this rule.

(5) No costs shall be allowed in this court either for or against the United States or an officer or

agency thereof, except where specially authorized by statute and directed by the court.

(6) When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

(7) In pursuance of the Act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, ten dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept and paid.

For an admission to the bar and certificate under seal, including filing of preliminary certificate and statements, fifteen dollars.

For preparing the record or a transcript thereof for the printer, in all cases, including records presented with petitions for certiorari, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, eight cents per folio of each one hundred words; but where the necessary printed copies of the record as printed for the use of the court below are furnished, charges under this item will be limited to any additions printed here under the clerk's supervision.

For making a manuscript copy of the record, when required under Rule 13, fifteen cents per folio of each one hundred words, but nothing in addition for supervising the printing.

For preparing, on filing, for the printer, petitions for writs of certiorari, briefs, jurisdictional statements or motions when required by the rules, or at the request of counsel when, in the opinion of the clerk, circumstances require, indexing the same, changing record references to conform to the pagination of the printed record, and supervising the printing, five dollars for each such petition, brief, jurisdictional statement or motion. Neither the expense of printing nor the clerk's supervising fee shall be allowed as costs in the case.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

**33. REHEARING.** A petition for rehearing may be filed with the clerk, in term time or in vacation, within twenty-five days after judgment is entered, unless the time is shortened or enlarged by order of the court, or of a justice thereof when the court is not in session; and must be printed, briefly and distinctly state its grounds, and be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. Such a petition is not subject to oral argument, and will not be granted, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

**34. MANDATES.** Mandates shall issue as of course after the expiration of twenty-five days from the day the judgment is entered, irrespective of the filing of a petition for rehearing, unless the time is shortened or enlarged by order of the court, or of a justice thereof when the court is not in session. (See Rules 31 and 35.)

No mandate issues upon the denial of a petition for writ of certiorari. Whenever application for a writ of certiorari to review a decision of any court is denied, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record.

**35. DISMISSING CASES IN VACATION.** Whenever the appellant and appellee in an appeal, or the petitioner and respondent in a petition for or writ of

certiorari, shall in vacation, by their attorneys of record, file with the clerk an agreement in writing that such appeal, petition for or writ of certiorari shall be dismissed, specifying the terms as respects costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter such dismissal and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue on such dismissal without an order of the court. (See Rules 31 and 34.)

**36. APPEALS; BY WHOM ALLOWED; SUPERSEDEAS.** (1) In cases where an appeal may be had from a district court to this court the same may be allowed, in term time or in vacation, by any judge of the district court; including a circuit judge assigned thereto, or by a justice of this court. In cases where an appeal may be had from a circuit court of appeals to this court the same may be allowed, in term time or in vacation by any judge of the circuit court of appeals or by a justice of this court. In cases where an appeal may be had from a state court of last resort to this court the same may be allowed in term time or in vacation by the chief justice or presiding judge of the state court or by a justice of this court. The judge or justice allowing the appeal shall take the proper security for costs and sign the requisite citation and he may also, on taking the requisite security therefor, grant a supersedeas and stay of execution or of other proceedings under the judgment or decree, pending such appeal.

(2) Supersedeas bonds must be taken, with good and sufficient security, that the appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

**37. QUESTIONS CERTIFIED BY A CIRCUIT COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.** (1) Where a circuit court of appeals or the United States Court of Appeals for the District of Columbia shall certify to this court a question or proposition of law, concerning which it desires instruction for the proper decision of a cause, the certificate shall contain a statement of the nature of the cause and of the facts on which such question or proposition of law arises. Questions of fact cannot be so certified. Only questions or propositions of law may be certified, and they must be distinct and definite.

(2) If in such a cause it appears that there is special reason therefor, this court may on application, or on its own motion, require that the entire record be sent up so that it may consider and decide the whole matter in controversy as upon appeal.

(3) Where application is made for direction that the entire record be sent up, the application must be accompanied by a certified copy thereof. (As amended May 25, 1936.)

**38. REVIEW ON WRIT OF CERTIORARI OF DECISIONS OF STATE COURTS, CIRCUIT COURTS OF APPEALS, AND THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.**

(1) A petition for review on writ of certiorari of a decision of a state court of last resort, a circuit court of appeals, or the United States Court of Appeals for the District of Columbia, shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed. For printing record see paragraph 7 of this rule.

(2) The petition shall contain a summary and short statement of the matter involved; a statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question (see Rule 12, par. 1); the questions presented; and the reasons relied on for the allowance of the writ. Only the questions spe-

cifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27.) A failure to comply with these requirements will be a sufficient reason for denying the petition. See *United States v. Rimer*, 220 U. S. 547; *Furness, Withy & Co. v. Yang Tsze Insurance Assn.*, 242 U. S. 430; *Houston Oil Co. v. Goodrich*, 245 U. S. 440; *Layne & Bowler Corporation v. Western Well Works*, 261 U. S. 387, 392; *Magnum Import Co. v. Coty*, 262 U. S. 159, 163; *Southern Power Co. v. North Carolina Public Service Co.*, 263 U. S. 508. Forty printed copies of the petition and supporting briefs shall be filed.

The petition will be deemed in time when it, the record, and the supporting brief, are filed with the clerk within the period prescribed by section 8 of the Act of February 13, 1925, except that in cases of petition to this court for writ of certiorari to review a judgment of a circuit court of appeals or of the United States Court of Appeals for the District of Columbia in criminal cases within the provisions of the Act of March 8, 1934, the petition shall be made within the period prescribed pursuant to said Act in Rule XI of the Rules of Practice and Procedure, promulgated May 7, 1934 (292 U. S. 661, 666).

(3) Notice of the filing of the petition, together with a copy of the petition, printed record and supporting brief, shall be served by the petitioner on counsel for the respondent within ten days after the filing (unless enlarged by the court, or a justice thereof when the court is not in session), and due proof of service shall be filed with the clerk. If the United States, or an officer or agency thereof, is respondent, the service of the petition, record and brief shall be made on the Solicitor General at Washington, D. C. Counsel for the respondent shall have twenty days, and where he resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, shall have twenty-five days (unless enlarged by the court, or a justice thereof when the court is not in session), after notice, within which to file forty printed copies of an opposing brief, conforming to Rules 26 and 27. The brief must bear the name of a member of the bar of this court at the time of filing.

(a) If the date for filing a brief in opposition falls in the summer recess, the brief may be filed within forty days after the service of the notice, but this enlargement shall not extend the time to a later date than September 10th.

(4) Upon the expiration of the period for filing the respondent's brief, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, record and briefs shall be distributed by the clerk to the court for its consideration.

(a) Timely reply briefs will be considered but distribution under this rule shall not be delayed pending the filing of such briefs.

(5) A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. (As amended May 31, 1938.)

(c) Where the United States Court of Appeals for the District of Columbia has decided a question of general importance or a question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court;

or where that court has not given proper effect to an applicable decision of this court.

(6) Section 8 (d) of the Act of February 13, 1925, prescribes the mode of obtaining a stay of the execution and enforcement of a judgment or decree pending an application for review on writ of certiorari. The stay may be granted by a judge of the court rendering the judgment or decree, or by a justice of this court, and may be conditioned on the giving of security as in that section provided. (See Rule 36.)

(7) Upon receipt of the certified transcript of the record the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising the printing, and other probable fees, and shall furnish the same to the party docketing the case. Upon payment of the amount estimated by the clerk, forty copies of the record shall be printed, under his supervision, for the use of the court and of counsel. But where the record has been printed for the use of the court below and the necessary copies as so printed are furnished, it shall not be necessary to reprint it for this court, but only to print such additions as may be necessary to show the proceedings in that court and the opinions there. When the petition is presented it will suffice to furnish ten copies of the record as printed below together with the proceedings and opinion in that court; but if the petition is granted the requisite additional printed copies must be promptly supplied, and if not available the record must be reprinted under the supervision of the clerk.

(8) Where it is necessary to print the record for the use of this court counsel should stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition for the writ, and when it is shown that unnecessary parts of the record have been printed although a reasonable effort was made by one of the parties to secure the printing of a proper record, such order as to costs may be made as the court shall deem proper.

**39. CERTIORARI TO A CIRCUIT COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA BEFORE JUDGMENT.** Proceedings to bring up to this court on writ of certiorari a case pending in a circuit court of appeals or the United States Court of Appeals for the District of Columbia, before judgment is given in such court, should conform, as near as may be, to the provisions of Rule 38; and similar reasons for granting or refusing the application will be applied. That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason.

**40. QUESTIONS CERTIFIED BY THE COURT OF CLAIMS.** Where the Court of Claims shall certify to this court a question of law, concerning which instructions are desired for the proper disposition of the case, the certificate shall contain a statement of the case and of the facts on which such question arises. Questions of fact cannot be certified. The certification must be confined to definite and distinct questions of law.

**41. JUDGMENTS OF COURT OF CLAIMS; PETITIONS FOR REVIEW ON CERTIORARI.** (1) In any case in the Court of Claims where both parties request in writing, at the time the case is submitted, that the facts be specially found, it shall be the duty of that court to make and enter special findings of fact as part of its judgment.

(2) In any case in that court where special findings of fact are not so requested at the time the case is submitted, a party aggrieved by the judgment may, not later than twenty days after its rendition, request the court in writing to find the facts specially; and thereupon it shall be the duty of the court to make special findings of fact in the case and, by an appropriate order, to make them a part of its judgment. The judgment shall be regarded as remaining under the court's control for this purpose.

(3) The special findings required by the two preceding paragraphs shall be in the nature of a special verdict, and shall set forth the ultimate facts found from the evidence, but not the evidence from which they are found.

(4) A petition to this court for a writ of certiorari to review a judgment of the Court of Claims shall be accompanied by a certified transcript of the record in that court, consisting of the pleadings, findings of fact, judgment and opinion of the court, but not the evidence. The petition shall contain a summary and short statement of the matter involved; the relevant parts of statutes involved (see Rule 27 (f)); the ques-

tions presented; and the reasons relied on for the allowance of the writ. Only the questions specifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27.) The petition, brief and record shall be filed with the clerk and forty copies shall be printed under his supervision. The record shall be printed in the same way and upon the same terms that records on appeal are required to be printed. The estimated costs of printing shall be paid within five days after the estimate is furnished by the clerk and if payment is not so made the petition may be summarily dismissed. When the petition, brief and record are printed the petitioner shall forthwith serve copies thereof on the respondent, or his counsel of record, and shall file with the clerk due proof thereof.

(5) Within twenty days after the petition, brief and record are served (unless enlarged by the court, or a justice thereof when the court is not in session) the respondent may file with the clerk forty printed copies of an opposing brief, conforming to Rules 26 and 27. Upon the expiration of that period, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, briefs and record, shall be distributed by the clerk to the court for its consideration. (See Rule 38, par. 4 (a).)

The provision of subdivision (a) of paragraph 3 of Rule 38 shall apply to briefs in opposition to petitions for writs of certiorari to review judgments of the Court of Claims.

(6) The same general considerations will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims as are applied to applications for such writs to other courts. (As amended May 31, 1932, effective September 1, 1932.)

**42. JUDGMENTS OF COURT OF CUSTOMS AND PATENT APPEALS OR OF SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES; PETITIONS FOR REVIEW ON CERTIORARI.** Proceedings to bring up to this court on writ of certiorari a case from the Court of Customs and Patent Appeals or from the Supreme Court of the Commonwealth of the Philippines should conform, as near as may be, to the provisions of Rule 38. The same general considerations which control when such writs to other courts are sought will be applied to them. (As amended May 25, 1936.)

**43. ORDER GRANTING CERTIORARI.** Whenever application for a writ of certiorari to review a decision of any court is granted, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record of the granting of the application. The order shall direct that the certified transcript of record on file here be treated as though sent up in response to a formal writ. A formal writ shall not issue unless specially directed.

**44. RULES, COSTS, FEES, AND INTEREST ON CERTIORARI.** Where not otherwise specially provided, the rules relating to appeals, including those relating to costs, fees and interest, shall apply, as far as may be, to petitions for, and causes heard on, certiorari.

**45. CUSTODY OF PRISONERS PENDING A REVIEW OF PROCEEDINGS IN HABEAS CORPUS.** (1) Pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

(2) Pending review of a decision discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate custody, or enlarged upon recognizance with surety, as to the court or judge rendering the decision may appear fitting in the circumstances of the particular case.

(3) Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceeding; and if in the opinion of the court or judge rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice.

(4) The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in the intermediate appellate court but also the further possible review in this court; and only where special reasons therefor are

shown to this court will it disturb that order, or make any independent order in that regard.

**46. REVIEW ON APPEAL.** (1) Appeals to this court from the district courts and the circuit courts of appeals are not affected by the Act of January 31, 1928, or the amendatory Act of April 26, 1928, both of which are copied in the appendix hereto. Such appeals, where admissible, must be sought, allowed and perfected as provided in other statutes and in the rules of this court. The Act of February 13, 1925, copied in the appendix hereto, shows when an appeal is admissible and when the mode of review is limited to certiorari.

(2) Under the Act of January 31, 1928, as amended by the Act of April 26, 1928 [Title 28, s. 861b], the review which theretofore could be had in this court on writ of error may now be obtained on an appeal. But the appeal thereby substituted for a writ of error must be sought, allowed and perfected in conformity with the statutes theretofore providing for a writ of error. The appeal can be allowed only on the presentation of a petition showing that the case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, a review could be had in this court on writ of error. The petition must be accompanied by an assignment of error (see Rule 9) and statement as to jurisdiction (see Rule 12), and the judge or justice allowing the appeal must take proper security for costs and sign the requisite citation to the appellee. See paragraph 1 of Rule 10 and paragraph 1 of Rule 36. The citation must be served on the appellee or his counsel and filed, with proof of service, with the clerk of the court in which the judgment to be reviewed was entered. The mode of obtaining a supersedeas is pointed out in paragraph 2 of Rule 36. (As amended May 31, 1932, effective Sept. 1, 1932.)

**47. APPEALS UNDER ACT OF AUGUST 24, 1937.** Appeals to this court under the Act of August 24, 1937 [Title 28, ss. 349a, 380a], shall be governed, as far as may be, by the rules of this court regulating the procedure on appeal in other cases from courts of the United States; provided, however, that when an appeal is taken under s. 2 of the Act [Title 28, s. 349a] the service required by paragraph 2 of Rule 12 shall be made on all parties to the suit other than the party or parties taking the appeal. The record shall be made up and the case docketed in this court within sixty days from the time the appeal is allowed. (Added January 10, 1938.)

**48. JOINT OR SEVERAL APPEALS OR PETITIONS FOR WRITS OF CERTIORARI; SUMMONS AND SEVERANCE ABOLISHED.** Parties interested jointly, severally, or otherwise in a judgment may join in an appeal or a petition for writ of certiorari therefrom; or, without summons and severance, any one or more of them may appeal or petition separately or any two or more of them may join in an appeal or petition.

**49. NO SESSION ON SATURDAY.** The court will not hear arguments or hold open sessions on Saturday.

**50. ADJOURNMENT OF TERM.** The court will at every term announce, at least three weeks in advance, the day on which it will adjourn, and will not take up any case for argument, or receive any case upon briefs or upon petition for certiorari, within two weeks before the adjournment, unless otherwise ordered for special cause shown.

**51. ABROGATION OF PRIOR RULES.** These rules shall become effective February 27, 1939, and be printed as an appendix to 306 U. S. The rules promulgated June 5, 1928, appearing in 275 U. S., Appendix, and all amendments thereof are rescinded, but this shall not affect any proper action taken under them before these rules become effective.

CIRCUIT COURTS OF APPEAL

EIGHTH CIRCUIT

(EFFECTIVE OCTOBER 1, 1935)

TITLE I. GENERAL RULES

Rule

1. Name.
2. Seal.
3. Terms and setting of cases.
4. Quorum.

- Rule
5. Clerk.
  6. Marshal and bailiffs.
  7. Attorneys and counselors.
  8. Practice.
  9. Process.
  10. Bills of exceptions; charge to jury; omission of unnecessary evidence.
  11. Translations.
  12. Physical exhibits.
  13. Printing records.
  14. Briefs.
  15. Form of printed records and briefs.
  16. Oral arguments.
  17. Opinions of the court.
  18. Rehearing.
  19. Mandate.
  20. Costs.
  21. Motions.
  22. Preservation of records and briefs.

TITLE II. CIVIL CASES

23. Assignment of errors.
24. Citation and record.
25. Supersedeas and cost bonds.
26. Docketing cases.
27. Docket; parties not ready.
28. Diminution of record.
29. Dismissal on agreement.
30. Parties not ready; disqualified judge.
31. Interest; damages.
32. Death of a party.
33. Objections to certain evidence in equity and admiralty cases.
34. Habeas Corpus, custody pending appeal.

TITLE III. CRIMINAL CASES

35. Cost bond.
36. Assignment of errors.
37. Record on appeal.
38. Docketing cases; dismissal.
39. Parties not ready.
40. Continuance and postponement.
41. Disqualified judge.
42. Service of sentence pending appeal.

TITLE IV. SPECIAL PROCEEDINGS

43. Tax reviews.
- States included in the Eighth Circuit are: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

TITLE I. GENERAL RULES

**Rule 1. NAME.** The court adopts "United States Circuit Court of Appeals for the Eighth Circuit" as the title of the court.

**2. SEAL.** The seal shall contain the words "United States" on the upper part of the outer edge; and the words "Circuit Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "Eighth Circuit" in two lines, in the center, with a dash beneath.

**3. TERMS AND SETTING OF CASES.** (1) Four terms of this court will be held annually, one at the city of Kansas City, Mo., beginning on the second Monday of March; one at the city of St. Paul, Minn., beginning on the first Monday of May; one at the city of Omaha, Nebr., beginning on the first Monday of October; and one at the city of St. Louis, Mo., beginning on the third Monday of November. These terms may be adjourned to such times and places as the court may from time to time designate; and the court may sit in more than one division at the same or different places at the same time.

(2) The terms of court at Kansas City and Omaha will have sittings for two weeks only; preference in such sittings to be given to: (a) Criminal cases, and (b) bankruptcy cases.

(3) Cases in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the appellees, or their counsel, are filed on or before the 10th day of January, and those only, will be heard at the succeeding March term in Kansas City; if such filing be on or before the 1st day of March, such cases, and those only, will be heard at the succeeding May term in St. Paul; if such filing be on or before the 1st day of August, such cases, and those only, will be heard at the succeeding October term at Omaha; if such filing be on or before the 15th day of September, such cases, and those only, will be heard at the succeeding November term at

St. Louis. This paragraph shall not apply to criminal appeals.

**4. QUORUM.** (1) If, at any term, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

(2) Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof, or affecting the mandate from this court.

**5. CLERK.** (1) The clerk's office shall be kept at the city of St. Louis, Mo.

(2) The clerk shall not practice, either as attorney or counselor, in this court or in any other court.

(3) He shall, before he enters on the execution of his office, take oaths in the forms prescribed by section 512, Title 28, and section 16, Title 5, United States Code and shall give bond (in accordance with sections 222 and 513, Title 28, United States Code) in a sum to be fixed, and with sureties to be approved by the court, conditioned faithfully to discharge the duties of his office and seasonably to record the decrees, judgments, and determinations of the court. A copy of such oaths and bond shall be entered on the journal of the court, and the oaths and bond shall be deposited for safe-keeping as the court may direct.

(4) He shall not permit any original record, paper, or exhibit to be taken from the court room or from the office without an order from the court or a circuit judge thereof.

**6. MARSHAL AND BAILIFFS.** The marshal of the district in which a term or session of the court is held shall be in attendance during the sessions of the court with such number of bailiffs as the court may from time to time order, who shall perform such duties as the court may direct.

**7. ATTORNEYS AND COUNSELORS.** (1) All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any other United States Circuit Court of Appeals, or in any District Court of the United States, or in the supreme court of any State, may, upon motion of some member of the bar of this court, be admitted as attorneys and counselors in this court on taking an oath or affirmation in the form prescribed below, and on subscribing the roll.

(2) And any attorney and counselor admitted to practice in any of the above courts may be admitted by order of this court to practice and may be enrolled as an attorney and counselor of this court 30 days after he or she furnishes to the clerk of this court a certificate of a clerk or judge of any one of the courts named that the applicant is an attorney and counselor of good moral and professional character in any one of said courts; and upon subscribing and forwarding to the clerk the following oath:

"I do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of the Circuit Court of Appeals for the Eighth Circuit, uprightly and according to law; and that I will support the Constitution of the United States. So help me God."

(3) Upon subscribing the roll under paragraph 1 of this rule, and before enrollment under paragraph 2 thereof, the applicant shall pay to the librarian (acting at St. Louis) of the Court the sum of Five Dollars (\$5.00) for the use of the libraries of the Court. The librarian shall receive, act as custodian and make expenditures of such moneys only in accordance with orders of the court.

(4) Any member of the bar of this court who is disbarred or suspended in any court of record shall, because thereof, be stricken from the roll of counsel, unless within a time to be fixed by this court, and after notice mailed by the clerk to the address on the roll, he shall show that such disbarment or suspension is no longer in effect.

**8. PRACTICE.** The practice shall be the same as in the Supreme Court of the United States, as far as the same shall be applicable.

**9. PROCESS.** All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

**10. BILLS OF EXCEPTIONS; CHARGE TO JURY; OMISSION OF UNNECESSARY EVIDENCE.** The judges of the district courts in allowing bills of

exceptions shall give effect to the following rules:

1. No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in trials at common law. The party excepting shall be required before the jury retires to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions.

