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JUDGMENT UPON FAILURE TO ANSWER.

Judgment upon failure to answer, when and what cause made.

SEC. 165. Judgment may be had if the defendant fail to answer the complaint as follows :

1. In an action arising on obligation for the recovery of money, only the plaintiff may file with the clerk, proof of personal service of the summons, and that no answer has been received within twenty days after the service of the summons, the clerk must thereupon enter judgment for the amount mentioned in the summons against the defendant, or against one or more of several defendants in the cases provided for in this chapter :

2. In other actions the plaintiff may upon the like proof apply to the court after the expiration of the time for answering, for the relief demanded in the complaint ; if the taking of an account or the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may in its discretion order a reference for that purpose ; and where the action is for the recovery of money only, or of specified real or personal property, with damages for the withholding thereof, the court may order the damages to be assessed by a jury, or if the examination of a long account be involved, by a reference as above provided :

3. In actions when the service of the summons was by publication, the plaintiff may in like manner apply for judgment, and the court must thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover ; before judgment the plaintiff must give satisfactory security to abide the order of the court touching the restitution of any property collected, or received under the judgment, in case the defendant or his representatives are admitted to defend the action, and succeed in the defence.

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ISSUES.

When issues arise upon the pleadings.

SEC. 1. Issues arise upon the pleadings, when a fact or conclusion of law is maintained by the one party and controverted by the other; they are of two kinds:

1. Of law: and,
2. Of fact.

How issues of law arise.

SEC. 2. An issue of law arises upon a demurrer to the complaint, on some part thereof.

When issue of fact arises.

SEC. 3. An issue of fact arises,

1. Upon a material allegation in the complaint, controverted by the answer: or,
2. Upon new matter in the answer, constituting a counter claim, controverted by the reply, or upon other new matter in the answer: or,
3. Upon new matter in the reply; issues both of law and of fact may arise upon different parts of the pleadings in the same action.

The term trial defined.

SEC. 4. A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Court must try issues of law.

SEC. 5. An issue of law must be tried by the court, unless it be referred as provided by the statute relating to referees.

Issues of fact how tried.

SEC. 6. An issue of fact, in an action for the recovery of money only, or of specific real or personal property, or for a divorce from the marriage contract, on the ground of adultery, must be tried by a jury, unless a jury trial be waived, as provided by law, or a reference be ordered, as provided by statute relating to referees.

Issue of fact in certain cases how disposed of.

SEC. 7. Every other issue of fact must be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or be referred, as provided by statute.

SEC. 8. At any time after issue, and at least ten days before the court, either party may give notice of trial; the party giving the notice must furnish the clerk, at least four days before the court, with a note of the issue, containing the title of the action, the names of the attorneys, and the time when the last pleading was served; and the clerk must thereupon enter the cause upon the calendar, according to the date of the issue. The issues once placed upon the calendar of a term, if not tried at the term for which the notice was given, need not be noticed for a subsequent term, but must remain upon the calendar from court to court, until finally disposed of; but when an issue of law is to be tried before a judge out of court, no calendar need be made or note of issue furnished.

Notice of trial and notice of issue when to be served.

SEC. 9. The issues on the calendar must be disposed of in the following order, unless for the convenience of parties, or the dispatch of business, the court otherwise direct:

Issues on the calendar how to be disposed of.

1. Issues of fact, to be tried by a jury:
2. Issues of fact, to be tried by the court:
3. Issues of law.

SEC. 10. Either party, after the notice of trial, whether given by himself or by the adverse party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case and take a dismissal of the action, or a verdict, or judgment, as the case may require.

When either party may bring cause on for trial.

SEC. 11. A separate trial between the plaintiff and any of several defendants, may be allowed by the court whenever in its opinion, justice will be thereby promoted.

When separate trial may be allowed defendants.

SEC. 12. A motion to postpone a trial for the absence of evidence, can only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; the court may also require the moving party to state the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial or offered, and overruled as improper, the trial must not be postponed.

Affidavit for continuance what to set forth.

SEC. 13. The plaintiff must furnish the court, before the trial begins, with a copy of the summons and pleadings, and the offer of the defendant, if any shall have been made.

Plaintiff must furnish court with copy of summons and pleadings.

TRIAL BY JURY.

SEC. 14. When the action is called for trial by jury, the clerk must draw from the trial jury box of the court, the ballots containing the names of jurors, until the jury is completed or the ballots are exhausted; if the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, must summon from the bystanders or the body of the county, so many qualified persons as may be necessary to complete the jury.

Jury how drawn by clerk.

SEC. 15. As soon as the drawing of the jury is completed, an oath must be administered to each juror, that he will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give according to the evidence.

Oath to be administered to jurors.

SEC. 16. When the jury is completed and sworn, the ballots containing the names of the jurors sworn, must be laid aside till the jury, so sworn is discharged, and then they must be returned to the box; and every ballot drawn, containing the name of a juror not so sworn, must be returned to the box as soon as the jury is completed.

Ballots when to be returned to the box.

SEC. 17. Either party may challenge the jurors, but when there are several parties on either side, they must join in a challenge before

Parties may challenge jurors when to join in challenge.

it can be made; the challenges are to the panel and to individual jurors as in criminal actions, except that there can be but two peremptory challenges on each side.

CONDUCT OF THE TRIAL.

Trial how to proceed.

SEC. 18. When the jury has been completed and sworn, the trial must proceed in the following order, unless the court for special reasons, otherwise directs:

1. The plaintiff after stating the issue, must open the case and produce the evidence on his part:
2. The defendant may then open his defence, and offer his evidence in support thereof:
3. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case:
4. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the defendant must commence and the plaintiff conclude the argument to the jury:
5. If several defendants, having separate defences, appear by different counsel, the court must determine their relative order in the evidence and argument:
6. The court may then charge the jury.

When and how jury may have a view of real property connected with the subject of litigation.

SEC. 19. Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which will be shown to them by the judge, or by a person appointed by the court for that purpose; while the jury are thus absent, no person other than the judge or person so appointed, must speak to them on any subject connected with the trial.

Jury how to be kept before cause is submitted to them.

SEC. 20. The jurors may be kept together in charge of proper officers, or may, in the discretion of the court, at any time before the submission of the cause to the jury, be permitted to separate; in either case, they may be admonished by the court that it is their duty not to converse with any other person or among themselves, on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

When juror is taken sick, court how to proceed.

SEC. 21. If, after the impanneling of the jury, and before a verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged; in that case, a new juror may be sworn and the trial begin anew, or the juror may be discharged and a new jury then or afterwards impaneled.

Court how to charge the jury.

SEC. 22. In charging a jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it present the facts of the case, it must also inform the jury that they are the exclusive judges of all questions of fact.

When jury to retire under charge of an officer.

SEC. 23. After hearing the charge, the jury may either decide in court, or retire for deliberation; if they retire, they must be left together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court; the officer must, to the utmost of his ability, keep the jury thus together, separate from other persons without drink, except water, and without food except ordered by the court; he must not suffer any communication to be made to them, nor make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he must not, before the ver-

Duties of officer having charge of jury.

dict is rendered, communicate to any person the state of their deliberations, or the verdict agreed on.

SEC. 24. If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they must be so provided by the sheriff at the expense of the county.

When jury to be provided with food and lodging at expense of county.

SEC. 25. Upon retiring for deliberation, the jury may take with them, all papers, (except depositions,) which have been received as evidence in the cause, or copies of such parts of public records or private documents, given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

What papers jury may take with them to their room.

SEC. 26. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court; upon their being brought into court, the information required must be given in presence of, or after notice to the parties or counsel.

Jury may return into court for information.

SEC. 27. Except as otherwise provided by statute, or in case of some accident or calamity requiring their discharge, the jury cannot be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the court deem proper, it satisfactorily appear that there is no probability of an agreement.

Jury not to be discharged until verdict is rendered, except in certain cases.

SEC. 28. In all cases where a jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

When jury is discharged without giving verdict, cause when to be tried.

SEC. 29. While the jury are absent, the court may adjourn from time to time, in respect to other business; but it is, nevertheless, to be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury is discharged. A final adjournment of the court discharges the jury.

While jury are absent court may adjourn.

SEC. 30. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge; their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict.

When jury may be discharged without giving verdict.

SEC. 31. If the jury appear, they must be asked by the court or the clerk, whether they have agreed upon their verdict; and, if the foreman answer in the affirmative, they must, on being required, declare the same.

Jury how to render verdict.

SEC. 32. When a verdict is rendered, and before it is recorded, the jury may be polled on the request of either party, for which purpose each juror must be asked whether it be his verdict; if any one answer in the negative, the jury must be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

Jury may be polled at request of either party.

SEC. 33. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full in the minutes, and must read it to the jury and inquire of them whether it be their verdict; if any juror disagree, the fact must be entered in the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

Clerk must record verdict, and read it to the jury.

THE VERDICT.

Verdict is either general or special.

SEC. 34. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court; it must present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented, as that nothing remains to the court, but to draw from them conclusions of law.

When jury may render general or special verdict.

SEC. 35. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict; in all other cases, the court may direct the jury to find a special verdict in writing, upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk, and entered upon the minutes.

When special verdict is inconsistent with general verdict which to control.

SEC. 36. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

When jury must assess the amount of the recovery.

SEC. 37. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery.

Verdict in action to recover personal property.

SEC. 38. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer, claim a return thereof, the jury must, if their verdict be in favor of the plaintiff, or if being in favor of the defendant, they also find that he is entitled to a return thereof, must assess the value of the property, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

When verdict is received, clerk to make entry in minutes of the court.