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are preserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

11. **TRANSLATIONS.** Whenever any transcript transmitted to this court upon an appeal shall contain any document, paper, testimony, or other proceeding in a foreign language, and the transcript does not also contain a translation of such document, paper, testimony, or other proceeding made under the authority of the inferior court, or admitted to be correct, the transcript shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it back to the inferior court, and if the record is to be printed in the court below, it shall be reported to that court by its clerk, in order that a translation may be there supplied and inserted in the record.

12. **PHYSICAL EXHIBITS.** (1) Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on appeal, shall be placed in the custody of the clerk of this court at least 10 days before the case is heard or submitted.

(2) All models, diagrams, and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

13. **PRINTING RECORDS.** (1) In cases in which the appellant elects to waive printing of the record under the provisions of section 865, title 28, United States Code, appellant may file, at the time the typewritten or manuscript transcript is filed with the clerk of this court, a designation of the parts of the record he thinks material for consideration of the errors assigned, and such statement shall include proof of service of a copy thereof upon adverse parties or their counsel. Such adverse parties or counsel may, within 10 days after the above service, file with such clerk a designation of such additional parts of the record as they think material. A failure to file either of the above designations at the above times shall be deemed a waiver thereof. If designations are made, the clerk shall print those parts only; and the court will consider only the record as thus printed. If, at the hearing, it shall appear that any material part of the record has not been printed, the court may make such order (including dismissal of the appeal) as may seem proper. If either party shall have caused unnecessary parts of the record to be printed, the court may make proper order as to costs caused thereby.

(2) On the filing of the transcript in every such case the clerk shall cause 30 copies of the same, or the parts thereof designated under this rule, to be printed, and such additional number of copies as counsel for either of the parties may direct, and shall furnish three copies of the record so printed to each party at least 60 days before the argument, but in criminal appeals such copies shall be furnished as soon after printing as possible.

(3) In cases brought to this court in which the record has been printed and used upon the hearing in the court below, and which substantially conform to the printed records in this court, the appellant upon application to and by leave of this court may furnish to the clerk 25 copies of such record used on the hearing in the court below, to be used in the preparation of the printed record in this court; and the clerk's fee for preparing the record for the printer, indexing same, supervising the printing and distributing the copies, shall be computed as if said record so furnished had been printed under his supervision.

(4) The clerk shall be entitled to demand of the appellant the cost of printing the record before ordering the same to be done. In a criminal case, when the record is filed with the clerk of this court, he shall forthwith mail to counsel for appellant a notice of the filing of such record and an estimate of the cost of printing the same, and the deposit of the amount of such estimate shall be made with such clerk within 15 days after the mailing of such notice and estimate. If the appellant, because of poverty, intends to avail himself of the provisions of section 832, title 28, United States Code, an application for leave to proceed thereunder must be filed with the clerk of this court not later than 15 days after the mailing by him of the notice and estimate above referred to.

(5) If the record shall not have been printed when the case is reached for argument, for failure of the party to advance the costs of printing, the case may be dismissed.

(6) In case of reversal, affirmance, or dismissal with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

(7) In any cause brought to this court, in which the record has been printed, in which a writ of certiorari shall be granted under the provision of Rule 28 of this court, the return to such writ of certiorari shall be printed as the court may order.

(8) If in any cause in which the record or a portion thereof has been printed it shall be made to appear to this court that the printed transcript does not substantially conform to the requirements of the rules of this court, it may be rejected and stricken from the files and such order relative thereto may be entered as the court shall deem proper.

14. **BRIEFS.** (1) In criminal cases, the appellant shall file with the clerk of this court 20 copies of a printed brief not later than 40 days after the record from the trial court has been received by said clerk and appellee shall file 20 copies of a printed brief not later than 70 days after receipt of such record. In all other cases, the appellant shall file with the clerk of this court, at least 40 days before the case is called for argument, 20 copies of a printed brief and counsel for appellee shall, at least five days before the case is called for argument, file 20 copies of a printed brief. Immediately upon filing, the clerk shall transmit one copy of every brief to opposite counsel.

(2) No brief shall be accepted or filed by the clerk unless it conform to Rule 15 and unless it contain, in the order following:

First. A complete detailed index of the entire brief.

Second. A complete list of all cases or statutes cited therein. Cases to be first stated and to be arranged in alphabetical order, giving title, volume, and page (citations of United States Supreme Court cases must be to the official reports, citation of State supreme court cases shall be both to the State official reports and to the Reporter System). Statutes should be stated in chronological order, with date, volume, and page. Each case or statute should be indexed as to every page in the argument where it is referred to.

Third. A concise statement of the case in so far as is necessary for the court to understand and decide the points to be argued in the brief or orally.

Fourth. A separate and particular statement of each assignment of error intended to be urged, with the record page thereof. When such error is as to the admission or rejection of evidence, the statement shall quote such evidence with the rulings thereon, giving pages of the printed record where it occurs. When such error is as to the charge of the court, the statement shall quote the portion of the charge or the requested instruction refused which is claimed as error, giving pages of the printed record where it occurs. When such error is as to a ruling upon the report of a master or referee, the statement shall show the exception to the report and the ruling thereon, giving pages of the printed record where they occur.

Fifth. A concise statement of each point to be argued, with a complete list of all cases and statutes referred to in the argument thereof.

Sixth. A printed argument which shall substantially follow the order of points stated under "Fifth." The court will entirely disregard any statement in the argument as to what the record contains unless reference is made to the page of the printed record where the statement may be found or verified. When a State statute is cited in the argument, so much thereof as may be necessary to the decision shall be printed in full.

Briefs of appellees need not contain the statement of errors (fourth) nor a statement of the case (third) unless that presented in appellant's brief is controverted or deemed insufficient.

(3) Except on leave of court first had and obtained, no brief of either party containing more than 80 pages will be received or filed by the clerk.

(4) When, according to this rule, an appellant is in default, a criminal appeal may be summarily dismissed and, on motion, any other case may be dismissed; and when an appellee is in default he will not be heard except on consent of his adversary or by request of the court.

**15. FORM OF PRINTED RECORDS AND BRIEFS.** (1) All transcripts of record, and briefs for the use of this court, except in patent causes as hereinafter provided, shall be printed on unglazed paper not less than 6¼ inches in width by 9½ inches in length, including a sufficient margin so that they can be conveniently trimmed and bound in volumes. The paper should equal a weight of 80 pounds per ream on basis of size of sheet 25 by 38 inches.

(2) All records and briefs in patent causes may be printed on unglazed paper, of the weight as provided in section 1 of this rule, of such size that copies of letters patent may be inserted therein without folding, but the size of such records and briefs in patent causes shall not be less than 7½ inches wide and 9¼ inches long so that the records and briefs can be conveniently trimmed and bound in volumes.

(3) All records, briefs, supplemental transcripts, and returns to writs of certiorari shall be printed in clear 11 point or small pica type (never smaller than 10 point), of 26 pica or 28 small pica ems to a line and 50 lines, including running head, solid, per printed page, containing substantially 1,400 small pica ems. Where testimony or depositions by question and answer are printed the answer shall follow on same line as the question whenever the same can be done.

(4) All indexes to records and tabular exhibits, which from their nature require smaller type, may be printed in 8 point or briefer type.

(5) All covers for records shall be printed in a neat and workmanlike manner on substantial paper equal to a weight of 96 pounds per ream on the basis of a sheet 25 by 40 inches, and shall contain in conspicuous type the following matter, viz.:

First. Transcript of Record.

Second. United States Circuit Court of Appeals Eighth Circuit.

Third. The abbreviation for number "No." followed by a blank line three-fourths of an inch in length.

Fourth. The words "At Law," "In Equity," "In Bankruptcy," or "Tax Review," as the case may require, on a separate line.

Fifth. The title of the cause as it will be docketed in this court, viz.:

....., Appellant (or Petitioner, as the case may be), vs. ...., Appellee (or Respondent).

Sixth. The words "Appcal from" or "Petition to review decision of," as the nature of the case may require, followed by the correct title of the trial tribunal.

(6) Unless otherwise expressly directed by counsel, the full titles of the court and cause once correctly shown in the printed transcript shall not be repeated when unchanged. There shall be placed at the head of each subsequent pleading, etc., a brief designation of its character.

Unless otherwise expressly directed by counsel, the indorsements on pleadings, etc., shall not be printed in full; it shall be sufficient to print: "Filed in the ..... Court on.....," giving the correct date and name of the court.

The date of all orders and decrees and the name of the judge or judges making them shall always appear.

In printed transcripts the pleadings, orders, testimony of witnesses, etc., shall be separated by a face rule 3 inches long. The clerk shall indicate to the printer the appropriate places therefor.

When inserts are folded several times to conform to the size of the printed record, stubs should be inserted at the binding side of the record to equalize the space occupied by the folds. Unmounted photographs should be used when copies of such are required in printed records.

As this rule is intended primarily for the guidance of the printer his attention should be directed thereto before the record or brief is printed.

A sample copy of a printed record will be furnished by the clerk of this court on application therefor.

Records and briefs not printed in substantial conformity with the provisions of this rule will not be accepted or filed.

**16. ORAL ARGUMENTS.** (1) The appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

(2) Only two counsel will be heard for each party on the argument of a case; but when no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party.

(3) Upon appeals from orders granting or refusing a preliminary injunction or appointing a receiver, and upon appeals in bankruptcy, one-half hour on each side and in other cases one hour on each side will be allowed. But in all cases where there are no difficult questions of law and the amount involved does not exceed \$500, only one-half hour on each side will be allowed. No more time than above specified will be allowed without special leave of the court granted before argument begins.

**17. OPINIONS OF THE COURT.** (1) All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

(2) The original opinions of the court shall be filed with the clerk of this court for preservation. A copy thereof shall be at once transmitted, without charge, to the party or parties adversely affected.

(3) Opinions printed or prepared under the supervision of the judge delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed or original opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

**18. REHEARING.** (1) A petition for rehearing may be presented and filed within 15 days after the date of the judgment or decree, and jurisdiction to hear and decide the questions presented thereby is reserved, notwithstanding the lapse of the term within the 15 days.

(2) Such petition for rehearing must be printed and 20 copies thereof filed with the clerk and must briefly and distinctly state its grounds, and be supported by a certificate of counsel, and will not be granted or permitted to be argued, unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

(3) The sole purpose of a petition for rehearing is to call attention to material matters of law or fact inadvertently overlooked by the court, as shown by its opinion. Mere reargument of issues determined by the opinion will be entirely disregarded. If such petition be found to be wholly without merit, vexatious, and for delay, the court may assess a sum not exceeding \$100 against petition in favor of the adversary to be collected with the costs in the case.

**19. MANDATE.** (1) In all cases finally determined in this court, a mandate or other proper process in the nature of a procedendo shall be issued by the clerk in all cases to the court below, at the expiration of 15 days after the date of the judgment or decree, unless otherwise ordered, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

(2) No mandate shall, without order of court, issue pending disposition of a petition for rehearing, but shall issue 10 days after denial thereof.

(3) If a stay of mandate be granted pending application to the Supreme Court for certiorari, such stay shall not exceed 30 days; Provided, That if, within such stay, there is filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record, and brief has been filed and proof of notice thereof under the rules of the Supreme Court, such stay shall continue until final disposition by the Supreme Court. Upon filing of a copy of an order of that court denying the writ, the mandate shall issue forthwith.

**20. COSTS.** (1) In all cases where any proceedings shall be dismissed in this court, costs shall be allowed to the appellee, unless otherwise agreed by the parties.

(2) In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the appellee, unless otherwise ordered by the court.



(3) In cases of reversal of any judgment or decree in this court, costs shall be allowed to the appellant, unless otherwise ordered by the court. Where the record has been printed in this court under the provisions of sections 1 and 2 of Rule 13, the cost of printing 30 copies of the transcript of record from the court below shall be taxed as costs in the case, unless otherwise ordered by this court, but no allowance shall be made for the amount paid to the clerk of the court below for the written or typewritten transcript of the record. Where the record has been printed in the court below and a copy of such printed record certified to this court the cost of printing 25 copies of such record or portion thereof shall be taxable as costs in the case in the court below, unless otherwise ordered by this court.

(4) None of the foregoing sections shall apply to cases where the United States is a party; but in such cases no costs shall be allowed in this court for or against the United States.

(5) When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

(6) In all cases certified to the Supreme Court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court, except that no fee shall be charged or collected for any printed record or portion thereof, required by law to be used by the clerk in the preparation of such transcript of the record.

**21. MOTIONS.** (1) All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

(2) No motion except on special assignment by the court, shall be heard, unless reasonable previous notice has been given to the adverse party, or the counsel or attorney of such party.

**22. PRESERVATION OF RECORDS AND BRIEFS.** The clerk shall cause to be bound in volumes in a substantial manner and shall carefully preserve in his office one copy of the printed record in every case, submitted to the court for its consideration, and of all printed motions and briefs filed therein.

## TITLE II. CIVIL CASES

**23. ASSIGNMENT OF ERRORS.** The appellant shall file with the clerk of the court below, with his petition for the appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is the admission or to the rejection of evidence, the assignment of errors shall quote the full evidence so admitted or rejected and the objections, exceptions and rulings thereon. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it.

**24. CITATION AND RECORD.** (1) When an appeal is allowed a citation to the appellee or appellees shall be signed by the judge or justice allowing the appeal, and shall be made returnable at St. Louis, Mo., not exceeding 40 days from the day of allowance of appeal, whether the return day fall in vacation in term time, and the citation must be served 20 days before the return day.

(2) The parties may file in the court below a stipulation designating the portions of the record to be included in the transcript to be sent to this court; or the appellant may (within such time as the court below may direct) file in the court below a designation of the portions of the record deemed necessary by him to be included in such transcript, with proof of service of a copy thereof upon opposing parties or counsel, and the appellees may, within 10 days after such service and filing, file in such court a designation of such additional parts of the record as they may deem necessary. Where designations are made as above, only portions of the record so designated shall be certified by the clerk below (under his hand and the seal of such court) as the transcript upon appeal: Provided, That such transcript shall always include any opinions filed in the case and the complete charge to a jury.

(3) No case will be heard until there shall have been filed in this court 25 copies of the printed transcript of the record, containing in themselves, and not by reference: (1) all the papers, exhibits, depositions, sketches, drawings, photographs, maps, blue prints, and other proceedings which are necessary to the hearing in this court, (matter which cannot be printed, or which cannot be printed save at great expense, will, upon application to this court, be covered by special order); (2) printed title-pages in the form prescribed in section 5 of Rule 15; (3) chronological printed indexes of each and every item of their contents specifying the pages where evidence, testimony, and exhibits, including those in the body of any pleading, order, or bill of exceptions may be found; and (4) briefly naming or describing each exhibit in addition to its number, together with a statement of the numbers, names, and dates of issue of any patents.

(4) The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rules of the Supreme Court.

(5) If this court shall find that any portion of the record unnecessary to a proper presentation of the case has been incorporated into the transcript at the instance of either party, the whole or any part of the cost of printing and the clerk's fees for supervising the printing may be ordered to be paid by the offending party.

**25. SUPERSEDEAS AND COST BONDS.** (1) Supersedeas bonds in the district courts must be taken with good and sufficient security, that the appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the suit, as in real actions and *replevin*, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and just damages for delay, and costs and interest on the appeal.

(2) On all appeals from any interlocutory order or decree of a district court, or a judge thereof, granting, continuing, refusing, dissolving, or refusing to dissolve an injunction or appointing a receiver, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such district court a bond to the opposite party in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal.

**26. DOCKETING CASES.** (1) It shall be the duty of the appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But for good cause shown, the justice or judge who signed the citation or allowed the appeal, or any judge of this court, may enlarge the time by or before its expiration. A certified copy or duplicate original of the order of enlargement shall be filed with the clerk of this court. If the appellant shall fail to comply with this rule, the appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such appeal has been duly allowed. And in no case shall the appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

(2) But the appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the appellant within the period of time above limited and prescribed by this rule, or by appellee at any time thereafter, the case shall stand for argument at the term.

(3) A deposit of \$35 to secure clerk's costs is required before the record in a civil cause is filed and docketed; and upon the filing of the transcript of a record brought up by appeal, the appearance of counsel for the party docketing the case shall be entered.

(4) In a criminal case the duplicate notice of appeal and statement of docket entries required to be forwarded to the clerk of this Court (Supreme

Court Rule IV governing Criminal Appeals) shall be filed upon receipt thereof and the appearance of counsel for such appellant shall be then entered. A deposit of \$35 to secure clerk's costs shall be made by appellant within fifteen days thereafter and before the transcript of record is filed. Upon failure of appellant to make such deposit within such time the appellee may move to docket and dismiss or this court, upon its own motion, may docket and dismiss the appeal.

**27. DOCKET; PARTIES NOT READY.** (1) The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term as to the cases set for hearing at such term.

(2) If a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the appellant, unless sufficient cause is shown for further postponement.

**28. DIMINUTION OF RECORD.** No certiorari for diminution of the record will be awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such certiorari must be made at the first term of the entry of the case; otherwise the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

**29. DISMISSAL ON AGREEMENT.** Whenever the parties to an appeal or other proceeding shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the appeal or other proceeding to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk seasonably to present such agreement to the court for its consideration and determination.

**30. PARTIES NOT READY; DISQUALIFIED JUDGE.** (1) Where no counsel appears and no brief has been filed for the appellant when the case is called for hearing, the appellee may have the appeal dismissed.

(2) Where the appellee fails to appear when the case is called for hearing, the court may proceed to hear an argument on the part of the appellant, and to give judgment according to the right of the case.

(3) When a case is reached in the regular call of the docket, and there is no appearance for either party, the case may be dismissed at the cost of the appellant.

(4) If, when a case is reached in the regular call of the docket, it is found that one of the sitting judges is disqualified to sit in that case, the same may be heard by the two remaining judges, by consent of the party or parties appearing. In case of disagreement between the two judges sitting, they may call in a third qualified judge, to whom the briefs and record may be submitted for examination and final determination.

**31. INTEREST; DAMAGES.** (1) In cases where the judgment or decree for payment of money of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment or decree below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment or decree was rendered.

(2) In all cases where proceedings in this court shall delay the proceedings on the judgment of the inferior court, and shall appear to have been taken merely for delay, damages at a rate not exceeding 10 per cent, in addition to interest, shall be awarded upon the amount of the judgment or decree.

(3) In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

**32. DEATH OF A PARTY.** (1) Whenever, pending an appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record and thereupon, on motion, obtain an order that unless such representatives shall become parties within 60 days, the party moving for such order, if appellee, shall be entitled to have the appeal dismissed, and if the party so moving shall be appellant, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous:

Provided, however, That a copy of every such order shall be personally served on said representatives at least 30 days before the expiration of such 60 days.

(2) When the death of a party is suggested, and the representatives of the deceased do not appear within 10 days after the expiration of such 60 days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

(3) When either party to a suit in a district court of the United States shall desire to prosecute an appeal to this court, from any final judgment or decree rendered in the district court, and at the time of taking such appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit can not be revived in that court, but shall have a proper representative in some State or Territory of the United States, or in the District of Columbia, the party desiring such appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such appeal as in other cases. And within 30 days after the filing of the record in this court the appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the State or Territory or District in which such representative resides; and upon such suggestion he may on motion obtain an order that, unless such representative shall make himself a party within 90 days, the appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous: Provided, however, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least 30 days before the expiration of such 90 days: Provided also, That in every such case, if the representative of the deceased party does not appear within 10 days after the expiration of such 90 days, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required by the opposite party, the case shall abate: And provided also, That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed and be heard and determined as in other cases.

**33. OBJECTIONS TO CERTAIN EVIDENCE IN EQUITY AND ADMIRALTY CASES.** In all cases of equity or admiralty jurisdiction heard in this court no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant, exhibit, or translation found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

**34. HABEAS CORPUS, CUSTODY PENDING APPEAL.** (1) Pending an appeal from the final decision of any court or judge declining to grant a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

(2) Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be enlarged upon recognizance, as hereinafter provided or may be committed by order to other safe custody pending appeal.

(3) Pending an appeal from the final decision of any court or judge discharging the prisoner, he may be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

### TITLE III. CRIMINAL CASES

**35. COST BOND.** At the time of filing notice of appeal the appellant shall also file a bond for costs, the amount to be fixed by the trial judge or one of the judges of this court, with good and sufficient security that the appellant shall prosecute the appeal to effect, and, if appellant fail to make his plea good,

shall answer all costs, such bond to be approved by the trial judge or one of the judges of this court.

**36. ASSIGNMENT OF ERRORS.** When the error alleged is to the admission or the rejection of evidence, the assignment of errors shall quote the full evidence so admitted or rejected and the objections, exceptions and rulings thereon. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to totidem verbis.

**37. RECORD ON APPEAL.** (1) The record transmitted by the trial court shall include any opinions filed in the case and any bill of exceptions shall include the complete charge to the jury.

(2) No case will be heard until there shall have been filed in this court 25 copies of the printed transcript of the record, containing in themselves, and not by reference: (1) all the papers, exhibits, depositions, sketches, drawings, photographs, maps, blue prints, and other proceedings which are necessary to the hearing in this court, (matter which cannot be printed, or which cannot be printed save at great expense, will, upon application to this court, be covered by special order); (2) printed title-pages in the form prescribed in section 5 of Rule 15; (3) chronological printed indexes of each and every item of their contents specifying the pages where evidence, testimony, and exhibits, including those in the body of any pleading, order, or bill of exceptions may be found; and (4) briefly naming or describing each exhibit in addition to its number.

**38. DOCKETING CASES; DISMISSAL.** (1) Upon filing of the transcript of record on appeal by the clerk of this court, the appeal shall be entered in proper chronological order with all other cases.