SEC. 39. Upon receiving a verdict, an entry must be made in the minutes of the court, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment to be rendered thereon, or, when the court is in doubt, what judgment ought to be given, it may order that the case be reserved for argument or further consideration.

TRIAL BY THE COURT.

When trial by jury may be waived by the parties.

SEC. 40. The trial by jury may be waived by the several parties, to an issue of fact in actions arising on obligations, and with the assent of the court in other actions, in the manner following:

1. By failing to appear at the trial:
2. By written consent, in person or by attorney, filed with the clerk:
3. By oral consent in open court, entered in the minutes.

When question of fact is tried by the court, decision when and how to be made.

SEC. 41. Upon the trial of a question of fact by the court, its decision must be given in writing, and filed with the clerk within twenty days after the term at which the trial took place; in giving the decision, the facts found and the conclusions of law must be separately stated; judgment upon the decision must be entered accordingly.

On judgment for plaintiff on issue of law plaintiff how to proceed.

SEC. 42. On a judgment for the plaintiff upon an issue of law, the plaintiff may proceed in the manner prescribed by the statute, upon the failure of the defendant to answer where the summons was personally served. If judgment be for the defendant, upon an issue of law, and

the taking of an account, or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered as by statute provided.

SEC. 43. In addition to the regular terms of the district courts in this territory, the said court is always open for the transaction of any business which may be heard and determined by the court, and the said court in vacation has power to hear and determine all questions which may arise in the said court, in the following cases :

District court to be always open for the transaction of business.

1. In all cases other than those arising in obligation for the payment of money only, when a summons has been personally served upon the defendant, and no answer has been made to the complaint, after the time for answering the same has expired. The said court in vacation may, whenever it shall be proper to do so, take an account to hear proof and render judgment thereon, or may order a reference as hereinafter provided ; and when the action is for the recovery of money only, or of specific, real, or personal property, with damages for the withholding thereof, the court may hear and determine the same in vacation, and assess the damages ; or, if the examination of a long account be involved, a reference may be made as above provided :

2. In all cases where an action has been removed to the district court by a certiorari to a justice of the peace, the same may be brought on for argument before the court in vacation, and heard and determined as fully as if the same had been determined in term :

3. All motions made to the said court in actions or proceedings pending therein, may be heard and determined by the court in vacation :

4. All applications for judgment upon special verdicts, and all questions reserved for argument or further consideration, and all questions of law pending in the said court, may also be heard and determined in vacation, as well as in term.

SEC. 44. Whenever application is made to the judge of any of the said district courts, for the hearing and determination of any of the cases mentioned in the preceding section, the judge shall appoint a day in which he will hear and determine the same, which shall not be less than six, nor more than ten days from the time the application aforesaid is made.

Judge to appoint a day for hearing.

SEC. 45. The party making such application shall notify the adverse party that such application has been made, and that the hearing and determination will take place at a time and place mentioned in the said notice, which notice must be served on the opposite party at least six days before the day of hearing.

Notice of hearing to be served on adverse party.

SEC. 46. All judgments, orders, or determinations, made by the said court in vacation, in any of the cases above mentioned, shall be as final and effectual as if the same had been made in term.

Judgments, &c., made in vacation to be effectual.

TRIAL BY REFEREES.

SEC. 47. A referee is a person appointed by the court or judge,

1. To try an issue of law or of fact in a civil action, and report a judgment thereon :

Referees and their powers.

2. To ascertain any other fact in an action at law, or in a special proceeding of a civil nature, when necessary for the information of the court, and report the fact either with or without his opinion thereon :

3. To execute an order or judgment.

SEC. 48. The appointment of a referee is denominated a reference.

Appointment of referees, how denominated.

SEC. 49. Upon the agreement of the parties to a civil action, or a proceeding of a civil nature, filed with the clerk or entered upon the minutes, a reference may be ordered :

When and in what cases court may order reference.

1. To try any or all the issues in a civil action, whether of fact or

law, (except an issue of fact when the action is for a divorce dissolving the marriage contract,) and to report a judgment thereon:

2. To try an issue or ascertain a fact in a special proceeding of a civil nature.

When and in what cases court may order reference.

SEC. 50. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. When the trial of an issue of fact requires the examination of a long account on either side, which case the referees may be directed to hear, and decide the whole issue, or to report upon any specific question of fact involved therein:

2. When the taking an account is necessary for the information of the court, before judgment, or for the carrying a judgment or order into effect:

3. When a question of fact other than upon the pleadings arises, upon the motion or otherwise, in any stage of the action: or,

4. When it is necessary for the information of the court in a special proceeding of a civil nature.

In what cases reference may be ordered.

SEC. 51. A reference may be ordered in a civil action, or in a special proceeding of a civil nature, in any court, (except a justice's court,) and may be ordered by a judge or court in vacation.