(2) When an appellant shall fail to perfect his record on appeal within the times prescribed under Rule VIII or Rule IX of the Supreme Court (promulgated May 7, 1934) or by any Rules hereafter promulgated by that Court governing the same matters, the clerk of the trial court shall, within ten days after expiration of such time, transmit to the clerk of this court a certificate setting out the facts and also that he has mailed to such appellant or his counsel of record a notice as hereinafter required, with a copy of such notice. Transmission of the certificate and mailing of the notice shall be on the same day. Failure by such clerk to comply with the above requirements within the above ten days shall be subject to action by this court in the nature of a contempt or otherwise and it shall be the duty of attorneys for appellee promptly to bring any such failure to the attention of this court.

(3) The above notice shall state the date of transmission of the certificate to the clerk of this court; shall contain or be accompanied by a copy of such certificate; and shall advise that, unless cause to the contrary be shown to this court within ten days after receipt of such certificate by the clerk of this court, the appeal will be dismissed.

(4) Failure of the clerk of the trial court to comply with this Rule shall not prevent dismissal upon motion of appellee.

**39. PARTIES NOT READY.** When a case is called for hearing: (a) if there be no appearance for and no brief on file for appellant, the appeal shall be dismissed and the mandate issue forthwith; (b) if there be either oral argument for or brief on file for appellant, the case shall be taken on submission.

**40. CONTINUANCE AND POSTPONEMENT.** No continuance or postponement of hearing shall be granted except on stipulation or written motion and then only for good cause shown. Such stipulations or motions must be filed at least ten days before the case is set for hearing as to all grounds then existing and, as to grounds arising within such ten days, as soon as possible after knowledge thereof.

**41. DISQUALIFIED JUDGE.** If, when a case is called for hearing, it is found that one of the sitting judges is disqualified to sit therein, the same may be heard by the two remaining judges, by consent of the parties or party appearing. In case of disagreement between the two judges sitting, they may call in a third qualified judge, to whom the briefs and record may be submitted for examination and final determination.

**42. SERVICE OF SENTENCE PENDING APPEAL.** An election to enter service of sentence pending appeal (in accordance with Supreme Court Rule V) shall be by oral declaration made in open court and entered of record or by a written statement filed in the trial court. Such service shall begin at any date after such entry of record or such filing as

is specified therein, provided appellant be then in actual custody pursuant to such sentence. Such service shall not affect the terms or conditions of the sentence as to place of imprisonment or otherwise. The clerk of the trial court shall promptly transmit a copy of such record or statement to the clerk of this court for filing.

#### TITLE IV. SPECIAL PROCEEDINGS

**43. TAX REVIEWS.** (1) Every petition for review of a decision of the United States Board of Tax Appeals shall set forth briefly the nature of the controversy, shall declare the court in which the review is sought, shall contain assignments of error separately stated and numbered in respect of each and every error asserted and intended to be argued, and shall be verified by the petitioner or his attorney of record.

(2) If error is assigned in the admission or rejection of evidence, or on the ground that a finding of the board is unsupported by any evidence, a statement of the evidence submitted to the board shall be prepared by the petitioner. Such statement shall contain in narrative form the evidence material to the assignments of error, and shall be prepared by the parties and settled by a member of the board in accordance with the general equity rules promulgated by the Supreme Court of the United States.

(3) The party applying for review shall file his petition with the clerk of the Board of Tax Appeals, and serve a copy thereof with notice of filing on the opposite party or parties. The review shall be taken by such filing and notice.

(4) Within 60 days from such filing and notice, the statement of evidence, if any, shall be prepared and filed, and the clerk of the Board of Tax Appeals shall transmit and deliver to the clerk of this court copies duly certified as correct of the following documents:

1. The docket entries of proceedings before the board.
2. Pleadings before the board.
3. Findings of fact, opinion, and decision of the board.
4. Petition for review.
5. The statement of evidence, if any, as settled or agreed upon.

The time for such preparation of evidence and transmission and delivery of documents may be enlarged by a member of the board or a judge of this court, and all such orders of enlargement shall forthwith be filed with the clerk of the Board of Tax Appeals and certified copies thereof be sent to this court with the above enumerated documents.

(5) If such certified copies are not delivered to the clerk of this court within 60 days from said filing and notice or before the expiration of the time enlarged by order, a motion to dismiss the petition for delay may be made, and shall be granted unless good cause be shown for the delay.

(6) Procedure in this court shall be the same as in appeals in civil cases from a district court in so far as applicable.

#### CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES

ADOPTED BY THE SUPREME COURT OF THE UNITED STATES PURSUANT TO THE ACT OF JUNE 19, 1934, Ch. 651

##### I. SCOPE OF RULES—ONE FORM OF ACTION

- Rule
1. Scope of rules.
  2. One form of action.

##### II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

3. Commencement of action.
4. Process.
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##### III. PLEADINGS AND MOTIONS

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8. General rules of pleading.
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10. Form of pleadings.
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## Rule

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## I. SCOPE OF RULES—ONE FORM OF ACTION

**Rule 1. SCOPE OF RULES.** These rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

**2. ONE FORM OF ACTION.** There shall be one form of action to be known as "civil action."

## II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

**3. COMMENCEMENT OF ACTION.** A civil action is commenced by filing a complaint with the court.

**4. PROCESS.** (a) **Summons; Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) **Same; Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) **By Whom Served.** Service of all process shall be made by a United States marshal, by his deputy, or by some person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(d) **Summons; Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion when residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the

copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(e) **Same; Other Service.** Whenever a statute of the United States or an order of court provides for service of summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.

(f) **Territorial Limits of Effective Service.** All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state. A subpoena may be served within the territorial limits provided in Rule 45.

(g) **Return.** The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or his deputy, he shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service.

(h) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

### 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(a) **Service; When Required.** Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) **Same; How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) **Same; Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counter-claim, or matters constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) **Filing.** All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(e) **Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

### 6. TIME.

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect; but it may not enlarge the period for taking any action under Rule 59, except as stated in subdivision (c) thereof, or the period for taking an appeal as provided by law.

(c) **Unaffected By Expiration of Term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) **For Motions—Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59 (c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) **Additional Time After Service By Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

## III. PLEADINGS AND MOTIONS

7. **PLEADINGS ALLOWED; FORM OF MOTIONS.** (a) **Pleadings.** There shall be a complaint and an answer; and there shall be a reply, if the answer contains a counter-claim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) **Motions and Other Papers.** (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) **Demurrers, Pleas, Etc., Abolished.** Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

**8. GENERAL RULES OF PLEADING.** (a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) **Defenses; Form of Denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counter-claim or a counter-claim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading to Be Concise and Direct; Consistency.** (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice.

**9. PLEADING SPECIAL MATTERS.** (a) **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) **Fraud, Mistake, Condition of the Mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) **Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) **Official Document Or Act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) **Judgment.** In pleading a judgment or decision of a domestic or a foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) **Time and Place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) **Special Damage.** When items of special damage are claimed, they shall be specifically stated.

**10. FORM OF PLEADINGS.** (a) **Caption; Names of Parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7 (a). In the complaint the title of the action shall include the names of all parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) **Paragraphs; Separate Statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) **Adoption By Reference; Exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

**11. SIGNING OF PLEADINGS.** Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

**12. DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS.** (a) **When Presented.** A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4 (e). A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counter-claim in the answer within 20 days after service if the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counter-claim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of any motion provided for in this rule alters the time fixed by these rules for serving any required responsive pleading as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition

until the trial on the merits, the responsive pleading may be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement or for a bill of particulars, the responsive pleading may be served within ten days after the service of the more definite statement or bill of particulars. In either case the time for service of the responsive pleading shall be not less than remains of the time which would have been allowed under these rules if the motion had not been made.

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter-claim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

(d) **Preliminary Hearings.** The defenses specifically enumerated (1)-(6) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) **Motion for More Definite Statement Or for Bill of Particulars.** Before responding to a pleading or, if no responsive pleading is permitted by these rules, within 20 days after the service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just. A bill of particulars becomes a part of the pleading which it supplements.

(f) **Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading.

(g) **Consolidation of Motions.** A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except that prior to making any other motions under this rule he may make a motion in which are joined all the defenses numbered (1) to (5) in subdivision (b) of this rule which he cares to assert.

(h) **Waiver of Defenses.** A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall then be disposed of as provided in

Rule 15 (b) in the light of any evidence that may have been received.

**13. COUNTER-CLAIM AND CROSS-CLAIM.** (a) **Compulsory Counter-claims.** A pleading shall state as a counter-claim any claim, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third-parties of whom the court cannot acquire jurisdiction.

(b) **Permissive Counter-claims.** A pleading may state as a counter-claim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) **Counter-claim Exceeding Opposing Claim.** A counter-claim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) **Counter-claim Against the United States.** These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counter-claims or to claim credits against the United States or an officer or agency thereof.

(e) **Counter-claim Maturing Or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counter-claim by supplemental pleading.

(f) **Omitted Counter-claim.** When a pleader fails to set up a counter-claim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counter-claim by amendment.

(g) **Cross-Claim Against Co-Party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counter-claim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) **Additional Parties May Be Brought In.** When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counter-claim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action.

(i) **Separate Trials; Separate Judgments.** If the court orders separate trials as provided in Rule 42 (b), judgment on a counter-claim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

**14. THIRD-PARTY PRACTICE.** (a) **When Defendant May Bring In Third Party.** Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses as provided in Rule 12 and his counter-claims and cross-claims against the plaintiff, the third-party plaintiff, or any other party as provided in Rule 13. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff. The plaintiff may amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

(b) **When Plaintiff May Bring In Third Party.** When a counter-claim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.



**15. AMENDED AND SUPPLEMENTAL PLEADINGS.** (a) **Amendments.** A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) **Amendments to Conform to the Evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) **Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) **Supplemental Pleadings.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

**16. PRE-TRIAL PROCEDURE; FORMULATING ISSUES.** In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

#### IV. PARTIES

**17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.** (a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the United States so provides,

an action for the use or benefit of another shall be brought in the name of the United States.

(b) **Capacity to Sue Or Be Sued.** The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.

(c) **Infants Or Incompetent Persons.** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

**18. JOINDER OF CLAIMS AND REMEDIES.**

(a) **Joinder of Claims.** The plaintiff in his complaint or in a counter-claim and the defendant in an answer setting forth a counter-claim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 19, 20, and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.

(b) **Joinder of Remedies; Fraudulent Conveyances.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

**19. NECESSARY JOINDER OF PARTIES.** (a)

**Necessary Joinder.** Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

(b) **Effect of Failure to Join.** When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance or if, though they are subject to its jurisdiction, their joinder would deprive the court of jurisdiction of the parties before it; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

(c) **Same; Names of Omitted Persons and Reasons for Nonjoinder to Be Plead.** In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

**20. PERMISSIVE JOINDER OF PARTIES.** (a)

**Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly,

severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

**21. MISJOINDER AND NONJOINDER OF PARTIES.** Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

**22. INTERPLEADER.** (1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counter-claim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Section 24 (26) of the Judicial Code, as amended, Title 28, s. 41 (26). Actions under that section shall be conducted in accordance with these rules.

**23. CLASS ACTIONS.** (a) **Representation.** If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

(b) **Secondary Action By Shareholders.** In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law and (2) that the action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) **Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it.

**24. INTERVENTION.** (a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's

interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) When a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in the Act of August 24, 1937, c. 754, s. 1.

**25. SUBSTITUTION OF PARTIES.** (a) **Death.** (1) If a party dies and the claim is not thereby extinguished, the court within 2 years after the death may order substitution of the proper parties. If substitution is not so made, the action shall be dismissed as to the deceased party. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) **Incompetency.** If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) **Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) **Public Officers; Death or Separation from Office.** When an officer of the United States, the District of Columbia, a state, county, city, or other governmental agency, or any other officer specified in the Act of February 13, 1925, c. 229, s. 11 (43 Stat. 941), Title 28, s. 780, is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the United States. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

## V. DEPOSITIONS AND DISCOVERY

**26. DEPOSITIONS PENDING ACTION.** (a) **When Depositions May Be Taken.** By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken at the instance of any party by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as

evidence in the action or for both purposes. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) **Scope of Examination.** Unless otherwise ordered by the court as provided by Rule 30 (b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether relating to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts.

(c) **Examination and Cross-Examination.** Examination and cross-examination of deponents may proceed as permitted at the trial under the provisions of Rule 43 (b).

(d) **Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: 1, that the witness is dead; or 2, that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or 3, that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or 4, that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or 5, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the later as if originally taken therefor.

(e) **Objections to Admissibility.** Subject to the provisions of Rule 32 (c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(f) **Effect of Taking or Using Depositions.** A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (2) of subdivision (d) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

**27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.** (a) **Before Action.** (1) **Petition.** A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the United States may file a verified petition in the district court of the United States in the district of the residence of any

expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) **Notice and Service.** The petitioner shall thereupon serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in Rule 4 (d) for service of summonses; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4 (d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17 (c) apply.

(3) **Order and Examination.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) **Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a district court of the United States, in accordance with the provisions of Rule 26 (d).

(b) **Pending Appeal.** If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

(c) **Perpetuation By Action.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

**28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.** (a) **Within the United States.** Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) **In Foreign Countries.** In a foreign state or country depositions shall be taken (1) on notice before

a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in [here name the country]."

(c) **Disqualification for Interest.** No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

**29. STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS.** If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

**30. DEPOSITIONS UPON ORAL EXAMINATION.**  
(a) **Notice of Examination; Time and Place.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

(b) **Orders for the Protection of Parties and Deponents.** After notice is served for taking deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(c) **Record of Examination; Oath; Objections.** The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) **Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for

an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

(e) **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32 (d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) **Certification and Filing By Officer; Copies; Notice of Filing.** (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) **Failure to Attend or to Serve Subpoena; Expenses.** (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

**31. DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES.** (a) **Serving Interrogatories; Notice.** A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories upon the party proposing to take the deposition.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30 (c), (e), and (f), to take the testimony of the witnesses in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

(c) **Notice of Filing.** When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(d) **Orders for the Protection of Parties and Deponents.** After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order specified in Rule 30 which is appropriate and just or an order

that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except upon oral examination.

**32. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.** (a) **As to Notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving the notice.

(b) **As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) **As to Taking of Deposition.** (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation; or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

(d) **As to Completion and Return of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

**33. INTERROGATORIES TO PARTIES.** Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the delivery of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Objections to any interrogatories may be presented to the court within 10 days after service thereof, with notice as in case of a motion; and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. No party may, without leave of court, serve more than one set of interrogatories to be answered by the same party.

**34. DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, COPYING, OR PHOTOGRAPHING.** Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

**35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.** (a) **Order for Examination.** In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and

upon notice to the party to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) **Report of Findings.** (1) If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

**36. ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS.** (a) **Request for Admission.** At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

(b) **Effect of Admission.** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

**37. REFUSAL TO MAKE DISCOVERY; CONSEQUENCES.** (a) **Refusal to Answer.** If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) **Failure to Comply with Order.** (1) **Contempt.** If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court in the district in which the deposition is being taken, the refusal may be considered a contempt of that court.

(2) **Other Consequences.** If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35

requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

(c) **Expenses on Refusal to Admit.** If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(d) **Failure of Party to Attend or Serve Answers.** If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

(e) **Failure to Respond to Letters Rogatory.** A subpoena may be issued as provided in the Act of July 3, 1926, c. 762, s. 1 (44 Stat. 835), U.S.C., Title 28, s. 711, under the circumstances and conditions therein stated.

(f) **Expenses Against United States.** Expenses and attorney's fees are not to be imposed upon the United States under this rule.

## VI. TRIALS

**38. JURY TRIAL OF RIGHT.** (a) **Right Preserved.** The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) **Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

(c) **Same; Specification or Issues.** In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) **Waiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5 (d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

**39. TRIAL BY JURY OR BY THE COURT.** (a) **By Jury.** When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the

parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

(b) **By the Court.** Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) **Advisory Jury and Trial By Consent.** In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

**40. ASSIGNMENT OF CASES FOR TRIAL.** The district courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by any statute of the United States.

**41. DISMISSAL OF ACTIONS.** (a) **Voluntary Dismissal; Effect Thereof.** (1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23 (c) and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service of the answer or (ii) by filing a stipulation of dismissal signed by all the parties who have appeared generally in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) **By Order of Court.** Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) **Involuntary Dismissal; Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) **Costs of Previously-Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

**42. CONSOLIDATED; SEPARATE TRIALS.** (a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the

matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) **Separate Trials.** The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

**43. EVIDENCE.** (a) **Form and Admissibility.** In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) **Scope of Examination and Cross-Examination.** A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

(c) **Record of Excluded Evidence.** In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) **Affirmation in Lieu of Oath.** Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) **Evidence on Motions.** When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

**44. PROOF OF OFFICIAL RECORD.** (a) **Authentication of Copy.** An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

(b) **Proof of Lack of Record.** A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evi-

dence that the records of his office contain no such record or entry.

(c) **Other Proof.** This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

**45. SUBPOENA.** (a) **For Attendance of Witnesses; Form; Issuance.** Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed, and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) **For Production Or Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, or documents designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, or documents.

(c) **Service.** A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered.

(d) **Subpoena for Taking Depositions; Place of Examination.** (1) Proof of service of a notice to take a deposition as provided in Rules 30 (a) and 31 (a) constitutes a sufficient authorization for the issuance by the clerk of the district court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein. A subpoena commanding the production of documentary evidence on the taking of a deposition shall not be used without an order of the court.

(2) A resident of the district in which the deposition is to be taken may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person. A non-resident of the district may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service, or at such other place as is fixed by an order of court.

(e) **Subpoena for a Hearing or Trial.** (1) At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the district court for the district in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the district, or at any place without the district that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the United States provides therefor, the court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in the Act of July 3, 1926, c. 762, ss. 1, 3 (44 Stat. 835), Title 28, ss. 711, 713.

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

**46. EXCEPTIONS UNNECESSARY.** Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

**47. JURORS.** (a) **Examination of Jurors.** The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry



as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) **Alternate Jurors.** The court may direct that one or two jurors in addition to the regular panel be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. If one or two alternate jurors are called each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

**48. JURIES OF LESS THAN TWELVE; MAJORITY VERDICT.** The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

**49. SPECIAL VERDICTS AND INTERROGATORIES.** (a) **Special Verdicts.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleading or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) **General Verdict Accompanied By Answer to Interrogatories.** The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

**50. MOTION FOR A DIRECTED VERDICT.** (a) **When Made; Effect.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor.

(b) **Reservation of Decision on Motion.** Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination

of the legal questions raised by the motion. Within 10 days after the reception of a verdict, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

**51. INSTRUCTIONS TO JURY; OBJECTION.** At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

**52. FINDINGS BY THE COURT.** (a) **Effect.** In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

(b) **Amendment.** Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

**53. MASTERS.** (a) **Appointment and Compensation.** Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) **Reference.** A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) **Powers.** The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in

every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43 (c) for a court sitting without a jury.

(d) **Proceedings.** (1) **Meetings.** When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed *ex parte* or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) **Witnesses.** The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) **Statement of Accounts.** When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) **Report.** (1) **Contents and Filing.** The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) **In Non-Jury Actions.** In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) **In Jury Actions.** In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) **Stipulation as to Findings.** The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) **Draft Report.** Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

## VII. JUDGMENT

**54. JUDGMENTS; COSTS.** (a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) **Judgment At Various Stages.** When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(c) **Demand for Judgment.** A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) **Costs.** Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

**55. DEFAULT.** (a) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) **Judgment.** Judgment by default may be entered as follows:

(1) **By the Clerk.** When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) **By the Court.** In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

(c) **Setting Aside Default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60 (b).

(d) **Plaintiffs, Counterclaimants, Cross-Claimants.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54 (c).

(e) **Judgment Against the United States.** No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

**56. SUMMARY JUDGMENT.** (a) **For Claimant.** A party seeking to recover upon a claim, counterclaim,

or cross-claim or to obtain a declaratory judgment may, at any time after the pleading in answer thereto has been served, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and Proceedings Thereon:** The motion shall be served at least 10 days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of Affidavits; Further Testimony.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

(f) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**57. DECLARATORY JUDGMENTS.** The procedure for obtaining a declaratory judgment pursuant to Section 274 (d) of the Judicial Code, as amended, Title 28, s. 400, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

**58. ENTRY OF JUDGMENT.** Unless the court otherwise directs, judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry.

**59. NEW TRIALS.** (a) **Grounds.** A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) **Time for Motion.** A motion for a new trial shall be served not later than 10 days after the entry of the judgment, except that a motion for a new trial on the ground of newly discovered evidence may be made after the expiration of such period and before the expiration of the time for appeal, with leave of court obtained on notice and hearing and on a showing of due diligence.

(c) **Time for Serving Affidavits.** When a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) **On Initiative of Court.** Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

**60. RELIEF FROM JUDGMENT OR ORDER.**

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

(b) **Mistake; Inadvertence; Surprise; Excusable Neglect.** On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding, or (2) to set aside within one year, as provided in Section 57 of the Judicial Code, Title 28, s. 118, a judgment obtained against a defendant not actually personally notified.

**61. HARMLESS ERROR.** No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

**62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.** (a) **Automatic Stay; Exceptions, Injunctions, Receiverships, and Patent Accountings.** Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunctions during the pendency of an appeal.

(b) **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial made pursuant to Rule 59, or of a motion for

relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52 (b).

(c) **Injunction Pending Appeal.** When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. If the judgment appealed from is rendered by a district court of three judges specially constituted pursuant to a statute of the United States, no such order shall be made except (1) by such court sitting in open court or (2) by the assent of all the judges of such court evidenced by their signatures to the order.