Number of referees to be appointed.

SEC. 52. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties; if the parties do not agree, the court or judge must appoint one or more, not exceeding three, who reside in the county in which the action is brought, or the proceeding is triable.

Qualifications of referees.

SEC. 53. When the appointment of referees is made by the court or judge, the referee must be:

1. Qualified as a juror, as provided by statute:
2. Competent as a juror between the parties.

Report of referees to stand as decision of the court.

SEC. 54. The report of the referees upon the whole issue stands as the decision of the court, and judgment may be entered thereon, in the same manner as if action had been tried by the court; and their decision may be excepted to and reviewed in like manner. When the reference is to report the facts, the report has the effect of a special verdict.

PROVISIONS RELATING TO TRIALS IN GENERAL; EXCEPTIONS.

Exceptions when and how to be taken.

SEC. 55. An exception is an objection taken, at the trial, to a decision upon a matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, the production of evidence, the charge to the jury, or at any other time from the calling of the action for trial, to the rendering of the verdict or decision; but no exception is to be regarded on a motion for a new trial, or on an appeal, unless the exception be material and affect substantial rights of the party.

Exceptions when and how to be taken.

SEC. 56. The point of the exception must be particularly stated, and either delivered in writing to the judge, or entered in his minutes, and immediately corrected or added to until made conformable to the truth, or it may afterwards be settled in a statement of the case, as provided in section sixty-three of this chapter.

No form of exception required, what necessary to state.

SEC. 57. No particular form of exception is required; the objection must be stated, with so much of the evidence as is necessary to explain it, but no more, and the whole as briefly as possible. If the decision excepted to, be verbally made, it must, upon the exception being taken, be reduced to writing, and entered either in the judge's minutes, or in the minutes of the court, or in the statement.

NEW TRIALS.

SEC. 58. A new trial is a re-examination of an issue of fact in the same court, after a trial and decision by a jury, court, or referees.

New trial defined.

SEC. 59. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

For what causes new trial may be granted.

1. Irregularity in the proceedings of the court, jury, or prevailing party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial:

2. Misconduct of the jury or of the prevailing party:

3. Accident or surprise, which ordinary prudence could not have guarded against:

4. Excessive damages, appearing to have been given under the influence of passion or prejudice:

5. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law:

6. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial:

7. Error in law, occurring at the trial and excepted to, by the party making the application.

SEC. 60. When the application is made for a cause mentioned in the fourth, fifth, and seventh subdivisions of the last section, it is made either upon the judge's minutes, or a statement of the case prepared as prescribed in the next section; for any other cause, it is made upon affidavit

When upon application for new trial party to prepare statement of cause of motion.

SEC. 61. The party preparing a statement, is to propose a draft of it, and within five days after the trial, serve it upon the adverse party, who may, within five days thereafter, propose amendments to it; if no amendment be proposed, the draft is adopted; if proposed, the statements and amendments may be submitted for settlement to the judge or referee, before whom the trial was had, upon a notice of five days; if such notice, be not served within five days after the amendments are proposed, they are adopted.

Statement how prepared and served.

SEC. 62. The application for a new trial, must, in the first instance, be made at a regular term except when made upon an appeal.

Application for new trial when made.

SEC. 63. The application for a cause mentioned in the fourth and fifth subdivisions of section fifty-nine, can only be made when notice thereof, oral, or written, was given in open court, immediately after the verdict or other decision rendered; and thereupon, if the adverse party consent, the court must appoint a day in the same term for hearing the application upon the judge's minutes; if however, the application be not heard at the same term, or if an appeal be taken, a statement of the case must be made.

Notice of application when made.

GENERAL PROVISIONS.

SEC. 64. Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages, to which he may be entitled for the cause of action established.

What rate of damages plaintiff may recover.

SEC. 65. Any party may, and if required by the court, must when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both; they may be written and handed to the court, or, at the option of the court, oral and entered

When party to submit propositions upon which he claims to recover.

in the judge's minutes ; but in either case they must be entered with any exceptions that may be taken, if either party require it.

Provisions for trial by jury to apply to trial by court.

SEC. 66. The provisions of this chapter respecting trials by jury apply, so far as they are in their nature applicable, to trials by the court or referees, and in the same manner, the provisions respecting trials by the court, apply to trials by referees.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

Upon trial by jury, judgment how entered.

SEC. 67. When a trial by jury has been had, judgment must be entered by the clerk in conformity to the verdict, unless the court order the case to be reserved for argument, or further consideration, or grant a stay of proceedings.

Proceedings when case is reserved.

SEC. 68. When the case is reserved for argument, or further consideration, as mentioned in the last section, on the ground that judgment ought not to be given in conformity to the verdict, or that it is doubtful what judgment should be given, the questions reserved may be decided by the court, and judgment thereupon rendered without further argument, or if not so decided, they may be brought before the court for judgment, upon notice, and judgment thereupon rendered.

When and how judgment may be given for defendant.

SEC. 69. If a counter claim established at the trial, exceed the plaintiff's demand so established, judgment for the defendant must be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

Judgment how given in action to recover personal property.

SEC. 70. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and of damages for the detention ; if the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

Judgment except in certain cases, to be entered on the direction of judge.

SEC. 71. Judgments upon an issue of law, or of fact, or upon confession, or upon failure to answer, (except where the clerk is otherwise authorized to enter the same,) must, in the first instance, be entered upon the direction of a single judge, or the report of referees upon the whole issue, subject to review at the term, on the demand of either party, as provided by statute.

Clerk must keep judgment book.

SEC. 72. The clerk must keep among the records of the court, a book for the entry of judgments, to be called the judgment book.

Judgment must be entered in judgment book.

SEC. 73. The judgment must be entered in the judgment book, and must specify clearly the relief granted, or other determination of the action.

When court may render judgment after death of party.

SEC. 74. If a party die after verdict or decision upon an issue of fact, and before judgment, the court may nevertheless render judgment thereon ; such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

Judgment roll, what to contain and where to be filed.

SEC. 75. Immediately after entering the judgment, the clerk must attach together and file the following papers, which constitute the judgment roll :

1. In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, proof of service and that no answer has been received, the report, if any, and a copy of the judgment :

2. In all cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, and all orders relating to a change of parties, or in any way involving the merits and necessarily affecting the judgment. If a state-

ment of the case be made, the same may be attached to the judgment roll on the request of either party, and thenceforth forms a part thereof. When the defendant is entitled to judgment, if the plaintiff shall not have filed the summons, with proof of service, and the pleadings on his part, the copies of summons and pleadings served on the defendant, may be substituted therefor in making the judgment roll, or the plaintiff may, at the instance of the defendant, be ordered by a judge forthwith to file such papers. Upon an exemplification of a judgment, as evidence, only that part of the roll which consists of the summons, pleadings, and judgment, need be given.

SEC. 76. On filing a judgment roll, upon a judgment requiring the payment of money, the judgment may be docketed with the clerk of the court where it was rendered, and in any other county upon filing with the clerk of the district court of such county a transcript of the original docket; and thereupon the judgment becomes a lien on real property in the county, from the time of docketing it therein.

How judgment made lien on real property.

SEC. 77. The lien mentioned in the last section, extends to all the real property of the judgment debtor in the county, owned by him at the time of the judgment, or afterwards acquired.

To what property the lien extends.

SEC. 78. The docket mentioned in section seventy-six, is a book which the clerk must keep in his office, and in which he must enter alphabetically, under the name of each person:

In what order judgment to be entered in judgment book.

1. The names of the parties to the judgment:
2. The amount of the judgment; and,
3. The precise time of his entry.

SEC. 79. Satisfaction of a judgment may be entered in the clerk's register and docket, upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or within two years after the judgment, by the attorney, unless a revocation of his authority is previously entered upon the register. Whenever a judgment is satisfied in fact, otherwise than upon an execution, it is the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it; and whenever a judgment is satisfied in fact, as to any one of several defendants, an entry to that effect may be made in the register and docket.

Satisfaction of judgment.

How acknowledged and entered.

THE EXECUTION.

SEC. 80. The party in whose favor judgment is given, may, at any time within five years after the entry thereof, proceed to enforce the same, as prescribed by statute.

Execution may issue in five years.

SEC. 81. There are three kinds of writs of execution; one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same; they are issued in the name of the United States, and are deemed the process of the court; but they need not be sealed nor subscribed, except as prescribed in the next section.

Three kinds of executions.

SEC. 82. The writ of execution must be directed to the sheriff, subscribed by the party issuing it, or his attorney, and must intelligibly refer to the judgment, stating the court, the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment if it be for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and must require the sheriff substantially as follows:

Execution by whom issued and to whom directed.

Execution what to contain.

1. If it be against the property of the judgment debtor, it must re-

quire the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient property cannot be found, out of his real property; or if the judgment be a lien on real property, then out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter, or if the judgment be entered pursuant to the statute, the execution must conform to such judgment:

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it must require the sheriff to satisfy the judgment with interest, out of such property:

3. If it be against the person of the judgment debtor, it must require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment with interest, or be discharged according to law:

4. If it be for the delivery of the possession of real or personal property, it must require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, charges, damages, rents or profits, recovered by the same judgment, out of the personal property of the party against whom it was rendered and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section, and in that respect, it is to be deemed an execution against property.

Execution when made returnable.

SEC. 83. The execution must be made returnable within sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed.

When certified copy of record to be served with execution.

SEC. 84. Where a judgment requires the payment of money, or the delivery of real or personal property, the same is enforced in these respects, by execution, as provided in the last three sections. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for contempt.