(d) **Stay Upon Appeal.** When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) **Stay in Favor of the United States or Agency Thereof.** When an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) **Stay According to State Law.** In any state in which a judgment is a lien upon the property of the judgment debtor and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled, in the district court held therein, to such stay as would be accorded him had the action been maintained in the courts of that state.

(g) **Power of Appellate Court Not Limited.** The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered; and these rules do not supersede the provisions of Section 210 of the Judicial Code, as amended, Title 28, s. 47a, or of other statutes of the United States to the effect that stays pending appeals to the Supreme Court may be granted only by that court or a justice thereof.

**63. DISABILITY OF A JUDGE.** If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

#### VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

**64. SEIZURE OF PERSON OR PROPERTY.** At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

**65. INJUNCTIONS.** (a) **Preliminary; Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(b) **Temporary Restraining Order; Notice; Hearing; Duration.** No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) **Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

(d) **Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Employer and Employee; Interpleader; Constitutional cases.** These rules do not modify the Act of October 15, 1914, c. 323, ss. 1 and 20 (38 Stat. 730), Title 29, ss. 52 and 53, or the Act of March 23, 1932, c. 90 (47 Stat. 70), Title 29, c. 6, relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or the provisions of Section 24 (26) of the Judicial Code as amended, Title 28, s. 41 (26), relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or the Act of August 24, 1937, c. 754, s. 3, relating to actions to enjoin the enforcement of acts of Congress.

**66. RECEIVERS.** The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district courts, but all appeals in receivership proceedings are subject to these rules.

**67. DEPOSIT IN COURT.** In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Sections 995 and 996, Revised Statutes, as amended, Title 28, ss. 851, 852; the Act of June 26, 1934, c. 756, s. 23 (48 Stat. 1236), Title 31, s. 725v; or any like statute.

**68. OFFER OF JUDGMENT.** At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party

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## APPENDIX 10. COURT RULES

an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. If the offer is not so accepted it shall be deemed withdrawn and evidence thereof is not admissible. If the adverse party fails to obtain a judgment more favorable than that offered, he shall not recover costs in the district court from the time of the offer but shall pay costs from that time.

**69. EXECUTION.** (a) **In General.** Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by the practice of the state in which the district court is held.

(b) **Against Certain Public Officers.** When a judgment has been entered against a collector or other officer of revenue under the circumstances stated in Section 989, Revised Statutes, Title 25, s. 842, or against an officer of Congress in an action mentioned in the Act of March 3, 1875, c. 130, s. 8 (18 Stat. 401), Title 2, s. 118, and when the court has given the certificate of probable cause for his act as provided in those statutes, execution shall not issue against the officer or his property but the final judgment shall be satisfied as provided in such statutes.

**70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE.** If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

**71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES.** When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

### IX. APPEALS

**72. APPEAL FROM A DISTRICT COURT TO THE SUPREME COURT.** When an appeal is permitted by law from a district court to the Supreme Court of the United States, an appeal shall be taken by petition for appeal accompanied by an assignment of errors. The appeal shall be allowed, a citation issued, a jurisdictional statement filed, a bond on appeal and supersedeas bond taken, and the record on appeal made and certified as prescribed by law and the Rules of the Supreme Court of the United States governing such an appeal.

**73. APPEAL TO A CIRCUIT COURT OF APPEALS.** (a) **How Taken.** When an appeal is permitted by law from a district court to a circuit court of appeals and within the time prescribed, a party may appeal from a judgment by filing with the district

court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(b) **Notice of Appeal.** The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or part thereof appealed from; and shall name the court to which the appeal is taken. Notification of the filing of the notice of appeal shall be given by the clerk by mailing copies thereof to all the parties to the judgment other than the party or parties taking the appeal, but his failure so to do does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record or, if the party is not represented by an attorney, then to the party at his last known address, and such notification is sufficient notwithstanding the death of the party or of his attorney prior to the giving of the notification. The clerk shall note in the civil docket the names of parties to whom he mails the copies, with date of mailing.

(c) **Bond on Appeal.** Whenever a bond for costs on appeal is required by law, the bond shall be filed with the notice of appeal. The bond shall be in the sum of two hundred and fifty dollars, unless the court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified. If a bond on appeal in the sum of two hundred and fifty dollars is given, no approval thereof is necessary. After a bond on appeal is filed an appellee may raise objections to the form of the bond or to the sufficiency of the surety for determination by the clerk.

(d) **Supersedeas Bond.** Whenever an appellant entitled thereto desires a stay on appeal, he may present to the court for its approval a supersedeas bond which shall have surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property; the costs of the action, costs on appeal, interest, and damages for delay.

(e) **Failure to File or Insufficiency of Bond.** If a bond on appeal or a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the appellate court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the appellate court.

(f) **Judgment Against Surety.** By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his address is known.

(g) **Docketing and Record on Appeal.** The record on appeal as provided for in Rules 75 and 76 shall be filed with the appellate court and the action there docketed within 40 days from the date of the notice

of appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of the first notice of appeal. In all cases the district court in its discretion and with or without motion or notice may extend the time for filing the record on appeal and docketing the action, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order; but the district court shall not extend the time to a day more than 90 days from the date of the first notice of appeal.

**74. JOINT OR SEVERAL APPEALS TO THE SUPREME COURT OR TO A CIRCUIT COURT OF APPEALS; SUMMONS AND SEVERANCE ABOLISHED.** Parties interested jointly, severally, or otherwise in a judgment may join in an appeal therefrom; or, without summons and severance, any one or more of them may appeal separately or any two or more of them may join in an appeal.

**75. RECORD ON APPEAL TO A CIRCUIT COURT OF APPEALS.** (a) **Designation of Contents of Record on Appeal.** Promptly after an appeal to a circuit court of appeals is taken, the appellant shall serve upon the appellee and file with the district court a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal. Within 10 days thereafter any other party to the appeal may serve and file a designation of additional portions of the record, proceedings, and evidence to be included.

(b) **Transcript.** If there be designated for inclusion any evidence or proceedings at a trial or hearing which was stenographically reported, the appellant shall file with his designation two copies of the reporter's transcript of the evidence or proceedings included in his designation. If the designation includes only part of the reporter's transcript, the appellant shall file two copies of such additional parts thereof as the appellee may need to enable him to designate and file the parts he desires to have added, and if the appellant fails to do so the court on motion may require him to furnish the additional parts needed. One of the copies so filed by the appellant shall be available for the use of the other parties and for use in the appellate court in printing the record.

(c) **Form of Testimony.** Testimony of witnesses designated for inclusion need not be in narrative form, but may be in question and answer form. A party may prepare and file with his designation a condensed statement in narrative form of all or part of the testimony, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part thereof.

(d) **Statement of Points.** If the appellant does not designate for inclusion the complete record and all the proceedings and evidence in the action, he shall serve with his designation a concise statement of the points on which he intends to rely on the appeal.

(e) **Record to Be Abbreviated.** All matter not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the appellate court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties.

(f) **Stipulation As to Record.** Instead of serving designations as above provided, the parties by written stipulation filed with the clerk of the district court may designate the parts of the record, proceedings, and evidence to be included in the record on appeal.

(g) **Record to Be Prepared By Clerk—Necessary Parts.** The clerk of the district court, under his hand and the seal of the court, shall transmit to the appellate court a true copy of the matter designated by the parties, but shall always include, whether or not designated, copies of the following: the material pleadings without unnecessary duplication; the verdict or the findings of fact and conclusions of law together with the direction for the entry of judgment thereon; in an action tried without a jury, the master's report, if any; the opinion; the judgment or part thereof appealed from; the notice of appeal with date of filing; the designations or stipulations of the parties

as to matter to be included in the record; and any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The clerk shall transmit with the record on appeal a copy thereof for use in printing the record, if a copy is required by the rules of the circuit court of appeals.

(h) **Power of Court to Correct Record.** It is not necessary for the record on appeal to be approved by the district court or judge thereof, but, if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the appellate court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk of the district court.

(i) **Order As to Original Papers or Exhibits.** Whenever the district court is of opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper.

(j) **Record for Preliminary Hearing in Appellate Court.** If, prior to the time the complete record on appeal is settled and certified as herein provided, a party desires to docket the appeal in order to make in the appellate court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on the supersedeas bond, or for any intermediate order, the clerk of the district court at his request shall certify and transmit to the appellate court a copy of such portion of the record or proceedings below as is needed for that purpose.

(k) **Several Appeals.** When more than one appeal is taken to the same court from the same judgment, a single record on appeal shall be prepared containing all the matter designated or agreed upon by the parties, without duplication.

(l) **Printing.** What part of the record on appeal filed in the appellate court shall be printed and the manner of the printing and the supervision thereof shall be as prescribed in the rules of the court to which the appeal is taken; but the type, paper, and dimensions of printed matter in the circuit court of appeals shall conform to the rules of the Supreme Court relating to records on appeals to that court.

**76. RECORD ON APPEAL TO A CIRCUIT COURT OF APPEALS; AGREED STATEMENT.** When the questions presented by an appeal to a circuit court of appeals can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the appellate court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the appeal, shall be approved by the district court and shall then be certified to the appellate court as the record on appeal.

## X. DISTRICT COURTS AND CLERKS

**77. DISTRICT COURTS AND CLERKS.** (a) **District Courts Always Open.** The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) **Trials and Hearings; Orders in Chambers.** All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.



(c) **Clerk's Office and Orders By Clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) **Notice of Orders Or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon every party affected thereby who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

**78. MOTION DAY.** Unless local conditions make it impractical, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

**79. BOOKS KEPT BY THE CLERK AND ENTRIES THEREIN.** (a) **Civil Docket.** The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Attorney General under the authority of the Act of June 30, 1906, c. 3914, s. 1 (34 Stat. 754), as amended, Title 28, s. 568, or other statutory authority, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) **Civil Order Book.** The clerk shall also keep a book for civil actions entitled "civil order book" in which shall be kept in the sequence of their making exact copies of all final judgments and orders, all orders affecting title to or lien upon real or personal property, all appealable orders, and such other orders as the court may direct.

(c) **Indices; Calendars.** Separate and suitable indices of the civil docket and of the civil order book shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

**80. STENOGRAPHER; STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE.** (a) **Stenographer.** A court or master may direct that evidence be taken stenographically and may appoint a stenographer for that purpose. His fees shall be fixed by the court and may be taxed ultimately as costs, in the discretion of the court. The cost of a transcript shall be paid in the first instance by the party ordering the transcript.

(b) **Official Stenographers.** Each district court may designate one or more official court stenographers for the district and fix by rule of court the compensation which such stenographers shall be entitled to charge for their services, with provision that amounts properly paid by parties for the service of such stenographers be taxable as costs in the case in the discretion of the trial judge. The work of the stenographers shall be so arranged as to avoid delay in furnishing transcripts ordered for the purposes of

motions for new trial, for amended findings, or for appeals.

(c) **Stenographic Report Or Transcript As Evidence.** Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

## XI. GENERAL PROVISIONS

**81. APPLICABILITY IN GENERAL.** (a) **To What Proceedings Applicable.** (1) These rules do not apply to proceedings in admiralty. They do not apply to proceedings in bankruptcy or proceedings in copyright under the Act of March 4, 1909, c. 320, s. 25 (35 Stat. 1081), as amended, Title 17, s. 25, except in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States. They do not apply to probate, adoption, or lunacy proceedings in the District Court of the United States for the District of Columbia except to appeals therein.

(2) In the following proceedings appeals are governed by these rules, but they are not applicable otherwise than on appeal except to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in actions at law or suits in equity: admission to citizenship, habeas corpus, quo warranto, and forfeiture of property for violation of a statute of the United States.

(3) In proceedings under the Act of February 12, 1925, c. 213 (43 Stat. 883), Title 9, relating to arbitration, or under the Act of May 20, 1926, c. 347, s. 9 (44 Stat. 585), Title 45, s. 159, relating to boards of arbitration of railway labor disputes, these rules apply to appeals, but otherwise only to the extent that matters of procedure are not provided for in those statutes.

(4) These rules do not alter the method prescribed by the Act of February 18, 1922, c. 57, s. 2 (42 Stat. 388), Title 7, s. 292; or by the Act of June 10, 1930, c. 436, s. 7 (46 Stat. 534), as amended, Title 7, s. 499g(c), for instituting proceedings in the district courts of the United States to review orders of the Secretary of Agriculture; or prescribed by the Act of June 25, 1934, c. 742, s. 2 (48 Stat. 1214), Title 15, s. 522, for instituting proceedings to review orders of the Secretary of Commerce; or prescribed by the Act of February 22, 1935, c. 18, s. 5 (49 Stat. 31), Title 15, s. 715d(c), as extended for instituting proceedings to review orders of petroleum control boards; but the conduct of such proceedings in the district courts shall be made to conform to these rules so far as applicable.

(5) These rules do not alter the practice in the district courts of the United States prescribed in the Act of July 5, 1935, c. 372, ss. 9 and 10 (49 Stat. 453), Title 29, ss. 159 and 160 (e), (g), and (i), for beginning and conducting proceedings to enforce orders of the National Labor Relations Board; and in respects not covered by those statutes, the practice in the district courts shall conform to these rules so far as applicable.

(6) These rules do not apply to proceedings under the Act of September 13, 1888, c. 1015, s. 13 (25 Stat. 479), as amended, Title 8, s. 282, relating to deportation of Chinese, or to proceedings for review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, s. 21 (44 Stat. 1436), Title 33, s. 921. The provisions for service by publication and allowing the defendant 60 days within which to answer in proceedings to cancel certificates of citizenship under the Act of June 29, 1906, c. 3592, s. 15 (34 Stat. 601), as amended, Title 8, s. 405, remain in effect.

(7) In proceedings for condemnation of property under the power of eminent domain, these rules govern appeals but are not otherwise applicable.

(b) **Scire Facias and Mandamus.** The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

(c) **Removed Actions.** These rules apply to civil actions removed to the district courts of the United States from the state courts and govern all procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under these rules within the time allowed for answer by the law of the state or within 5 days after the



filing of the transcript of the record in the district court of the United States, whichever period is longer. If at the time of removal all necessary pleadings have been filed, a party entitled to trial by jury under Rule 38 and who has not already waived his right to such trial shall be accorded it, if his demand therefor is served within 10 days after the record of the action is filed in the district court of the United States.

(d) District of Columbia; Courts and Judges. Whenever in these rules reference is made to a district court or to a district judge, the reference includes the District Court of the United States for the District of Columbia or a justice thereof; and whenever reference is made to a circuit court of appeals or to a judge thereof, the reference includes the United States Court of Appeals for the District of Columbia or a justice thereof.

(e) Law Applicable. Whenever in these rules the law of the state in which the district court is held is made applicable, the law applied in the District of Columbia governs proceedings in the District Court of the United States for the District of Columbia. When the word "state" is used, it includes, if appropriate, the District of Columbia. When the term "statute of the United States" is used, it includes, so far as concerns proceedings in the District Court of the United States for the District of Columbia, any Act of Congress locally applicable to and in force in the District of Columbia. When the law of a state is referred to, the word "law" includes the statutes of that state and the state judicial decisions construing them.

82. JURISDICTION AND VENUE UNAFFECTED. These rules shall not be construed to extend or limit the jurisdiction of the district courts of the United States or the venue of actions therein.

83. RULES BY DISTRICT COURTS. Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

84. FORMS. These forms contained in the Appendix of Forms are intended to indicate, subject to the provisions of these rules, the simplicity and brevity of statement which the rules contemplate.

85. TITLE. The rules may be known and cited as the Federal Rules of Civil Procedure.

86. EFFECTIVE DATE. These rules will take effect on the day which is 3 months subsequent to the adjournment of the second regular session of the 75th Congress, but if that day is prior to September 1, 1938, then these rules will take effect on September 1, 1938. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

RULES OF PRACTICE OF THE SUPREME COURT OF MINNESOTA

EFFECTIVE JULY 1, 1942

RULE I

CLERK—DUTIES OF. 1. The clerk shall keep a general docket or register in which he shall enter the title of all actions and proceedings including the names of the parties and the attorneys by whom they prosecute or defend, brief notes of all papers filed and all proceedings had therein, the issuing of writs and other process and the return thereof, and all orders and judgments.

2. He shall also keep a judgment book in which he shall enter all judgments, the names of the parties thereto, the date of the judgment, its number, the amount thereof if the recovery of money or damages is included therein, and the amount of costs and disbursements, which record shall be properly indexed.

3. He shall keep a court journal in which he shall enter from day to day brief minutes of all proceedings in court.

4. He shall file all papers presented to him; endorse thereon the style of the action, its number, the character of the paper and date of filing; and after

filing no paper shall be taken from his office unless by order of the court or a judge thereof.

RULE II

CERTIORARI—MANDAMUS—TITLE. In this court the title of all cases under review shall be as in the court below. Writs shall issue in the name of the state upon the relation of the petitioner and the title shall be in the form indicated by the following example:

John Jones, Plaintiff and Relator, vs. Johnson Canning Co., Defendant and Respondent. State upon the relation of John Jones to the Court of County, Minnesota, and to the Honorable, one of the judges thereof:

The petition shall definitely and briefly state the judgment, order, or proceeding which is sought to be reviewed and the errors which the relator claims and the writ shall direct a return of the proceedings. Upon receipt of a \$10.00 filing fee the clerk shall file the original petition and order for the writ. The original writ, together with copies of the petition and order shall be served upon the court or judge to whom it is directed and upon the adverse party in interest. The court or judge shall make return thereto. The attendance of counsel on return day is unnecessary.

In certiorari records and briefs shall be printed and served as prescribed by Rule VIII unless the order directing the writ or a subsequent order otherwise provides.

In mandamus Rule VIII shall not apply and only three typewritten copies of the petition and briefs shall be required to be filed on or before the return day, and no oral argument shall be permitted.

Costs and disbursements may be taxed for or against the adversary parties but not for or against any court or judge thereof.

RULE III

CERTIORARI TO INDUSTRIAL COMMISSION—FORMS—SETTLED CASE. In applying to this court for a writ of certiorari to review a decision of the Industrial Commission the petitioner may use forms substantially as follows:

STATE OF MINNESOTA IN SUPREME COURT

John Jones, Respondent, vs. PETITION FOR WRIT OF CERTIORARI Johnson Canning Co., et al, Relators.

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The relators above named hereby petition the Supreme Court for a writ of certiorari to review a decision of the Industrial Commission filed... (date)... upon the grounds that it is not in conformity with the terms of the Workmens Compensation Act and is unwarranted by the evidence.

Dated (signed) Attorneys for relators. (Address)

ORDER FOR WRIT OF CERTIORARI

Upon the filing of the foregoing petition, let a writ of certiorari issue as therein prayed for, returnable within 30 days of the issuance thereof.

Dated (signed) Chief Justice Supreme Court

(Put the writ of certiorari under a separate cover)

TITLE WRIT OF CERTIORARI TO THE INDUSTRIAL COMMISSION OF MINNESOTA:

You are hereby ordered to return to this court within 30 days from date hereof the record, exhibits and proceedings in the above entitled matter to the end that the decision of the Industrial Commission filed... (date)... may be reviewed by this court.

Let service of this writ and of the petition herein be made by delivering the original writ and copy of the petition to the secretary of the Industrial Commission and by delivering copies of the writ and

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## APPENDIX 10. COURT RULES

petition herein to.....(names and addresses)....., attorneys for respondents.

WITNESS the Honorable Henry M. Gallagher, Chief Justice of the Supreme Court of the State of Minnesota, and the seal thereof, this.....(date).....  
(signed).....  
Clerk of Supreme Court

Upon the issuance of a writ the relator, unless otherwise ordered by this court, shall prepare and submit to the adverse parties a proposed settled case for their approval. If approved, a stipulation to that effect shall be entered into by all interested parties. A case, so stipulated to, when approved by the commission shall constitute a settled case. If the parties are unable to agree the relator shall, on not less than five days' notice, apply to the commission for an order settling the case. The party served may in like manner propose amendments thereto within three days thereafter. In either event, the stipulation with the commission's approval or the order of the commission settling the case shall be contained in the printed record. Such record shall be delivered to the commission within the time provided by Sec. 4320 Mason Minn. St. 1927; Sec. 176.61 Minn. St. 1941, and such printed record, settled in the manner aforesaid, shall constitute the return to this court. All proceedings for the procurement and approval of a settled case shall be as nearly as may be, similar to proceedings on appeal from the district court.

Printed records and briefs shall in all respects conform to Rule VIII of this court except that the printed record shall be served and filed within 30 days from the issuance of the writ.

### RULE IV

**MOTIONS—EIGHT DAYS' NOTICE.** Motions for special relief will be heard only upon eight days' notice given the adverse party, and when not based upon the records and files shall be accompanied by the papers upon which they are founded. No oral argument shall be permitted. The original and three typewritten copies of motion papers and briefs in support of or in opposition to the motion shall be filed on or before the return day. All papers, including briefs, which the moving party intends to submit to the court in support of the motion shall be served on opposing counsel at the time of service of the motion papers. All papers, including briefs, in opposition to the motion shall be served on counsel for the moving party within five days thereafter; and if counsel for the moving party wishes he may serve a reply thereto within two days thereafter.

**ORDERS TO SHOW CAUSE.** A \$10.00 filing fee is required for an order to show cause except when issued in a pending case where the statutory fee has been paid. The order to show cause shall fix a return day and shall specify the time for the service and filing of affidavits, counter affidavits and briefs. The original and three copies of the petition, affidavits, and briefs shall be filed. The order to show cause shall be filed immediately after issued and before it is taken out for service. The title of the case shall be as in the court below. No oral argument shall be permitted. The attendance of counsel on the return day is unnecessary.