After five years, execution to be issued on leave of the court.

SEC. 85. After the lapse of five years from the entry of a judgment, if no execution has been already issued, an execution can be issued only by leave of the court on motion, upon notice to the adverse party; such leave must not be given, unless it be established by the oath of the party, or other proof, that the judgment, or some part thereof, remains unsatisfied and due. When the judgment has been rendered in a justice's court and docketed in the office of the clerk of the district court, the application for leave to issue execution must be to the district court of the county where the judgment was rendered.

In case of death of party after judgment, execution may issue against his property.

SEC. 86. Notwithstanding the death of a party after judgment, execution thereon against his property may be issued and executed in the same manner and with the same effect as if he were still living; except that such execution cannot be issued within a year after his death, unless upon permission granted by the judge of probate.

To what sheriff execution must be directed.

SEC. 87. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. Where it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

When and how ex-

SEC. 88. If the action be one in which the defendant might have

been arrested, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court, after the return of an execution against his property, unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, in cases mentioned in the fourth and fifth subdivisions of that section, where the defendant has been provisionally arrested in the action, and the order for his arrest has not been vacated; or upon an order of arrest obtained in the same manner as for a provisional arrest.

Execution may issue against person of defendant.

Sec. 89. A person arrested on execution must be imprisoned within the jail, or the liberties thereof, and there kept at his own expense until satisfaction of the execution, or his legal discharge.

Person arrested on execution to be imprisoned.

Sec. 90. When a defendant has been once imprisoned upon execution, no other execution can issue upon the same judgment, unless he escape, or die while charged in execution, or unless he be discharged without the consent of the judgment creditor.

When defendant has been once imprisoned, no other execution to issue against him.

Sec. 91. All property liable to an attachment is liable to execution; it must be levied on in the same manner as similar property is attached; until a levy, property is not affected by the execution.

Property liable to attachment may be taken on execution.

Sec. 92. If the property levied on be claimed by a third person as his property, the sheriff may summon from his county any twelve persons, qualified as jurors, between the parties, to try the validity of the claim; they, and the witnesses must be sworn by the sheriff, and if their verdict be in favor of the claimant, the sheriff may relinquish the levy unless the judgment creditor give him a sufficient indemnity for proceeding thereon; the fees of the jury must be paid by the claimant if the verdict be against him, otherwise, by the plaintiff. The following property is exempt from execution, except as herein otherwise specially provided.

When property is claimed by third person, how sheriff to proceed.

Sec. 93. There shall be exempt from sale on execution, or other process of a court, a homestead; that is to say, the land, and buildings thereon, occupied as a residence and owned by the debtor, he or she being a householder, to the value of one thousand dollars; such exemption shall continue after the death of such householder, for the benefit of the widow and family, some, or one of them, continuing to occupy such homestead until the youngest child shall become twenty-one years of age, and until the marriage or death of the widow; and no release or waiver of such exemption, shall be valid, unless the same shall be in writing, subscribed by such householder and his wife, if he have one, and acknowledged in the same manner, as conveyances of real estate, are by law required to be acknowledged.

Real estate not subject to execution, &c.

Sec. 94. Such exemption shall not affect any laborer's, mechanic's, or other lien, for labor performed, or materials furnished in the erection, alteration, or repair of any building, or addition thereto, on such land; nor extend to any mortgage thereof, lawfully obtained; nor to any sale for non-payment of taxes, or assessment thereon; nor to any debt contracted or liability incurred for the purchase of such land, nor to any debts, or liabilities contracted previous to the time this chapter takes effect.

Preceding section qualified.

Sec. 95. If, in the opinion of the sheriff, holding an execution against such householder, the premises claimed by him or her, are worth more than one thousand dollars, he shall summon six qualified jurors of his county, who shall upon oath, to be administered to them by such sheriff, appraise said premises; and if, in the opinion of the jury, the property may be divided without injury to the interest of the owner thereof, they shall set off so much of said premises, including the dwelling house, as in their opinion shall be worth one thousand dollars, and the residue of such premises may be advertised and sold by such sheriff.

Proceedings when premises claimed are worth more than \$1000.

Jury may be summoned by sheriff.

Proceedings when premises claimed are worth more than \$1000.

Sec. 96. If, in the opinion of the jury, the value of the premises be more than one thousand dollars, and the same cannot be divided as provided for in the last preceding section, they shall make and sign an appraisal of the value thereof, and deliver the same to the sheriff, who shall deliver a certified copy thereof to the execution debtor, or to some one of his or her family, of suitable age to understand the nature of the same, with a notice attached, that unless the execution debtor shall pay to said sheriff the amount of such appraised value exceeding the sum of one thousand dollars, within sixty days thereafter, that said premises will be sold; and in case such execution debtor shall pay such excess to the sheriff, as herein required, such premises shall not again be subject to appraisal in like manner, until the expiration of one year after such payment.