### RULE V

**APPELLANT TO FILE ESSENTIAL PARTS OF ORIGINAL RECORD TEN DAYS BEFORE ARGUMENT—PLATS—EXHIBITS—CLERKS TO FURNISH LISTS OF PAPERS AND EXHIBITS—DEFECTIVE RETURN—PROCURING ADDITIONAL PAPERS.** Appellant shall designate in writing to the clerk of the lower court what part of the original record he deems essential to the consideration of questions presented on the appeal, and cause return thereof to be made as required by Sec. 9493, Mason Minn. St. 1927; Sec. 605.04 Minn. St. 1941, ten days before the day set for the argument of the cause in this court. When original papers have been prematurely sent to this court they will be returned to the lower court upon the written request of either party.

In cases involving accidents or tracts of land and other cases where a plat of the locus will facilitate an understanding of the facts or of the issues involved, counsel should assume personal responsibility for having in this court for the purpose of clarifying the oral argument a plat or diagram of sufficient size and distinctness to be visible to all members of this court when placed upon the court's easel.

Counsel will also see that photographic exhibits shall be in court for the oral argument.

All exhibits sent to the clerk of this court shall have endorsed thereon the title of the case to which they belong. All exhibits will be returned to the clerk of the court below with the remittitur. All models will be so returned when necessary on a new trial, but where the decision of this court is final and no new trial is to be had, such models will be destroyed by the clerk of this court unless called for by the parties within 30 days after final decision is rendered.

Whenever a clerk of a lower court shall transmit to this court any original papers, files or exhibits as required by Sec. 9493 Mason Minn. St. 1927; Sec. 605.04 Minn. St. 1941, he shall include therewith full and complete detailed lists in duplicate of such papers, files and exhibits. The clerk of this court shall, upon receipt of such papers, files and exhibits, receipt to the transmitting clerk therefor. And when they are returned to the lower court the clerk of said court shall receipt to the clerk of this court for the same.

If the return made by the clerk of the court below is defective and all papers, exhibits, orders or records necessary to an understanding and decision of the case are not transmitted, either party may, on an affidavit specifying the defect or omission, apply to a justice of this court for an order requiring the clerk of the lower court to make further return and supply the defect or omission without delay.

(Note—Lower court does not lose jurisdiction to settle case when appeal has been perfected. See State ex rel Kelly v. Childress, 172 Minn. 533, 149 N. W. 550.)

### RULE VI

**ENDORSEMENT OF RETURN BY CLERK OF THE COURT BELOW.** The clerk of the court below shall endorse upon each return to this court the name and post office address of the judge presiding in the lower court and of the attorneys for the respective parties.

### RULE VII

**ATTORNEYS—GUARDIANS AD LITEM—CONTINUE SUCH ON APPEAL.** The attorneys and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties, respectively, in this court, until others are retained or appointed and notice thereof served on the adverse party.

### RULE VIII

**PRINTING, SERVICE AND FILING RECORDS AND BRIEFS—PENALTY.** 1. The appellant or party removing a cause to this court (including the defendant in a criminal case where the trial court certifies a question to this court under the provisions of Sec. 10756, Mason Minn. St. 1927; Sec. 632.10 Minn. St. 1941 shall, within 60 days from the date of service of the notice of appeal upon opposing counsel, serve upon the opposite party the printed record and his assignments of error and brief, and file with the clerk of this court 12 copies of each thereof; and within 30 days from such service upon him the respondent shall serve his brief and file with the clerk 12 copies thereof; except that in all appeals from municipal courts the appellant or party removing a cause to this court shall have only 30 days from the date of the service of the notice of appeal upon opposing counsel within which to serve upon the opposite party and file the printed record and assignments of error and brief, and the respondent shall have only 20 days from such service upon him within which to serve and file his brief. Appellant may reply in typewritten or printed form within ten days thereafter. The reply shall be limited strictly to a concise answer to new points made by respondents. As to form and size typewritten records and briefs shall comply with these rules. The failure of appellant to comply with this rule in respect to printing and serving the record and his brief and filing the same with the clerk of this court within the time stated—which time cannot be extended by stipulation—will be deemed an abandonment of the appeal, and the order or judgment appealed from will be affirmed or the appeal dismissed, as the court may deem proper.

2. The record and briefs must be printed and the folios of the record numbered in the margin. The record shall consist of the pleadings, the findings or

verdict, the order or judgment appealed from, the reasons of the trial court for the decision, if any, the notice of appeal and in cases where the sufficiency of the evidence is not involved, such abridgment of the settled case as will clearly and fully present the questions arising on the appeal. Even in cases where the sufficiency of the evidence is involved, only that pertinent to the issues to be presented need be printed. (For example, in personal injury cases where the amount of the recovery, if any, is not questioned, the medical and other testimony going only to the nature and extent of the injury should be omitted.) All matters in the return not necessary to a full presentation of the questions raised by the appeal shall be excluded from the printed record, and to that end the material testimony may be printed in narrative form, immaterial parts thereof omitted, and documentary evidence condensed. If the respondent deems the record so printed not sufficiently full to present properly the merits of the appeal, he may print a supplemental record, or instead in his brief refer to the folios or pages in the settled case, the original of which will be on file in this court, which he deems necessary and important.

3. The brief of appellant shall contain:

(a) A subject index of the contents of the brief, with page references; and a table of the cases (alphabetically arranged), text books, and statutes cited, with references to the pages where they are cited, all of which may be omitted if the brief contains no more than 15 pages.

(b) A summary of the nature and procedural history of the case stating the relief sought, the date of commencement of the action or proceeding, date of trial or hearing, the date and form of the order or judgment sought to be reviewed, the date of service of the notice of appeal, and concluding with a brief summary of the questions presented by the appellant. This statement must make it appear, in cases of appeal, that the order sought to be reviewed is appealable.

(c) A concise statement of facts shown by the record so far as relevant to the grounds urged for reversal, modification or other relief. Where it is claimed that a verdict, finding or decision is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference, to sustain such verdict, finding or decision, shall be summarized. All references to the evidence shall indicate the folio and page of the printed record or settled case where same may be found.

(d) Assignments of error each shall be separately and concisely stated and numbered, without repetition. Where a finding of fact is attacked as not sustained by the evidence, it shall be particularly specified.

(e) In appellant's brief, the points urged for reversal, modification or relief, shall be separately stated and numbered, and each point so stated and numbered shall be followed by the argument thereon. The law and facts presented on each point shall be clearly stated, with citation of the authorities and statutes relied upon. Quotations must be confined to what is presently relevant. Useless repetition is to be avoided. For example, if, on a given point, one authority is quoted, the others in accord should ordinarily be cited only, without further quotation.

4. It is the duty of counsel for appellant or moving party, in both brief and oral argument, to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. In the oral argument of causes it will be well if the appellant precede his statement of facts with a summary of the questions to be raised so that as the facts are stated their relation to the questions presented may at once be obvious. Normally, no restatement of facts by respondent should be needed. In both written and oral argument such statement for respondent should be limited to such correction or supplement of appellant's statement as the case may require, and clearly indicate wherein it differs from the statement by appellant, and why. Subject to the foregoing, the arrangement of the brief for respondent, and of the reply and supplemental briefs, if any, should so far as possible conform to that prescribed hereby for the brief of the appellant.

5. When the brief of the prevailing party or the record or supplemental record contains any unnecessary, irrelevant or immaterial matter, he shall not be allowed any disbursements for preparing or printing such unnecessary matter.

The party entitled to object to the taxation of disbursements in such case shall point out—specifying the pages or folios—the particular portions of the

record, supplemental record or brief for which he claims the opponent is not entitled to tax disbursements.

#### RULE IX

**SETTING OF CASES AND NOTICE—RESETTING.** Upon the filing of the printed record and appellant's brief each case will be placed on the calendar for argument or submission on briefs, as the case may be, and the clerk will give prompt notice of the date thereof to the respective attorneys. A case may be reset by the court upon a showing of good reasons therefor.

#### RULE X

**RECORD—PRINTING.** Records, assignments of error and briefs shall be neatly and legibly printed in leaded small pica or long primer type with black ink on white or cream, opaque, unglazed paper, properly paged at the top and properly folioed at the side, with a margin on the outer edge of the printed page of 1½ inches. The printed page shall be 7 inches long and 3½ inches wide, and the paper page shall be 9 inches long and 7 inches wide. Each brief shall be over the name of the counsel preparing it. Each copy of such brief or record shall be stitched together and there shall be printed on the outside thereof its proper designation, the title of the cause, and on the record the names and addresses of the attorneys for all of the parties and on the brief only the names and addresses of attorneys preparing the same. Every record shall be accompanied by an adequate index of its contents, with particular reference to exhibits, which shall be so designated as to facilitate quick reference thereto.

One-half inch from the top of the cover page of each brief and printed record shall be printed the file number of the case in this court, in black-faced 18 point figures.

The prevailing party shall be allowed as a disbursement the reasonable amount which he has actually paid for printing record or brief.

#### RULE XI

**DEFAULT OF APPELLANT—AFFIRMANCE OR DISMISSAL—CERTIFYING TO COURT BELOW.** Respondent may apply to the court for judgment of affirmance or dismissal if the appellant shall fail or neglect to serve and file the printed record and his brief as required by these rules. No reversal will be ordered for the failure of the respondent to appear, unless the record presents reversible error. If appellant is in default for 30 days and respondent does not move for dismissal or affirmance this court will dismiss the appeal without notice and without the allowance of costs and disbursements. In all cases of dismissal of any appeal in this court the clerk shall issue a certified copy of the order of dismissal to the court below.

#### RULE XII

**CERTIFYING RECORD—TEMPORARY INJUNCTION IN "LABOR DISPUTE."** Upon the certification of a record to this court for review under the provisions of Sec. 9, c. 416, Laws 1933; Sec. 185.15 Minn. St. 1941 the case shall be set for hearing in this court on the first available date and the proceedings in the case shall be given precedence over all other matters except older matters of the same character; and the rules of this court requiring the printing of record and briefs shall not apply to such cases, but typewritten records and briefs of a like number and size as required for printed records may be filed in lieu thereof.

#### RULE XIII

**ORAL ARGUMENT—WHEN ALLOWED.** On oral argument the appellant shall open and be entitled to reply. In actions for the recovery of money only, or of specific personal property, where the amount or the value of the property involved in the appeal shall not exceed \$500; in appeals from orders involving only questions of practice, or forms or rules of pleading; in appeals from the clerk's taxation of costs; and in appeals from municipal courts, no oral argument will be allowed.

In actions for the recovery of money only, or for specific personal property, where the amount or value

of the property involved in the appeal is more than \$500, but does not exceed \$1000, and in cases reviewing decisions of the Industrial Commission, and in cases to determine settlement for poor relief purposes, appellant shall be entitled to 30 minutes in all and respondent to 20 minutes.

In all other cases appellant shall be entitled to one hour in all and respondent to 45 minutes.

Application for leave to argue a case orally when oral argument is not otherwise permitted, or for an extension of the time allowed for oral argument as prescribed by this rule, may be made in writing at the time of filing the briefs.

Either party may submit a case on his part on his brief, and when no appearance is made on the day of argument, the printed record and briefs being on file, the case will be ordered so submitted.

When any member of the court is not present at the oral argument of a case, such case shall be deemed submitted to such member of the court on the record and briefs therein and when during the consideration of a case there is a change in the personnel of the court the case shall be deemed submitted to the new member or members on the record and briefs.

#### RULE XIV

**REMITTITUR AS MATTER OF COURSE—MAILING COPY OF DECISION OR ORDER—ENTRY OF JUDGMENT—TRANSMITTING REMITTITUR.** Upon the reversal, affirmance, or modification of any order or judgment of a lower court by this court, there will be a remittitur to the lower court unless otherwise ordered. A remittitur shall contain a certified copy of the judgment of this court, sealed with the seal thereof, and signed by the clerk.

When a decision is filed or an order entered determining the cause, the clerk shall mail a copy thereof to the attorneys of the parties, and no judgment shall be entered until the expiration of 10 days thereafter, except that in criminal cases judgment may be entered immediately. The mailing of such copy shall constitute notice of the filing of the decision.

The remittitur shall be transmitted to the clerk of the court below when judgment is entered, unless written objection under Sec. 9487, Mason Minn. St. 1927; Sec. 607.02 Minn. St. 1941 is made by the prevailing party and filed with the clerk of this court on or before the day set for the taxation of costs and disbursements.

#### RULE XV

**COSTS AND DISBURSEMENTS—PREVAILING PARTY.** Unless otherwise ordered the prevailing party shall recover costs as follows: 1. Upon a judgment in his favor on the merits, \$25.00; 2. Upon dismissal, \$10.00. (Who is prevailing party. See Sanborn v. Webster, 2 Minn. 277 (323); Allen v. Jones, 8 Minn. 172 (202).)

Costs and disbursements in all cases shall be taxed in the first instance by the clerk upon two days' notice, subject to review by the court, and inserted in the judgment. Costs and disbursements shall be taxed within 15 days after the filing of the decision.

Objections to taxation of costs and disbursements must be made in writing and filed. Appeals from the clerk's taxation of costs and disbursements must be served on opposing counsel and filed within six days from the date of the taxation by the clerk.

#### RULE XVI

**JUDGMENT—ENTRY BY LOSING PARTY OR THE CLERK.** In case the prevailing party shall neglect to have judgment entered within 15 days after notice of the filing of the opinion or order of the court, the adverse party, or the clerk of this court, may without notice, cause the same to be entered without inserting therein any allowance for costs and disbursements.

#### RULE XVII

**JUDGMENT ROLL—PAPERS CONSTITUTING.** In all cases the clerk shall attach together the bond and notice of appeal certified and returned by the clerk of the court below and a certified copy of the judgment of this court, signed by him; and these papers shall constitute the judgment roll.

#### RULE XVIII

**EXECUTIONS—ISSUANCE AND SATISFACTION.** Executions to enforce any judgment of this court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. Such executions shall be returnable within 60 days from the receipt thereof by the officer. On the return of an execution satisfied in due form of law the clerk shall make an entry thereof upon the record.

#### RULE XIX

**PROCESS AND WRITS OTHER THAN EXECUTIONS.** All other writs and process issuing out of this court shall be signed by the clerk, sealed with the seal of the court, tested of the day when the same issued, and made returnable in accordance with the order of the court.

#### RULE XX

**REHEARING—FILING APPLICATION.** Applications for rehearing shall be made on petition setting forth the grounds on which they are made, and filed within ten days after the filing of the decision. They shall be served on the opposing party, who may answer within five days thereafter. A fee of \$5.00 shall accompany all petitions for rehearing.

Nine copies shall be filed. They may be either typewritten or printed, and whether typewritten or printed shall comply with the rules for printed briefs as to size.

The filing of a petition for rehearing stays the entry of judgment in civil cases until the filing of the order of the court thereon. It does not stay the taxation of costs.

#### RULE XXI

**DISCIPLINE OF ATTORNEYS—ACCUSATION—SERVICE—ANSWER—DEFAULT—REFEREE—SETTLED CASE.** When a member of the bar of this state is charged with misconduct and a verified accusation and petition praying that he be disciplined is submitted to this court and an order is filed directing respondent to answer, such order and accusation shall be served on respondent by delivering copies thereof to him personally, and if he have a resident guardian appointed for such purpose, to him also; or to a person of suitable age and discretion residing at the house of the usual abode of respondent, whether within or without this state. Such service may be made by the sheriff of the county in which respondent is found; or by any person not a party to, or a complaining witness in such disciplinary proceeding. When respondent is served without the state he shall have 20 days exclusive of the day of service to comply with the order of this court.

When respondent cannot be found, and his place of residence is unknown, and the sheriff of the county in which respondent last resided or practiced law makes a return to that effect, a member of the State Board of Law Examiners shall file in this court an affidavit setting forth such facts. After the lapse of 30 days the board may apply to this court for an order suspending respondent from the practice of law. A copy of such order when made and filed shall be mailed to every district judge in this state. Within a reasonable time thereafter respondent may petition this court for vacation of such order and show cause why he should be allowed to answer the accusation.

After service of the accusation and order is made on respondent he shall file in duplicate in this court a plea of not guilty or an answer. The answer may contain:

1. A denial of each allegation of the accusation controverted by respondent, or an averment that he has not knowledge or information thereof sufficient to form a belief;
2. A brief statement of any new matter constituting a defense, or any matter in mitigation of discipline.

If the respondent fails to plead or file an answer, upon proof of such facts, he shall be found in default, and an order of discipline will be entered upon the assumption that he is guilty as charged.

When this court appoints a district judge as referee with directions to hear and report the evidence, the referee shall have his official court reporter (appointed pursuant to Sec. 201 Mason Minn. St. 1927; Sec. 486.01 Minn. St. 1941) make a stenographic report of all testimony given and all proceedings had before

him as in civil cases. The reporter shall be paid his necessary expense, but no compensation except as hereinafter provided. Upon request of any person interested and payment or tender of his fees therefor, the reporter shall furnish a transcript of such record as in civil cases, pursuant to Sec. 203 Mason Minn. St. 1927; Sec. 486.03 Minn. St. 1941, and shall be paid therefor the fee provided for in Sec. 206 Mason Minn. St. 1927; Sec. 486.06 Minn. St. 1941. The transcript of testimony shall be made upon paper nine inches long and seven inches wide to conform to the size of printed records and briefs in this court. It shall be the duty of the person ordering the transcript to see that the court reporter complies with this rule.

The referee shall make findings of fact which shall be conclusive, unless a case shall be settled in accordance with and within the time limited in Secs. 9328 and 9329 Mason Minn. St. 1927; Secs. 547.04 and 547.05 Minn. St. 1941. The party proposing such settled case shall first obtain and pay for a transcript of the testimony or the relevant portions thereof, and deliver the original to the referee and a copy to the adverse party.

#### RULE XXII

**MODIFICATION AND SUSPENSION OF RULES.** Any of these rules may be relaxed or suspended by the court in term or a judge thereof in vacation, in particular cases, as justice may require.

**MEMO.** 1. Rules do not apply in habeas corpus appeals. See Sec. 9768, Mason Minn. St. 1927; Sec. 589.30 Minn. St. 1941.

2. The use of the supreme court file number of the case on all papers, and when communicating with the court or clerk, will aid greatly in giving prompt service.

3. Rules governing applications for admission to bail when application to trial court is denied, see *State v. Russell*, 159 Minn. 290, 199 N. W. 750.

#### CODE OF RULES

for the

#### DISTRICT COURTS OF MINNESOTA

As revised and adopted by the District Judges at a Meeting duly called for that purpose in the city of Minneapolis on July 10, 1928, pursuant to section 484.33.

#### PART I. GENERAL RULES

#### PART II. RULES FOR REGISTRATION OF LAND TITLES

#### PART I

#### General Rules

#### RULE 1

**ACTIONS BY REPRESENTATIVES; ATTORNEY'S FEES.** In actions for personal injury or death by wrongful act, brought by persons acting in a representative capacity, contracts for attorney's fees shall not be regarded as determinative of fees to be allowed by the court.

#### RULE 2

**ACTIONS FOR DEATH BY WRONGFUL ACT; DISTRIBUTION.** Applications by representatives for the distributions of funds recovered under section 573.02, or pursuant to any federal act, shall be by verified petition. The petition shall set forth the amount received; a detailed statement of expenditures, if any; the amount, if any, claimed for services of the representative or of an attorney, together with the nature and extent of such service. It shall recite the names and places of residence of all persons claiming an interest or the right to share in the fund to be distributed, so far as known to the petitioner, specifying claimants who are minors or under legal disability; the amount of the funeral expenses and of any demand for the support of the decedent duly allowed by the probate court, if unpaid, and whether the time set for such allowance has expired. If such time has not expired, the hearing upon the petition shall be post-

poned until such expiration, or until provision satisfactory to the court has been made for the payment of such items.

The petition shall be heard at a time and place to be fixed by order of court. The order shall recite briefly the facts stated in the petition and shall be served by registered mail upon all interested persons whose places of residence are known to the petitioner or can be ascertained. The court may direct the giving of further or other notice. Persons under guardianship shall be represented by the guardian; and where no guardian has been appointed, the court may provide for such representation by a guardian ad litem.

#### RULE 3

**ACTION ON BEHALF OF MINORS; SETTLEMENT.** (a) In making application for the approval of a settlement of any action brought on behalf of a minor child, the parent or guardian ad litem shall present to the court:

(1) A verified petition, stating the age of the minor, the nature of the action, if for personal injuries to what extent the minor has recovered therefrom, the reasons justifying the proposed settlement, the expenses which it is proposed to pay out of the amount to be received, the nature and extent of the services rendered by the attorney representing the minor, whether or not an action has been commenced on behalf of the parent or guardian, and, if so, what settlement, if any, has been made in that action, with itemized expenses incurred on behalf of the minor;

(2) Satisfactory evidence that the settlement is for the best interest of the minor;

(3) If the action be for personal injuries, an affidavit of the attending physician showing the nature, extent, and probable duration of the injuries caused by the accident, and the extent of the recovery which has been made therefrom at the time of the presentation of the application.

The minor shall appear before the court at the time the application is made, and no order approving any settlement shall be made where the action is one for personal injuries until the court has seen and had an opportunity to examine the minor.

Before any parent or guardian ad litem in any such action shall receive any money, he shall file a bond in an amount and with such sureties as shall be approved by the court, running to the minor as obligee, and conditioned that he will duly account for and pay over the sum received for the benefit of such minor to said minor upon his coming of age, or to his general guardian during his minority, if one shall be appointed; provided, that upon petition of said parent, the court may, in its discretion, order that in lieu of such bond any money so received shall be deposited as a savings account in a banking institution or trust company, together with a copy of the court's order, and the deposit book filed with the clerk of court, subject to the order of the court; and no settlement or compromise of any such action shall be valid unless the same shall be approved by a judge of the court in which such action is pending.