If excess be not paid, sheriff may advertise and sell.

Sec. 97. In case the amount over and above one thousand dollars, mentioned in the last preceding section, shall not be paid within the said sixty days, it shall be lawful for the sheriff to advertise and sell the said premises, and out of the proceeds of such sale he shall pay to said execution debtor the said sum of one thousand dollars, which shall be exempt for one year thereafter, and the balance he shall apply on such execution: *Provided*. That no sale shall be made unless a greater sum than one thousand dollars shall be bid for such premises, in which case the sheriff may return the execution for want of property.

Who entitled to benefits of this chapter.

Sec. 98. Every householder occupying lands and tenements, to which he may have but possessory title, by leave or otherwise, shall be entitled to the benefits of this chapter as fully as if such lands and tenements were held in fee simple.

Costs to be charged in sheriff's bill.

Sec. 99. The costs and expenses of selling off every homestead, as herein provided, shall be charged and included in the sheriff's bill of costs upon the execution or other process, under which the homestead may be sold.

What property exempt from attachment, and levy and sale on final process.

Sec. 100. The following named property shall be exempt from sale under any execution, writ of attachment, or any other final process of a court:

1. All spinning wheels, weaving looms, with the apparatus, and all stoves and pipes with their utensils, put up or kept in any dwelling house:

2. A seat, pew, or slip, occupied by any person or family, in any house or place of public worship:

3. All cemeteries, monuments, tombs, and rights of burial, while in use as repositories of the dead:

4. All arms and accoutrements required by law to be kept by any person:

5. All wearing apparel of every person or family:

6. The miscellaneous library, and school books, of every individual and family, not exceeding in value one hundred and fifty dollars, and all family pictures:

7. To each householder, ten sheep, with their fleeces, and the yarn and cloth manufactured from the same, two cows, five swine, and provisions and fuel for the comfortable subsistence of such householder and family for six months:

8. To each householder, all household goods, furniture and utensils, not exceeding in value two hundred and fifty dollars:

9. The tools, implements, material, stock, apparatus, team, vehicle, horses, harness, library, or other things, to enable any person to carry on the profession, trade, occupation or business in which such person may be wholly or principally engaged, not exceeding in value two hundred and fifty dollars; the word team, in this subdivision, shall be con-

strued to mean either one yoke of oxen, a horse, or a pair of horses, as the case may be :

10. A sufficient quantity of hay, grain, feed and vegetables necessary for keeping for six months the animals mentioned in the several subdivisions of this section exempted from execution, and any chattel mortgage, bill of sale, or other lien created on any part of the property, except such as is mentioned in the ninth subdivision of this section, shall be void, unless such mortgage, bill of sale, or lien, be signed by the wife of the party making such mortgage, bill of sale, or lien.

SEC. 101. The property hereinbefore mentioned shall not be exempt from any execution or other process issued upon a judgment rendered for the purchase money for the same property.

Property holden for purchase money, &c.

SEC. 102. When a levy shall be made upon property of any class or species, which is by law exempt from execution to a specified amount or value, the officer levying the execution may make an inventory of the whole of such property, and cause the same to be appraised at its cash value, by two disinterested freeholders of the precinct where the property may be, on oath to be administered by him to such appraisers. The appraisers shall be entitled to fifty cents each for their services, and six cents per mile for traveling fees, for which the plaintiff in the execution shall be liable to them, but the same may be collected on the execution for his use.

Officer how to proceed when part of certain property is exempt.

SEC. 103. Such inventory being completed, the defendant in the execution, or his authorized agent, may select from such inventory an amount of such property, not exceeding, according to such appraisal, the amount or value exempted by law from execution; but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same.

Defendant may select from property the amount exempt

SEC. 104. A levy may be made upon grain or grass while growing, and upon any other unharvested crops; but no sale thereof shall be made under such levy, until the same shall be ripe or fit to be harvested; and any levy thereon by virtue of an execution, issued by a justice of the peace, shall be continued beyond the return day thereof, if necessary, and remain in life, and the execution thereof may be completed at any time within thirty days after such grain, grass, or other unharvested crop shall be ripe, or fit to be harvested.

Levy may be made upon grain or grass growing.

Proceedings in such case.

SEC. 105. Any real or personal estate which may have been acquired by any female before her marriage, either by her own personal industry, or by inheritance, gift, grant, or devise, or to which she may at any time after her marriage, be entitled by inheritance, gift, grant, or devise, and the rents, profits, and income of any such real estate, shall be and continue the real and personal estate of such female after marriage, to the same extent as before marriage; and none of such property shall be liable for her husband's debts, engagements, or liabilities; but such property shall be liable for all debts of the wife contracted prior to her said marriage: *Provided*, That nothing in this section contained shall be construed to authorize any married woman to give, grant, or sell any such real or personal property during coverture, without the consent of her husband, except by order of the district court of the county: and, *Provided further*, That a separation between such husband and wife, by an adjudication of a court, or by act of the legislature, such married woman shall, in no case, be authorized to remove any such property from the premises of her husband, without his consent.