Unless otherwise ordered, application for approval of such settlement may be made ex parte.

(b) In application for approval of settlement of an action brought under section 540.06 or section 540.08, on behalf of a minor child or ward, when settlement is approved by the court, attorney's fees will not be allowed in any amount in excess of 25 per cent of the recovery. No other deductions may be made from the amount of the settlement.

(c) Stipulations for judgment shall be deemed settlements within the meaning of this rule. (Adopted at annual meeting of district court judges held in Minneapolis on July 5-6, 1932.)

#### RULE 4

**ATTORNEYS AS SURETIES.** No practicing attorney shall be accepted as surety on a bond or undertaking required by law.

#### RULE 5

**BANKS IN LIQUIDATION, SALE OF ASSETS, FINAL DIVIDENDS.** Petitions for orders approving the sale or compounding of doubtful debts, or the sale of real or personal property, or authorizing a final dividend, of any bank, state or national, in

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## APPENDIX 10. COURT RULES

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liquidation, shall be heard after notice of all interested persons given as herein provided.

Upon the filing of the petition, the court shall enter an order reciting the substance of the petition and the time and place for hearing thereon, and advising all interested persons of their right to be heard.

A copy of the order shall be published once in a legal newspaper published near the location of the bank in liquidation, which publication shall be made at least ten days prior to the time fixed for the hearing; or the court may direct notice to be given by such other method as it shall deem proper. If it shall appear to the court that delay may prejudice the rights of those interested, the giving of notice may be dispensed with.

### RULE 6

**CONTINUANCE.** No civil case on the general term calendar shall be continued by consent of counsel only, or otherwise than by order of the court for cause shown; provided that in counties having an assignment clerk the special rules of such county shall govern.

### RULE 7

**COSTS ON DEMURRER OR MOTION.** On sustaining or overruling a demurrer or granting or denying a motion, the court may award costs, not exceeding \$10.00, which, in the discretion of the court, may be absolute or to abide the event of the action.

### RULE 8

**DEPOSITIONS.** Commissions to take testimony without the state may be issued on notice and application to the court either in term time or in vacation. Within five days after the entry of the order for a commission the party applying therefor shall serve a copy of the interrogatories proposed by him on the opposite party. Within five days thereafter the opposite party may serve cross-interrogatories. After the expiration of the time for serving cross-interrogatories, either party may within five days give five days' notice of settlement of interrogatories before the court. If no such notice be given within five days, the interrogatories and cross-interrogatories, if any have been served, shall be settled by the court. When a commission is applied for and the other party wishes to join therein, interrogatories and cross-interrogatories to be propounded to his witnesses may be served and settled or adopted within the same time and in the same manner as those to the witnesses of the party applying. After the interrogatories are settled, they shall be engrossed and numbered by the party proposing the interrogatories in chief; and the engrossed copy or copies shall be signed by the officer settling the same, annexed to the commission and forwarded to the commissioner. If the interrogatories and cross-interrogatories are adopted without settlement, engrossed copies need not be made, but the originals or copies served may be annexed and forwarded immediately with the commission.

### RULE 9

**DIVORCE ACTIONS.** (a) All divorce cases, whether contested or not, shall be placed on the calendar and tried at general term.

(b) No action for divorce based upon incurable insanity shall be heard until a general guardian of the person of the defendant (or a guardian ad litem when the appointment of a general guardian appears impracticable) shall have been appointed, and service of the summons and notice of the pendency of the action shall have been made upon such guardian, upon defendant's nearest blood relative, and upon the superintendent of the institution in which the defendant is confined. If from the sheriff's return and the proofs submitted it shall appear to the satisfaction of the court that personal service cannot be made upon the nearest blood relative of the defendant, then upon order of the court the summons and notice of the pendency of the action shall be served upon such nearest blood relative in the manner and as directed by the court; and no hearing in any such case shall be had until after the lapse of 30 days from the time of such service.

(c) Orders for publication of summons in actions for divorce will be granted only upon an affidavit of

the plaintiff made as provided by statute and showing specifically what efforts have been made to ascertain the residence of the defendant for the purpose of making personal service.

### RULE 10

**EX PARTE ORDERS.** No order shall be made ex parte unless there shall be presented with the application therefor an affidavit showing whether any previous application has been made for the order requested, or for a similar order; and if there has been a previous application, to what court or judge it was made, and the determination made thereof, and what new facts, if any, are shown upon such subsequent application that were not previously shown. For a failure to comply with the provisions of this rule, the order made on subsequent application may be vacated.

### RULE 11

**EXPERT WITNESS FEES.** In taxation of costs in civil cases a fee not exceeding \$10.00 per day may be allowed for expert witnesses. Under special circumstances such fee may be increased, but not to exceed \$25.00 per day.

### RULE 12

**FILING PAPERS.** (a) All affidavits, notices, and other papers designed to be used in any cause shall be filed with the clerk prior to the hearing of the cause unless otherwise directed by the court.

(b) All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall be filed forthwith in the office of the clerk. Orders required to be served shall be so filed within three days after the service thereof, and, unless seasonably served and filed, may be vacated.

(c) All orders and findings, whether prepared by the judge or by counsel by direction of the judge, shall be typewritten in manifold; and when the original is filed a copy shall be furnished to each attorney or firm of attorneys appearing in the case. The observance of this rule shall not be deemed a substitute for statutory notice of the filing of a decision or order.

(d) No papers on file in a cause shall be taken from the custody of the clerk otherwise than upon order of the court.

(e) When judgment is entered in an action upon a promissory note, draft, or bill of exchange under the provisions of section 544.07 such promissory note, draft, or bill of exchange shall be filed with the clerk and made a part of the files of the action.

### RULE 13

**FORM OF PAPERS.** (a) On process or papers to be served the attorney or a party appearing in person, besides subscribing or indorsing his name, shall add thereto the name of the city, town, or village in which he resides, and the particular location of his place of business by street, number, or otherwise; and if he shall neglect to do so, papers may be served on him through the mail, by directing them according to the best information concerning his residence conveniently available.

(b) The attorney or other officer of the court who prepares any pleading, affidavit, case, bill of exceptions, or report, decree, or judgment, exceeding two folios in length, shall distinctly number and mark each folio of 100 words in the margin thereof, or shall number the pages and the lines upon each page; and all copies either for the parties or the court shall be numbered and marked so as to conform to the originals. All typewritten matter shall be carefully and legibly typed on plain, unglazed, white paper of good texture, made with well inked ribbon and carbon, and shall be double spaced. Any pleading, affidavit, bill of exceptions, or case not thus prepared may be returned by the party on whom the same is served or by the court.

(c) All pleadings and other papers filed shall be plainly endorsed on the outside thereof with the title of the case, matter, or proceedings in which they are so filed; and the name or character of the paper shall be endorsed thereon below the title, so that the same

may be clearly identified without opening; and the clerk may refuse to receive for filing any paper not so endorsed.

#### RULE 14

**FRAMING ISSUES.** In cases where the trial of issues of fact by a jury is not required by section 546.03, if either party shall desire a trial by jury, such party shall, within ten days after issue joined, give notice of a motion to be made upon the pleadings that the whole issue, or any specific question of fact involved therein, be tried by a jury. With the notice of motion shall be served a distinct and brief statement of the questions of fact proposed to be submitted to the jury for trial, in proper form to be incorporated in the order, and the judge may settle the issues, or may appoint a referee to settle the same. The judge, in his discretion, may thereupon make an order for trial by jury, setting forth the questions of fact as settled, and such questions only shall be tried by the jury, subject to the right of the court to allow an amendment of such issues upon the trial in like manner as pleadings may be amended upon trial.

#### RULE 15

**GARNISHMENTS.** (a) Garnishments or attachments shall not be discharged through a personal bond under section 571.30 without one day's written notice of the application therefor to the adverse party; but if a surety company's bond is given, notice shall not be required.

(b) Judgment against a garnishee shall be entered only upon notice to the garnishee and the defendant, if known to be within the jurisdiction of the court, showing the date and amount of the judgment against the defendant, and the amount for which plaintiff proposes to enter judgment against the garnishee after deducting such fees and allowances as the garnishee is entitled to receive. If the garnishee appears and secures a reduction of the proposed judgment, the court may make an appropriate allowance for fees and expense incident to such appearance.

#### RULE 16

**ILLEGITIMACY PROCEEDINGS.** Upon certification to and filing of record in the district court of any proceeding to determine the paternity of an illegitimate child, the clerk shall immediately notify by mail the director of social welfare of the pendency of the proceedings.

#### RULE 17

**JUDGMENT, ENTRY BY ADVERSE PARTY.** When a party is entitled to have judgment entered in his favor upon the verdict of a jury, report of a referee, or decision or finding of the court, and neglects to enter the same for ten days after the rendition of the verdict or notice of the filing of the report, decision, or finding; or, in case a stay has been ordered, for ten days after the expiration of such stay, the opposite party may cause judgment to be entered on five days' notice to the party entitled thereto.

#### RULE 18

**MECHANIC'S LIEN, INTERVENTION.** Leave to intervene in an action to foreclose a mechanic's lien shall be granted only on motion and notice to the owner of the land sought to be charged.

#### RULE 19

**NE EXEAT.** Upon the allowance of a writ of ne exeat the court shall require an undertaking or bond in the penal sum of not less than \$250.00, to be approved by the court. Such bond shall be conditioned upon payment to the party detained of such damages as he may sustain by reason of the writ, if the court shall eventually decide that the party applying was not entitled thereto.

#### RULE 20

**NOTICE OF MOTION.** Notices of motion shall be accompanied with copies of the affidavits and other

papers on which the motions are made, provided that papers in the action of which copies shall have therefore been served, and papers other than such affidavits which have theretofore been filed, may be referred to in such notice and read upon the hearing without attaching copies thereof. When the notice is for irregularity it shall set forth particularly the irregularity complained of. In other cases it shall not be necessary to make a specification of points, but it shall be sufficient if the notice state generally the grounds of the motion.

#### RULE 21

**ORDER TO SHOW CAUSE.** When a motion can be made upon notice, an order to show cause will not be granted, except upon showing of some exigency whereby delay for the time prescribed for the notice of motion will cause injury, or render the relief sought ineffectual.

Such exigency must also be stated in the order as ground for shortening the notice; and if on the hearing it appears that there was no such ground, the order may be discharged.

Such order must be accompanied by notice of motion setting forth the grounds on which the relief asked is sought, and substantially in the ordinary form of such notices, except that the time of hearing, if mentioned in the notice otherwise than by reference to the order, shall be the time fixed by the order, the only scope of the order in such case being to shorten and fix the time for hearing the motion.

#### RULE 22

**PLEADINGS.** (a) In all cases where application is made for leave to amend a pleading or for leave to answer or reply after the time limited by statute, or to open a judgment and for leave to answer and defend, such application shall be accompanied with a copy of the proposed amendment, answer, or reply, as the case may be, and an affidavit of merits and be served on the opposite party.

(b) In an affidavit of merits made by the party the affiant shall state that he has fully and fairly stated the facts in the case to his counsel, that he has a good and substantial defense or cause of action on the merits, as he is advised by his counsel after such statement and verily believes true; and he shall give the name and place of residence of such counsel.

An affidavit shall be made by counsel, who shall state therein that from the showing of the facts made to him by the party he verily believes that such party has a good and substantial defense or cause of action on the merits.

(c) When a demurrer is overruled with leave to answer or reply, the party demurring shall have 20 days after notice of the order, if no time is specified therein, to file and serve an answer or reply, as the case may be.

(d) Different causes of action, defenses, counterclaims, and distinct matters alleged in reply shall be separately stated and plainly numbered. All pleadings not conforming to this rule may be stricken out on motion.

#### RULE 23

**RECEIVERS.** (a) All actions or proceedings for the sequestration of the property of corporations or for the appointment of receivers thereof, except actions or proceedings instituted by the attorney general in behalf of the state, shall be instituted in the county in which the principal place of business of said corporation is situated; provided, that if the action is not instituted in the proper county, for the convenience of witnesses and to promote the ends of justice, the venue may be changed by order of court.

(b) Receivers, trustees, guardians, and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest, and selected with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that prejudice will otherwise result, no person who is or has been during the preceding year a stockholder, director, or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court; but if it shall be clearly shown that an emergency



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exists requiring the immediate appointment of a temporary receiver, such appointment may be made *ex parte*.

(c) Every receiver after his appointment shall give a bond to be approved by the court in such sum and conditioned as the court shall direct, and shall make and file with the clerk an inventory and estimated valuation of the assets of the estate in his hands; and, unless otherwise ordered, appraisers shall then be appointed and their compensation fixed by order of the court.

(d) Claims of creditors of corporations, the subject of sequestration or receivership proceedings, shall be duly verified and filed in the office of the clerk of court. The court, by order, shall fix the time for presentation, examination, and adjustment of claims and the time for objecting thereto, and the order shall be published as therein directed. Written objection to the allowance of any claim may be made by any party to the proceeding by serving a copy of such objection upon the claimant or his attorney. Where no objection is made within the time fixed by said order, the claim may stand admitted and be allowed without proof. Issues of law and fact shall be tried as in other cases.

(e) Every receiver shall file an annual inventory and report showing the condition of the estate in his hands and a summary of his proceedings to date. The clerk shall keep a list of receiverships and notify such receiver and the court when such reports are due.

(f) When an attorney has been appointed receiver, no attorney for such receiver shall be employed except upon the order of the court, which shall be granted only upon the petition of the receiver, stating the name of counsel whom he wishes to employ and showing the necessity for such employment.

(g) No receiver shall employ more than one counsel, except under special circumstances requiring the employment of additional counsel; and in such case only after an order of court made on a petition showing such circumstance, and on notice to the party or person on whose behalf or application the receiver was appointed. No allowance shall be made to any receiver for expenses paid or incurred in violation of this rule.

(h) No receiver or other trustee appointed by the court, nor any attorney acting for such receiver or trustee, shall withdraw or use any trust funds to apply on his compensation for services except on written order of court, duly made after such notice as the court may direct, and filed in the proceeding.

(i) All applications for the allowance of fees to receivers and their attorneys shall be accompanied by an itemized statement of the services performed and the amount charged for each item shown.

Compensation of receivers and their attorneys shall be allowed only upon the order of the court after such notice to creditors and others interested as the court shall direct, of the amounts claimed as compensation and of the time and place of hearing the application for their allowance.

(j) Every receiver shall take a receipt for all disbursements made by him in excess of \$1.00, shall file the same with his final account, and shall recite such filing in his verified petition for the allowance of such account.

### RULE 24

**RESTRAINING ORDER, BOND.** Before any restraining order shall be issued, except in aid of writs of execution or replevin, or in actions for divorce, the applicant shall give a bond in the penal sum of at least \$250.00, executed by him or by some person for him as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as he shall sustain by reason of the order, if the court finally decides that the applicant was not entitled thereto.

### RULE 25

**SERVICE, ADMISSION OF ATTORNEY.** Written admission of service by the attorney of record in any action or proceeding shall be sufficient proof of service, except in case of service of summons, or of an order in contempt proceedings.

### RULE 26

**STAY.** Upon the filing of a verdict, or of a decision if the trial be by the court or referee, the court or referee may order a stay of all proceedings for not to exceed 40 days, which stay may be extended only upon notice and showing made that a transcript of the testimony was ordered from the court reporter within a reasonable time after the filing of the verdict or decision.

### RULE 27

**TRIALS.** (a) The presiding judge shall examine jurors in civil cases; his examination to be followed by such further inquiry by counsel as the judge may deem proper.

(b) In civil cases called for trial by jury the court at the request of any party to the action may direct the clerk to draw 18 names from the jury box in the first instance, and the said 18 shall then be examined as to their qualifications to sit as jurors in the action; and if any of them be excused another shall be called in his place until there shall be 18 jurors in the box qualified to sit in the action; and the parties shall have the right to exercise their peremptory challenges as to those 18. When the peremptory challenges have been exercised, of those remaining the 12 first called into the jury box shall constitute the jury. In appropriate cases this rule may be modified in accordance with sections 546.10 and 593.15.

(c) Counsel on each side, in opening his case to the jury, shall confine himself to stating the facts which he proposes to prove.

(d) On the trial of actions but one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge shall otherwise order.

(e) In criminal trials involving sex offenses or in which the evidence is likely to be of a scandalous nature the court may, with the consent of the defendant, exclude the general public from the court room.

(f) Exceptions to remarks by counsel either in the opening statement to the jury or in the closing argument shall be taken while such statement or argument is in progress unless the same is being taken down in full by the court reporter, in which case exceptions taken at the close of the statement or argument shall be deemed seasonable. The services of the court reporter shall be at the expense of the party desiring it, which shall not be taxable as costs. (Adopted at annual meeting of district court judges held in Minneapolis on July 5-6, 1932.)

### RULE 28

**TRUSTEES, ANNUAL ACCOUNT.** Every trustee subject to the jurisdiction of the district court shall file an annual account, duly verified, of his trusteeship. Such account shall contain an itemized statement of all trust property in the hands or under the control of the trustee since the beginning of the trusteeship or since the time of last settlement; also a statement of all expenditures and investments and a statement in detail of what remains in the hands or under the control of the trustee, with the estimated value of each item thereof. There shall also be filed proof of mailing of such account or of the service thereof upon all beneficiaries or their natural or legal guardians.

The clerk shall keep a list of trusteeships and notify each trustee and the court when such annual accounts are overdue for more than 90 days.

Hearings upon annual accounts may be ordered upon the request of any interested party.

Upon the filing of a final account, the court shall fix a time and place for the hearing and auditing thereof, and notice of such hearing shall be given to all interested parties as the court shall direct. (Adopted at annual meeting of district court judges held in Minneapolis on July 5-6, 1932.)

### RULE 29

**VENUE, CHANGE.** A change of venue shall not be granted under the provisions of section 542.11 unless the party applying therefor uses due diligence to procure the same within a reasonable time after issue has been joined in the action and the ground for the change has come to the knowledge of the

applicant. Nor shall a change be granted where the other party will lose the benefit of a term, unless the party asking for such change shall move therefor at the earliest reasonable opportunity after issue has been joined and he has information of the ground of such change.

## PART II

### RULES FOR REGISTRATION OF LAND TITLES

#### PROCEEDINGS FOR INITIAL REGISTRATION

##### RULE 1

**APPLICATION, INDORSEMENTS.** Applications, approved as to form by the examiner, shall be presented in duplicate. There shall be indorsed thereon the name and address of the applicant's attorney, or of the applicant if he appears in person.

##### RULE 2

**ABSTRACTS OF TITLE.** The abstract when filed shall show the record of the patent or other conveyance from the United States, the record of the certified copy of the application, and all judgments, federal and state, taxes, assessments, and tax sales.

##### RULE 3

**TITLE BASED UPON AN ADJUDICATION NOT FINAL, OR UPON ESTOPPEL.** When the title of the applicant or the release or discharge of any encumbrance thereon, is based upon an adjudication not final, or upon estoppel, and there remains a right of appeal or contest, all parties having such right of appeal or contest shall be made parties defendant.

##### RULE 4

**TITLE DERIVED THROUGH DECREE OR ADJUDICATED TAX SALE.** Title based upon a judgment or decree of court in an action, or upon an adjudicated tax or local assessment sale, shall be registered only after the expiration of six months from the date of the judgment or decree; but this shall not apply to cases where in the action in which the judgment or decree was entered, or in the proceeding to register the title, the summons was served personally upon the parties who could alienate the fee title.

##### RULE 5

**EXAMINER'S REPORT; PETITION AND ORDER FOR SUMMONS.** The examiner's report shall specify the names of all parties he deems necessary parties defendant. Petitions for summons shall set forth such names and the names of such other parties as the applicant deems to be necessary, and the names, if known to the applicant, or ascertainable by him upon reasonable inquiry, of the successors in interest of such persons known to the applicant to be deceased. Where the place of residence of a defendant is unknown to the applicant, the petition shall so recite and shall set out the facts relating to the search for such defendant by the applicant.

##### RULE 6

**PAPERS TO BE FILED, EFFECT OF NOTICE AND APPEARANCE.** If a defendant, in addition to appearing or filing his answer, as by statute required, shall serve a copy thereof upon the applicant or his attorney, he shall be entitled to notice of all subsequent proceedings.

##### RULE 7

**AFFIDAVIT OF NO ANSWER AND CLERK'S CERTIFICATE OF DEFAULT.** The default of defendants who fail to appear and answer shall be shown by the certificate of the clerk entitled and filed in the action, and by the affidavit of the applicant's attorney, if he appears by attorney; otherwise by the applicant's affidavit.

##### RULE 8

**HEARINGS IN DEFAULT CASES, FILING NOTE OF ISSUE AND PAPERS.** Initial applications, where no issue has been joined, shall be heard by the court at any special term, unless by local rules adopted for any particular county or district, or by special order, other days have been designated for such hearings; or they may be heard by an examiner, to whom the matter has been specially referred, as referee. In counties where the examiner checks the proceedings in advance of the hearings, the note of issue and all papers necessary to complete the files shall be filed and all documentary evidence proposed to be used by the applicant or petitioner shall be delivered to the examiner at least three days before the hearing, together with the proposed order for judgment and decree.

##### RULE 9

**ISSUES RAISED BY ANSWER, REPLY.** All facts alleged in an answer, which are not in accordance with the allegations of the application, shall be considered at issue without reply by the applicant. If the answer sets up rights admitted in the application, or in a reply of the applicant, the hearing may proceed as in case of a default, and the registration shall be subject to such rights.

##### RULE 10

**TRIAL OF CONTESTED ISSUES.** In all cases where the answer raises an issue which is undisposed of by stipulation or otherwise, the matter shall be noted for trial at the general term. The procedure and the method of determination shall be the same as in the trial of similar issues in civil actions or proceedings.

##### RULE 11

**INTERLOCUTORY DECREE ESTABLISHING BOUNDARIES.** When the applicant seeks to fix and establish the boundary lines of the land, he shall have the premises surveyed by a competent surveyor and shall cause to be filed in the proceeding a plat of the survey showing the correct boundaries of the premises. He shall furnish the examiner with such abstracts of title of adjoining lands as the latter shall require in determining the necessary parties defendant in the fixing and establishing of such boundaries. The hearing upon such application may be separate from or in connection with the hearing upon the application to register, but before any final adjudication of registration, the court by order shall fix and establish such boundaries and direct the establishment of "Judicial Landmarks" in the manner provided by section 559.25. In the decree of registration thereafter entered, and in certificates of title thereafter issued, the description of the land shall contain appropriate reference to such "Judicial Landmarks."

##### RULE 12

**PROTECTION OF INTERESTS ACQUIRED PENDENTE LITE; PROVISION FOR IMMEDIATE REGISTRATION AFTER HEARING.** At the time of the hearing of the application for judgment, the applicant shall satisfy the court by continuation of abstract and other proper proof, of changes, if any, in the title, or in the encumbrances thereon arising since the filing of the application. When the decree is signed, the applicant shall forthwith file the same with the clerk, together with a receipt of the registrar showing payment of all sums due him for the registration of the decree, and the issuance of a certificate of title in pursuance to said decree, and thereupon the clerk shall certify a copy of the decree and file the same for registration with the registrar.

#### PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

##### RULE 13

**TITLE OF PROCEEDINGS.** Proceedings subsequent to the initial registration under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73 shall be commenced by

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filing with the clerk a verified petition by a party in interest, which shall be entitled:

"In the Matter of the Petition of..... in Relation to (description of property) registered in Certificate of Title No..... for (relief sought)."

The petition shall allege the facts justifying the relief sought, the names of all interested parties as shown by the certificate of title, and their interests therein.

### RULE 14

**TRIAL AND HEARING.** In proceedings where no notice is required and in proceedings where the required process of notice has been served and the time for appearance has expired without any issue having been raised, the proceedings shall be noted for trial and heard the same as in proceedings upon default for initial registration. Issues raised in these proceedings shall be noted for trial and disposed of the same as similar issues in other civil proceedings.

### RULE 15

**NEW CERTIFICATES, AMENDMENTS, ETC.** In proceedings under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73, the petition for relief, duly verified, before being presented, shall be approved as to form by the examiner of titles. The examiner shall make such examination as to the truth of the allegations contained in the petition as to him may seem necessary, or as directed by the court. In all cases where notice is necessary and the manner thereof is not prescribed by statute, it shall be by an order to show cause, which shall designate the respondents, the manner of service, and the time within which service shall be made. Any final order or decree directed in such proceeding shall be approved as to form by the examiner before presentation to the court.

### RULE 16

**NEW DUPLICATE CERTIFICATE.** Every petition for a new duplicate shall be filed with the clerk and show by a receipt of the registrar of titles indorsed thereon that a duplicate original has been delivered to him. Thereupon the court shall issue a citation addressed "To Whom It May Concern," fixing a time and place of hearing and prescribing the mode of service. No order shall be made for a new duplicate except upon hearing and due proof that the duplicate theretofore issued has been lost or destroyed or cannot be produced. If it shall appear at the hearing that there are any known parties in interest to whom notice should be given, the hearing shall be continued and an order entered accordingly.

### SPECIAL RULES APPLICABLE TO PARTICULAR DISTRICTS

#### FIRST JUDICIAL DISTRICT

Special terms are held in Dakota county on the first and third Saturdays of each month except the months of July and August; and in Goodhue county on the first and third Tuesdays of each month except the months of July and August. During July and August special matters are heard in both counties on dates set by the court.

### SPECIAL RULES OF PRACTICE For the Second Judicial District, Minnesota (Adopted August 31, 1928)

#### RULE 1

**RESETTING OF CASES.** Application for the resetting of any case shall be made to the court not less than eight days prior to the date set for trial, except for reasons arising within said period of eight days. Such application shall be made upon affidavit and written notice, served upon opposing counsel at least two days prior to the hearing. When the reason for the application arises within the period of eight days, an order to show cause shall be applied for with reasonable promptness. Applications for reset-

tings will be granted only upon a legal showing which would, under the practice heretofore existing, have entitled the moving party to a continuance.

### RULE 2

**SETTING OF CASES FOR TRIAL BY COURT.** The clerk of court shall set for trial all causes triable by the court without a jury. Such causes shall be set in the order of the time of the filing of the notes of issue and in accordance with the requirements of section 546.05.

### RULE 3

**CRIMINAL CASES. TRANSCRIPT IN NARRATIVE FORM. NO CHARGE AGAINST COUNTY FOR TRANSCRIPTS FURNISHED COUNSEL.** The synopsis required under sections 640.10 and 640.11 shall be furnished in condensed narrative form by the stenographer acting on the trial. Carbon copies thereof shall be furnished without charge to the court acting on the trial and the county attorney. No charge of any kind against the county shall be permitted for copies of transcripts of the testimony of witnesses furnished by the stenographer to counsel for either side during or after trial and attached for convenience of the stenographer as a part of the synopsis required by statute.

### RULE 4

**DIVORCE CASES. DEFAULT. SETTING.** Divorce cases in which the time for answering has expired and default has been made and in which the summons and complaint with proof of service have been filed with the clerk, shall upon filing a note of issue containing the title of the cause, a statement of the foregoing facts, and the address of counsel, be placed upon the court calendar in their order and set for trial for Monday of each week, but at a time not earlier than 30 days after the filing of the note of issue.

### RULE 5

**EXHIBITS.** (a) **Custody.** Unless otherwise directed by the court, the exhibits used upon the trial of causes shall be placed in the custody of the court reporter.

When a jury agrees upon a verdict and the verdict is sealed, the bailiff in charge shall before the jury separates take possession of the exhibits sent out with the jury, and immediately upon the reception of the verdict by the court he shall deliver them to the reporter; in case the verdict is not sealed, the bailiff immediately upon the reception of the verdict shall take possession of the exhibits and deliver them to the reporter.

(b) **Disposition.** At the expiration of a period of six months from and after the final determination of any cause tried in this court, the court reporter shall, in writing and by mail, notify and require attorneys who have engaged in such cause forthwith to remove from his office and custody, and from the custody of the court, any exhibits (not a part of the permanent record) offered in such cause by and on behalf of and belonging to the parties for whom they have appeared respectively therein; and unless such exhibits are so removed within 30 days from and after such giving of such notice, the court reporter may and shall destroy or otherwise dispose of them, as he may see fit.

All exhibits offered in any cause tried in this court shall be offered and received conditionally and subject to the right of destruction or other disposition, in accordance with the terms of this rule.

### RULE 6

**JUVENILE COURT; WOMAN ASSISTANT; PROBATION OFFICER; REFEREE; DUTIES.** A woman assistant of the probation officer shall be designated as a referee by the judges of this court to investigate all cases involving immorality or improper conduct on the part of girls coming before the juvenile branch of this court. She shall examine any such girl brought before the court and shall appear with her before the judge thereof and shall make such report to him and perform such other duties as the court may require.

## RULE 7

**NATURALIZATION; HEARINGS.** The following days are hereby fixed as the stated days on which final action shall be had upon all petitions for naturalization:

The third Wednesday of each month (except July, August, and September), in each odd-numbered year.

The third Wednesday in each of the months of January, February, March, May, June, November, and December, and the last Wednesday in the month of July in each even-numbered year.

When any of such days falls on a legal holiday, the final action shall be had on the following day. The date of hearing may be changed by order of court. In no case shall final action be had upon such petitions until at least 90 days have elapsed after filing and posting the notice of such petition. (Amended September 28, 1928.)

## RULE 8

**SPECIAL TERMS.** A special term of this court shall be held each Saturday that is not a legal holiday, at ten o'clock in the forenoon, except during the months of July, August, and September.

## RULE 9

**TRIAL; TIME FOR ARGUMENT.** In the argument of any case, neither counsel will be allowed more than one hour.

## RULE 10

**REGISTRATION OF LAND TITLES**

(a) **Manner of Service.** Upon defendants residing or found within the state, the summons shall be served by the sheriff of the county wherein the defendants reside or are found.

(b) **Summons; Manner of Service Without the State.** When the sheriff has duly returned that the defendant cannot be found within his county, the applicant shall cause the summons to be personally served on the defendant without the state, if such personal service is practicable. Such service and proof thereof shall be made in the manner and as provided by statute for service of a summons upon defendants within the state, and such service without the state shall be in addition to the service by publication and mailing required by law. When personal service is impracticable, as made to appear to the satisfaction of the court by the affidavit of the applicant or his attorney showing the facts in that regard, the court by order may dispense with such personal service.

(c) **Decrees Shall Specify Liens for Tax or Local Assessments.** Decrees in registration proceedings by which the title of the applicant to such land is adjudged to be subject to certain liens arising from tax or local assessment sales shall specify such liens. The decree shall provide that upon the filing with the registrar of the official receipt showing the redemption from or payment of any such lien or liens, the registrar shall cancel the memorial or memorials thereof.

(d) **Storing Duplicate Certificates.** The registrar is authorized to place in storage in a suitable place in the court house at St. Paul, Minnesota, all duplicate certificates of title which have been canceled five years or more.

(e) **Hearings; Note of Issue; Filing Papers.** Initial applications and proceedings subsequent to the initial application where no issue has been raised, shall be heard by the court at special term. All such matters shall be upon a special calendar, which shall be called at ten o'clock in the morning. In the months of July, August, and September such hearings shall be had at such times as the court may determine. During the term time, notes of issue and all necessary moving papers shall be filed at least three days before the hearing. The examiner shall attend and participate in all hearings. He shall advise the court and approve all orders and decrees as requested.

## RULE 11

**ASSIGNMENT CLERK.** (a) The clerk shall assign a duly appointed deputy clerk from his office to have charge of the assignment of civil jury cases to the several judges for trial. Such deputy shall be designated as the assignment clerk and shall act under the general instructions of the judge presiding at jury call.

(b) It shall be the duty of the assignment clerk to set for trial each day that the court is in session a sufficient number of cases to keep the courts occupied, and shall be required to have mailed to all attorneys postal cards notifying them as to the days their cases are set for trial at least 15 days in advance.

(c) The clerk shall assign deputy clerks to assist the assignment clerk in such number as from time to time the work may require.

(d) Attorneys shall be required to answer the call of the calendar on the morning of the day their cases are set for trial.

(e) Application for resetting of any cause shall be made to the court in chambers, as per Rule 1.

(f) All cases reported ready for trial shall be placed on the active list, and when the case next in order on such active list is about to be assigned to a court room for trial the assignment clerk shall notify the attorneys by telephone to report at once to the court to whom such case has been assigned for trial.

(g) Attorneys shall be required to keep the assignment clerk informed of their telephone number, and when they have cases on the active list they shall be required to hold themselves within telephone call of their offices, and report to the trial court within 15 minutes after such notification, in person or by representative.

(h) The time at which the assignment clerk has notified the attorneys shall be indicated on the records of the assignment clerk.

(i) Each case in its order shall be assigned by the assignment clerk to the trial court next ready for a case and thereupon shall be tried, dismissed, or stricken, unless for good cause, arising after the closing of court on the preceding day, the case is continued or returned to the assignment clerk. The cause for continuance under this rule must be entered on the records of the assignment clerk together with the names of the parties seeking and obtaining such continuance. In subsequent applications for continuance such records shall be examined as to former proceedings and no case shall be continued or reset for trial more than three times.

(j) In all cases the party filing a note of issue shall at the same time file such of his pleadings and other papers as have been served by him in the cause as have not been theretofore filed. All other parties to the cause shall file their pleadings and other papers served by them forthwith upon receipt of the notice of the date of trial. All pleadings must be on file in the office of the clerk of the district court before any case is assigned for trial under penalty of dismissal, continuance, striking from the calendar, or such other terms as the court may see fit to impose. If defendant has failed to comply with this rule by the time the case reaches the clerk for assignment, it shall be assigned and tried as a default case.

(k) Cases will not be assigned when any attorney therein is actually engaged in another court in a trial.

(l) When an attorney has a case on the active list and is personally engaged in actual trial in another court, he shall notify the assignment clerk, and cases in which he is such attorney shall be taken from the active list and held in order until such attorney is released from the case in which he is then engaged. Immediately upon becoming released from such case the attorney shall notify the assignment clerk and such cases as are held and ready for trial shall then be placed again on the active list and sent to the court for trial in regular order.

(m) When a case is assigned for trial it must be ready for immediate trial. All motions, demurrers, or other proceedings as to pleadings shall be heard prior to the time of trial, at special term.

(n) When a trial is for good reason interrupted and the case is to be returned to the assignment clerk, he shall make such record of its return and forthwith place such case upon the calendar for trial, for such date as the court may direct.

(o) When the parties to any suit which has reached the active list have settled or dismissed the same, the attorneys shall at once notify the assignment clerk and cause an entry of such settlement or dismissal to be made and entered upon the records.

**THIRD JUDICIAL DISTRICT**

Special terms are held in Olmsted county on the second Monday in September and March; and in Wabasha county on the second Monday in February and July.

Winona and Houston counties have no fixed special term days.

## FOURTH JUDICIAL DISTRICT

(Revised and amended, effective October 1, 1928)

## RULE 1

**FILING OF PLEADINGS.** In all cases the party filing a note of issue shall at the same time file such of his pleadings and other papers as have been served by him in the cause and have not been theretofore filed. All parties to the cause shall file their pleadings and other papers served by them before the date of trial, and not later than five days after receipt of notice of such date. For failure to observe this rule, the clerk shall assess \$1.00 as special costs against each delinquent party. (Amended January 5, 1940.)

## RULE 2

**SETTING OF CASES.** The clerk of this court shall, for each general term thereof, prepare a calendar of civil causes, court and jury, and enter upon such calendar:

(1) All causes which shall have been continued to such term, in the order in which the same shall have appeared upon the calendar of the term from which the continuance was had;

(2) All other civil causes, originally commenced in the district court, in which the notes of issue shall have been filed with the clerk, prior to such term, or during the continuance thereof, as provided by section 546.05, the same to be so entered in the order of the dates of filing of the notes of issue; and

(3) All other actions and proceedings, originally commenced in the district court, or appealed or transferred thereto and required by law to be placed upon this calendar, the same to be entered thereon at the time and in the manner prescribed by law, upon compliance being had with the provisions of the respective statutes, relating thereto, as modified by section 546.05.

The clerk shall also, for each general term thereof, prepare a calendar, which shall be known as the default divorce calendar, and enter therein:

(1) Default divorce cases, which shall have been continued to such term, in the order in which the same shall have appeared upon the calendar of the term from which the continuance was had;

(2) All other default divorce cases, in which notes of issue shall have been filed, prior to such term, or during the continuance thereof.

No default divorce case shall be entered for trial at an earlier date than 90 days after note of issue is filed.

## RULE 3

**RESETTING OF CASES.** Application for the resetting of any cause shall be made to the court not less than eight days prior to the date of trial except for reasons arising within the period of eight days. This application shall be made upon affidavit and written notice, served upon opposing counsel at least two days prior to the hearing. When the reason for the application arises within the period of eight days an order to show cause shall be applied for with reasonable promptness. Applications for resettings will be granted only upon a legal showing which would, under the practice heretofore existing, have entitled the moving party to a continuance.

## RULE 4

**SPECIAL TERM.** Special terms shall be held every Saturday (except on holidays), at ten o'clock in the forenoon, but matters ordinarily returnable at special term may be noticed for hearing on any court day before the judge in chambers. The preliminary call of the calendar will be followed at once by the peremptory call, at which hearing will be had and causes finally disposed of as reached. No hearing will be set down for the afternoon, nor continued beyond the morning session, unless for urgent reasons. Only cases properly on the calendar when the court opens will be heard, unless they shall have been omitted by mistake or inadvertence of the clerk. All pleadings, orders, notices, affidavits, and other papers proper to be filed must be, to entitle them to be read, filed with the clerk before the day on which the special term is held, unless for some reason other than neglect, the paper could not have been sooner filed, or unless the occasion for the use of the paper arises at the hearing

from some cause not previously apparent. The strict enforcement of the provisions of this rule may be relaxed in favor of attorneys from other counties.

## RULE 5

**ASSIGNMENT OF CASES.** (a) The clerk shall assign a duly appointed deputy clerk from his office who shall be designated as the assignment clerk and he shall act under the general instructions of the judge presiding in chambers in connection with the assignment of civil cases to the several judges for trial. (Amended October 17, 1928; January 3, 1938.)

(b) It shall be the duty of the assignment clerk to set for trial each day that the court is in session a sufficient number of cases to keep the courts occupied, and he shall mail to all attorneys postal cards notifying them as to the day their cases are set for trial, 15 days in advance. Attorneys so notified shall at once inform the clerk whether such case or cases are for trial, and unless so informed within five days after the mailing of such notice it shall be deemed that the case has been settled or abandoned, and the clerk shall then omit it from the calendar and may substitute another case in lieu thereof. (Amended October 17, 1928.)

(c) The clerk shall assign to each trial court room a deputy clerk, who shall be in constant attendance during the sessions of the court, and whose first duty shall be the clerical details or/and pertaining to the trial work. (Amended October 17, 1928.)

(d) The clerk shall assign deputy clerks to assist the assignment clerk in such number as from time to time the work may require. (Amended October 17, 1928.)

(e) In all cases where there is more than one attorney of record for a party, or where an attorney other than the attorney of record will try the case, the name of the attorney who will try the case for any such party shall be stated to the court at the time of the call of the calendar, unless the clerk has been previously notified in writing of the name of such attorney and, in either event, the name of such attorney shall be entered upon the records of the court. (Amended October 17, 1928; January 3, 1938.)

(f) Except as provided in subdivision (g) hereof, a case may be reset or continued only upon stipulation filed by 12 o'clock of the day prior to the date when the case is set for trial or upon application to the judge in chambers, as set forth in rule 3. No such application shall be made later than the date when the case is set for trial and shall be based either upon notice of motion or order to show cause, stating the grounds for such application. If the judge is satisfied that there is just cause for granting the application for the resetting or continuance, such application shall be decided forthwith by the court. Not more than three resettings or continuances of any case shall be granted, except as provided in subdivision (g) hereof or upon stipulation of the parties. (Amended October 17, 1928; January 3, 1938.)

(g) After a case has been assigned to a judge for trial, an application for resetting or continuance may be based only on an emergency arising since the case was called on the calendar. Such motion or application shall be made immediately upon the discovery of such emergency and shall be heard and determined forthwith by the judge in chambers. (Amended October 17, 1928; January 3, 1938.)

(h) All cases reported ready for trial shall be placed on the active list and assigned by the judge in chambers to a court room for trial in the order in which they appear on such list. The assignment clerk shall notify the attorneys by telephone to report at once to the court to which such case has been assigned. (Amended October 17, 1928; January 3, 1938.)

(i) Attorneys shall be required to keep the assignment clerk informed of their telephone number and when they have cases on the active list they shall be required to hold themselves within telephone call of their offices, and report to the trial court within 15 minutes after such notification in person or by representative. (Amended October 17, 1928.)

(j) The time at which the assignment clerk has notified the attorneys shall be indicated on the records of the assignment clerk. (Amended October 17, 1928.)

(k) Each case in its order shall be assigned by the judge in chambers to the first judge available and thereupon it shall be tried, dismissed, or stricken, unless it is reset or continued because of an emergency arising since the case was called on the calendar.

No case shall be kept on the active list more than 30 days after it has been called for trial on the calen-

dar. It must be tried, dismissed, or stricken within the 30 days.

Without any exception, save as herein specified, cases shall be assigned to the judge trying civil cases who first reports to the assignment clerk that he is ready for a new case. To fill time not otherwise occupied default divorce cases may be assigned out of their regular order to any judge on his request, such cases always retaining their calendar order relative to each other. The judge having the juvenile court assignment may select cases of such probable length as not to interfere with his juvenile court work. (Amended October 17, 1928; January 3, 1938.)

(l) All pleading must be on file in the office of the clerk of the district court as provided in rule 1 before any case is assigned for trial, under penalty of dismissal, continuance, striking from the calendar, or such other terms as the court may see fit to impose. (Amended October 17, 1928.)

(m) Cases will not be assigned when any attorney therein is actually engaged in another court. (Amended October 17, 1928.)

(n) When an attorney who is going to try a case or cases on the active list is actually engaged in another court he shall file a statement with the assignment clerk setting forth the court wherein he is engaged and his cases shall be held until he is released from the case in which he is then engaged. Immediately upon becoming released from such case the attorney shall notify the assignment clerk, who shall forthwith notify the judge in chambers and such cases as are held shall then be assigned to a judge for trial in regular order. (Amended October 17, 1928; January 3, 1938.)

(o) When a case is reached for trial and a jury is not available the assignment clerk may assign a court case. When juries are available jury cases shall be given such preference as shall be deemed expedient. (Amended October 17, 1928.)

(p) When a case is assigned for trial it must be ready for immediate trial. All motions, demurrers, or other proceedings as to pleadings shall be heard prior to the time of trial by the court in chambers. (Amended October 17, 1928.)

(q) When a trial is for good reason interrupted and the case is to be returned to the assignment clerk, he shall make such record of its return and forthwith place such case again upon the calendar for trial, for such date as the court may direct. (Amended October 17, 1928.)

(r) When the parties to any suit which has reached the active list have settled or dismissed the same, the attorneys shall at once notify the assignment clerk and cause an entry of such assignment or dismissal to be made and entered upon the records. Failure to comply with this rule may be treated as a contempt of court. (Amended October 17, 1928.)

#### RULE 6

**ADOPTION MATTERS.** Adoption matters shall be referred to and heard by the judge of the juvenile court.

#### RULE 7

**DEFAULTS.** (a) Divorce cases, in which the time for answering has expired, and default has been made, and in which the summons and complaint, with proof of service thereof, have been filed with the clerk, shall, upon filing with the clerk a note of issue, containing the title of the cause, a statement of the foregoing requisites, and the address of counsel, be placed upon the calendar and set for trial as provided for in rule 2.

(b) All causes, other than divorce and tax cases, requiring the taking of testimony, in which the time for answering has expired and default has been made, and in which the summons and complaint, with proof of service, have been filed with the clerk, shall, upon filing with the clerk a note of issue containing the title of the cause, a statement of the foregoing requisites, and the address of counsel, be placed upon a special calendar and set for trial at chambers or special term for such date as may be specified by the party filing the note of issue.

#### RULE 8

**CLERK'S FEE.** All clerk and trial fees must be paid before the jury is sworn.

#### RULE 9

**EXHIBITS.** All exhibits offered in evidence shall be placed in the custody of the clerk of the court who shall be responsible for their care and production and delivery to the party to whom the same may belong for a period of 48 hours following a verdict in cases of trial by jury or rendition of decision by the court without a jury. After the expiration of the 48 hours the care and responsibility for such exhibits shall be upon the parties themselves. Upon surrendering the custody of any such exhibits, the clerk shall take a receipt therefor from the party to whom delivered.

Exhibits in criminal cases shall be kept by the clerk for six months after verdict of the jury, unless surrender of the same shall be directed by written order of the judge before whom the case was tried. (Amended May 13, 1932.)

#### RULE 10

**FINDINGS IN DIVORCE CASES.** In divorce cases, upon signing the findings the judge so signing shall deliver the same to the clerk for filing.

#### RULE 11

**EXPERT WITNESS FEES.** In taxation of costs in all civil cases a fee not exceeding \$10.00 per day may be allowed for expert witnesses except under special circumstances such fee may be increased, but not to exceed \$25.00 per day.

In criminal cases a fee not exceeding \$25.00 per day may be allowed for expert witnesses; provided that under special circumstances such fee may be increased, but not to exceed \$50.00 per day.

#### RULE 12

**FEES IN CONDEMNATION PROCEEDINGS.** Each commissioner in condemnation proceedings shall be allowed a fee not to exceed the sum of \$15.00 per day.

#### RULE 13

**ORDERS IN SUPPLEMENTARY PROCEEDINGS.** Orders in supplementary proceedings shall provide that in the examination of the judgment debtor the referee shall not grant more than two continuances.

#### RULE 14

**RECEIVERS AND TRUSTEES.** (a) All applications for allowance of fees to assignees, receivers, and attorneys, which allowance is asked to be made from the funds of any insolvent estate or estate in the hands of any receiver for settlement, shall be heard by the full bench, or a division thereof consisting of at least three judges, on the last Saturday of each month. Four copies of the account shall be delivered to the clerk together with the application.

(b) In any case where an order for compensation to a receiver, or attorneys, would appear necessary or expedient, in the exercise of sound discretion, for the preservation of the estate, pending the next full bench meeting when the matter may be presented, the judge to whom the application is made, may by written order make such interim allowance.

(c) In receivership matters all interlocutory motions and orders shall be referred to and considered by the judge who appointed the receiver in the first instance.

(d) Every receiver or trustee in submitting his final account shall disclose to the court as a part thereof the status of the property of the estate as to unpaid or delinquent taxes, both personal and real, and the same shall be paid by him to the extent that the funds in his hands permit over and above the costs and expenses of the receivership and debts due to the United States. (Amended February 7, 1936.)

#### RULE 15

**DISMISSAL; REINSTATEMENT OF BAIL; CRIMINAL CASES.** (a) Motions to dismiss or nolle criminal cases in which there has been a mistrial or in which a new trial has been granted shall be made before the judge who presided at the former trial.

(b) Motions to reinstate defaulted bail shall be made before the judge who ordered the default.

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## APPENDIX 10. COURT RULES

### RULE 16

**PROBATION RULE.** In all cases where persons are placed on probation after conviction for crime, such persons shall not be permitted to leave the state of Minnesota without express leave of the court, and leave shall in no case be granted within six months after date of conviction.

### RULE 17

**JURY SERVICE.** (a) Applications for excuse from jury duty shall be made or referred to the judge to whom the juror has been ordered to report. (b) No petit juror shall be required to serve more than once in two years, and where it appears that any petit juror is summoned for jury service after having served as a petit juror the year previous he shall be forthwith excused.

### RULE 18

**CRIMINAL PROCEDURE.** 1. Every person in custody charged with crime shall be arraigned in district court within 48 hours after the filing of the information or indictment against him.

2. When juries are in attendance, the trial of every person charged with crime shall be set for not later than eight days after arraignment.

3. No case on the calendar for trial shall be continued except upon an order of the court, based on an affidavit showing substantial cause.

4. All cases shall be tried in the order in which they stand on the calendar, except for good cause shown.

5. When upon a trial the jury disagrees, the case, unless otherwise disposed of, shall be reset for trial not more than 14 days after such disagreement.

6. When a bail bond has been defaulted it shall not be reinstated without personal appearance of the defendant within ten days, unless it is shown by affidavit that the defendant had a sufficient excuse for his non-appearance, and the court is satisfied that the state has not been deprived of material evidence by reason of the delay.

7. Except for the formal approval of bail bonds, orders in pending criminal cases shall be made only by the judge in charge of the criminal calendar. (Adopted December 19, 1930.)

### RULE 19

**MORATORIUM CASES.** In moratorium cases applications to determine default or waste shall not be heard or granted except upon due notice of motion or order to show cause. (Adopted January 27, 1936.)

### RULE 20

**ACTIONS ON BEHALF OF MINORS; SETTLEMENT.** Where Rule 3 (a) (1) of the general rules of the district court of Minnesota, as amended in 1932, refers to actions brought on behalf of a minor or to actions brought by a parent or guardian, it shall also be understood as applying to claims made on behalf of a minor and to claims made by a parent or guardian where no action has been commenced. In any proceeding for a settlement of a minor's claim, the petition shall be filed before an order is made, and the order made therein shall be filed forthwith. (Adopted 1936.)

### RULE 21

**NOTICE.** Before service of notice shall be made pursuant to section 543.17 or section 481.12 on the clerk of court or by mail, the relevant facts must be shown by affidavit and an order of the court procured and filed authorizing such service. (Adopted November 20, 1936.)

### RULE 22

**PRELIMINARY EXAMINATION OF VENIREMEN.** (a) A questionnaire in the form provided in paragraph (d) hereof shall be delivered to each venireman with his summons for jury service.

(b) These questionnaires when executed and returned shall be delivered forthwith by the clerk to the judge to whom the veniremen are required to report, who will promptly examine them, and when-

ever a statutory disqualification appears will notify the venireman that he is excused from jury service.

(c) When a jury is drawn and examined on his voir dire, his executed questionnaire shall be in the hands of the judge for inspection by counsel on either side.

(d) The questionnaire shall be in the following form:

### QUESTIONNAIRE FOR PETIT JURORS

- Q. What is your name? (Print plainly)  
A. ....  
Q. When and where were you born?  
A. ....  
(Give exact date)  
Q. Where do you now live?  
A. .... Tel. ....  
(Give street address, if any)  
Q. Are you a citizen of the United States?  
A. ....  
Q. What is your occupation, trade, or profession?  
A. ....  
Q. If employed, state name of employer?  
A. ....  
Q. Are you single, married, widowed, or divorced?  
A. ....  
Q. If married, what is your spouse's occupation or profession?  
A. ....  
Q. Are you now a qualified voter in this state?  
A. ....  
Q. How long have you lived in Hennepin county?  
A. ....  
Q. Have you made or has there been made in your behalf any application to be selected and returned as a juror?  
A. ....  
Q. Have you ever been convicted of a felony?  
A. ....  
Q. If so, have your civil rights been restored?  
A. ....  
Q. Are you now under indictment in any court?  
A. ....  
Q. Have you defects in your hearing?  
A. ....  
Q. Have you any defects in your vision?  
A. ....  
Q. When were you last a juror and in what court?  
A. ....  
Q. Have you ever been discharged (not excused) from jury service?  
A. ....  
Q. If so, for what cause?  
A. ....

Subscribed and sworn to before me  
This.....day of....., 19..... Sign here

(Adopted May 27, 1937.)

### REGISTRATION OF LAND TITLE RULES

(a) **Manner of Service, Defendants Within the State.** Upon defendants residing or found within the state, the summons shall be served as in the manner provided for service in other civil actions except that, when practicable, the service shall be made by personally handing to and leaving with the defendant a true copy thereof.

(b) **Manner of Service, Non-Resident Defendants.** The recitals of the order for summons, to the effect that a defendant's address is outside the state or that his address is unknown shall constitute prima facie evidence that the defendant is not a resident of the state and cannot be found therein, and service shall be made accordingly as provided by statute for service upon non-residents, except as to any such defendants upon whom personal service is secured within the state.

(c) **Liens for Tax Or Local Assessment Sales.** Decrees in either initial or subsequent proceedings in which the title of the applicant is adjudged to be subject to certain liens arising from tax or local assessment sales shall specify such liens and shall provide that upon the filing with the registrar of the official receipt showing redemption from or payment of any such lien, the registrar shall cancel the memorial thereof. When the auditor's certificate upon any deed thereafter presented for registration shall show taxes to have been "paid by sale," any registration shall be made subject to the sales outstanding against the premises conveyed. The registrar shall note upon any residue certificate a statement that the



premises therein described are subject to any taxes which may have accrued subsequent to the date of the original registration.

(d) **Hearings.** All hearings where no issue has been joined shall be had before the court at special term thereof on Wednesday of each week, and note of issue, together with all other papers relating to such registration, shall be filed with the clerk on or before the preceding Monday. In all cases where an answer is filed and not otherwise disposed of by order of the court, notice of trial shall be served and note of issue filed for the general term of court as in civil actions.

(e) **Cases in Which the Registrar May Act Without Special Order of Court.** In the following cases the special order of court need not be required unless it shall be requested by the registrar or examiner:

When the inchoate interest of a spouse of the registered owner has been terminated by death, the registrar may receive and enter as a memorial a duly certified copy of the official death certificate and an affidavit of identity of such deceased spouse; and in case such deceased spouse is a joint tenant, the registrar may issue a new certificate to the survivor or survivors in joint tenancy;

When the registered owner has married since the issuance of the certificate, the registrar may receive and enter as a memorial a duly certified copy of the marriage license and return;

When the interest of a life tenant has been terminated by death the registrar may receive and enter a memorial of a duly certified copy of the official death certificate and an affidavit of identity of the decedent with the life tenant named in the certificate of title; and in such case the memorial of the certificate and affidavit shall be treated as evidence of the discharge of the life tenancy.

Also, the provisions of rule (e) relative to accepting an official death certificate and an affidavit of identity as authority for entry of a new certificate in favor of the survivor or survivors in joint tenancy is declared to include joint tenancies consisting of persons other than husband and wife.

(f) **Practice in Relation to State Tax Deeds.** Excepting those cases where a certificate of title is outstanding in favor of the State of Minnesota, when a deed from the State of Minnesota in favor of the registered owner is offered for registration, it shall be registered as a memorial upon the certificate of title as evidence of discharge of any claim of title by the State of Minnesota evidenced by the prior memorial of an auditor's certificate of forfeiture to the state; and the same practice shall be followed in those cases where subsequent to or concurrent with a repurchase from the State of Minnesota by the registered owner, the latter shall have conveyed either by quitclaim deed or warranty deed the affected premises and the deed from the State of Minnesota in favor of the registered owner is dated subsequent to the date of conveyance of the registered owner or subsequent to the entry of the certificate in favor of the registered owner's grantee, in which case the fact that the repurchase from the State of Minnesota was concurrent with or prior to the date of the deed by the registered owner making such purchase shall be evidenced by an endorsement to that effect upon the state deed made by the county auditor, one of his deputies, or the county land commissioner.

(g) **Amendment to Rule 16 of District Court Rules.** Rule 16 in the Minnesota District Court rules pertaining to registration of land titles is amended as to proceedings in Hennepin county by omission of the provision that petitions for a new duplicate certificate shall show by a receipt of the registrar of titles endorsed thereon that duplicate of the petition has been delivered to him.

(h) **Deeds From Federal Housing Administrator.** In the registration of deeds or other instruments hereinafter listed for titles or interests registered in the name of an individual as Federal Housing Administrator, the registrar of titles shall be guided by Section 204 (g) of the National Housing Act as amended by the act of June 3, 1939, which confers upon any assistant administrator the power to convey and to execute in the name of the administrator deeds of conveyance, deeds of release, assignments of mortgages, satisfactions of mortgages, and any other written instrument relating to real property or any interest therein which has been acquired by the administrator; and that the registrar of titles shall accept the statement of the certificate of acknowledgment attached to any such instrument as evidence of the official

character of the administrator or the assistant administrator executing the instrument. (Amended September 24, 1941.)

## SIXTH JUDICIAL DISTRICT

### RULE 1

**SPECIAL TERMS.** Special terms are held for the hearing of issues of law, applications, motions, orders to show cause, and all matters except the trial of issues of fact, as follows, unless the day indicated is a legal holiday, in which case the special term is held on the day next following:

For Blue Earth county, at the court house in the city of Mankato, at two p. m. on the first and third Mondays in January, March, and April, the fourth Monday in May, the first and third Mondays in July and September, the fourth Monday in October, the first Monday in November, and the first and third Mondays in December;

For Watonwan county, at the court house in the city of St. James, at one p. m. on the second and fourth Mondays in January, the fourth Monday in February, the second and fourth Mondays in March and April, the fourth Monday in June, the second and fourth Mondays in July and September, the second Monday in November, and the second and fourth Mondays in December.

### RULE 2

**CALL OF THE CALENDAR.** The preliminary call of the calendar at special term will be followed at once by a formal call, at which hearing will be had in cases in their order in which both parties are ready; and the formal call will be followed at once by a peremptory call, at which hearing will be had and cases finally disposed of as reached.

### RULE 3

**NO TRIALS OR HEARINGS OUT OF TERM.** No action will be tried or motion or order to show cause heard out of term.

### RULE 4

**ISSUES OF FACT TRIABLE BY JURY.** All issues of fact triable by jury will be so tried.

### RULE 5

**DIVORCE ACTIONS.** Divorce cases in which the defendant does not appear will be placed upon the general term calendar, upon filing notes of issue with the clerk as in other cases.

### RULE 6

**DEFAULT CASES.** Other default cases may be placed upon the special term calendar in the proper county for trial.

### RULE 7

**STAY.** Upon rendition of a verdict or a decision by the court in any case, no stay of proceedings after the first will be granted without consent of the adverse party, except upon affidavits showing the necessity for such stay and notice to the adverse party.

### RULE 8

**EXHIBITS.** All exhibits introduced in evidence upon the trial of actions shall be marked by and left in the custody of the reporter until the close of the trial; and when the trial is completed the reporter shall deliver such exhibits to the clerk of the court. The clerk shall cause the same to be filed and kept in a proper and safe place and shall make and keep a proper index book in which shall be kept a list of all such exhibits and a reference to their place of deposit. All attorneys and interested parties in said actions shall have an opportunity to examine the same in the office of the clerk at all proper times.

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## APPENDIX 10. COURT RULES

### SEVENTH JUDICIAL DISTRICT

Special terms for the following counties are held at nine a. m. at the court house on the days indicated:

Stearns county at the city of St. Cloud, on the last Saturday in February, March, September, and October;

Morrison county at the city of Little Falls, on the last Tuesday in January and August;

Clay county at the city of Moorhead, on the third Tuesday in February and the second Tuesday in August;

Otter Tail county at the city of Fergus Falls, on the third Tuesday in February and the last Tuesday in August.

### EIGHTH JUDICIAL DISTRICT

#### RULE 1

**ORDER OF TRIAL.** No cause will be set for a day certain nor "not to be moved" before a certain date. On the preliminary call of the calendar a case may, by consent of parties, be placed at the foot of the calendar, but such case shall then be given the number in its then order.

At the second call of the calendar all cases shall be tried or disposed of in the order in which they appear on the calendar at the adjournment of court on the first day of the term.

#### RULE 2

**SERVICE OF BRIEFS IN CASES TRIED TO THE COURT.** In all cases tried to the court without a jury, if submitted on briefs, defendant shall have 15 days and plaintiff 30 days after the completion of the trial within which to serve his brief, and defendant 40 days after the completion of the trial within which to serve reply brief.

Counsel, at the time of the service of his brief on the opposing counsel, will furnish the court with a copy thereof.

At the expiration of the said 40 days, the case will be considered as submitted to the court for its decision whether briefs have been served or not. Where a transcript of the evidence is to be furnished, the time for serving briefs shall commence to run from the date of delivery of the transcript by the court reporter.

#### RULE 3

**SPECIAL TERMS.** Special terms are held in Scott county at the city of Shakopee on the third Tuesday in January; in McLeod county at the city of Glencoe on the fourth Tuesday in January; in Le Sueur county at the city of Le Sueur Center on the last Tuesday in April; in Carver county at the city of Chaska on the last Tuesday in June; and in Sibley county at the city of Gaylord on the last Tuesday in August.

### NINTH JUDICIAL DISTRICT

#### RULE 1

Bonds in attachment shall be in an amount at least equal to the amount of the claim upon which suit is brought, unless special circumstances are shown which satisfy the judge that a smaller bond is sufficient.

#### RULE 2

Judgment against a garnishee shall be ordered only upon five days' notice to the garnishee, and like notice to the defendant if the defendant has appeared in the action or at the garnishee disclosure.

### TENTH JUDICIAL DISTRICT

#### RULE 1

**FILES.** No papers on file in a case shall be taken from the custody of the clerk, except by the judge, for his own use, or by a referee appointed to try the

action. Before the referee shall take any files in the action the clerk shall require a receipt therefor signed by the referee, specifying each paper so taken.

#### RULE 2

**CALL OF THE CALENDAR.** At general terms there shall be two calls of the calendar. The first shall be preliminary, and the second shall be peremptory. All preliminary motions, except motions of continuance, shall be made on the first call. The cases shall be finally disposed of in their order upon the calendar on the second call. Substitution of cases may be made on the second call by consent of all the attorneys in the cases transposed.

#### RULE 3

**MOTIONS FOR CONTINUANCE.** All motions for continuance shall be made on the first day of the term, unless the cause for such continuance shall have arisen or come to the knowledge of the party subsequent to that day. In all affidavits for continuance on account of the absence of a material witness, the deponent shall set forth particularly what he expects and believes the witness would testify to were he present and orally examined in court.

No counter affidavits shall be received on a motion for continuance.

### ELEVENTH JUDICIAL DISTRICT

(Revised and amended, Effective October 23, 1928)

#### RULE 1

**SPECIAL TERMS.** Special terms will be held in Duluth every Saturday, except on holidays and during the months of July and August, at 9:30 a. m. for the hearing of issues of law, applications, motions, and all matters except the trial of issues of fact.

Special terms will be held at Virginia on the fourth Saturday of each month, except the month of August, at 9:30 a. m.

Special terms will be held at Hibbing on the first Saturday of each month, except the month of August, at 9:30 a. m.

#### RULE 2

**DIVORCE CASES.** Divorce cases in which the defendant does not appear will be placed upon the general term calendar upon filing notes of issue with the clerk as in other cases.

#### RULE 3

**DESIGNATION OF CASE ON NOTE OF ISSUE.** Attorneys are hereby required to designate upon each note of issue filed in the office of the clerk of the court whether the case mentioned therein is triable by the court or by the jury.

#### RULE 4

**PETIT JURY; CALL OF CALENDAR.** The petit jury will be summoned to appear at Duluth at 9:30 a. m. on the first Monday after the first day of the term, and the first and second days of the term will be devoted to the calling of the calendar, hearing calendar motions, and trying default divorce cases.

The petit jury will be summoned to appear at Virginia at nine a. m. on the first Monday after the first day of the term.

The petit jury will be summoned to appear at Hibbing and Ely at 1:30 p. m. the first day of the term.

#### RULE 5

**EXHIBITS.** All exhibits introduced in evidence by any party in the trial of an action shall be marked by the stenographer and left in the custody of the

stenographer until the close of the trial of the cause; and when the trial of any cause is completed, the stenographer shall deliver all exhibits as evidence in the case to the clerk of the court, and the clerk shall cause the same to be filed and kept in a proper and safe place, and shall cause to be made and shall keep a proper index or reference book wherein shall be kept a list of all such exhibits, with reference to their place of deposit, so that they can be readily found by any parties interested therein; and no person shall be permitted to remove any of the exhibits from this depository except upon the written order of the court, provided that all attorneys and interested parties shall have an opportunity to examine the same in the office of the clerk under reasonable provisions to be provided therefor.

## RULE 6

**JUDGMENT, FILING OF EXECUTION.** All persons other than the person in whose favor a judgment is entered in any action or proceeding, or his successor in interest, or his attorney of record therein, who shall apply for the issuing of an execution on such judgment within the period of two years after the entry thereof, and all persons other than the person in whose favor a judgment is entered, or his successor in interest, applying for such execution after the expiration of such period, shall file with the clerk of court where such judgment is entered, at the time of making such application, written authority from the owner of such judgment, duly executed and acknowledged by him, and authorizing the person so making the application to appear and act in the matter. No execution shall issue in such case until this authority shall be filed as herein provided.