Real and personal property of wife, not liable for husband's debts.

SEC. 106. The district court for the county where the parties, or either of them reside, shall have jurisdiction in all cases arising under the provisions of the preceding section, except when the amount in controversy, is less than one hundred dollars, and relates to personal estate, in which case a justice of the peace shall have jurisdiction, and the

Jurisdiction of district court in cases arising under the preceding section.

wife may institute proceedings to enforce the said provision, in her own name, or otherwise.

Husband to have a life estate in property of wife.

SEC. 107. If any married woman shall die without disposing of any such real estate, the husband surviving her shall have a life estate therein, by the curtesy.

Writ how to be executed by sheriff.

SEC. 108. The sheriff must execute the writ against the property of the judgment debtor, by levying on the property, collecting the things in action, as prescribed by the statute, selling the other property, and paying to the plaintiff the proceeds, or so much thereof as will satisfy the execution.

Before sale, notice must be given.

SEC. 109. Before the sale of property on execution, notice thereof must be given as follows :

1. In case of personal property, by posting written notice of the time and place of sale, in three public places of the county where the sale is to take place, six days successively :

Notice how given and what to contain.

2. In case of real property, by posting a similar notice, describing the property with sufficient certainty to enable a person of common understanding to identify it, for six weeks successively, in three public places of the county where the property is situated, and also where the property is to be sold, and publishing a copy thereof, once a week, for the same period, in a newspaper of the county, if there be one, or if there be none, and the property is not occupied by the judgment debtor, or by a tenant or purchaser under him, then in a paper at the capital of the territory.

Penalty to officer, for selling without notice.

SEC. 110. An officer selling without the notice prescribed by the last section, shall forfeit one hundred dollars to the aggrieved party, in addition to his actual damages ; and a person taking down or defacing the notice posted, if done before the sale, or the satisfaction of the execution, and without the consent of the parties, shall forfeit fifty dollars ; but the validity of the sale is not affected by either act.

Sale how to be made.

SEC. 111. A sale must be made by auction between nine o'clock in the morning and sunset ; after sufficient property has been sold to satisfy the execution, no more must be sold ; neither the officer holding the execution, nor his deputy can purchase ; when the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price ; and when the sale is of real property, and consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold.

Real estate when and how may be redeemed.

SEC. 112. Upon a sale of real property, where the estate is less than a leasehold of two years unexpired term, the sale is absolute ; in all other cases, the property sold is subject to redemption, as provided in the next five sections ; the officer must give to the purchaser, a certificate of the sale, proved or acknowledged, so that it may be recorded ; containing,

1. A particular description of the property sold :

2. The price bid for each distinct lot or parcel :

3. The whole price paid :

4. When subject to redemption, it must be so stated ; a duplicate of which certificate must be filed by the officer, with the register of deeds of the county.

Who may redeem.

SEC. 113. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed, in the manner provided in the next four sections, by the following persons or their successors in interest :

1. The judgment debtor or his successor in interest in the whole, or any part of the property :

2. A creditor having a lien by judgment or mortgage of the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the last four subdivisions, are in this chapter termed redemptioners.

SEC. 114. The judgment debtor, or redemptioner, may redeem the property from the purchaser within sixty days after the sale, on paying him the amount of his purchase, and if he be also a creditor, having a lien prior to that of the redemptioner, the amount of such lien, with interest.

Property to be redeemed in sixty days.

SEC. 115. If the property be so redeemed, by a redemptioner, either the judgment debtor or another redemptioner, may within thirty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on his redemption, with interest, and unless his lien be prior to that of the preceding redemptioner, the amount of such lien with interest. The property may be again, and as often as the debtor, owner, or any redemptioner is so disposed, redeemed from any redemptioner, within thirty days after his redemption, and notice thereof filed with the sheriff. If no redemption is made in sixty days after the sale, the purchaser is entitled to a conveyance; or if so redeemed, whenever thirty days have elapsed, and no redemption has been made and notified therein, the time for redemption has expired, and the last redemptioner is entitled to a sheriff's deed. If the debtor or owner redeem at any time before the time for redemption expires, the effects of the sale are terminated, and he is restored to his estate.

When judgment, debtor may redeem.

SEC. 116. The payment mentioned in the last two sections, may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale; and a tender of the money is equivalent to payment.

Payment mentioned in last section, to whom made.

SEC. 117. A redemptioner must produce to the officer or person from whom he seeks to redeem, and file with his notice, in the sheriff's office:

Redemptioner must produce to sheriff authority to redeem.

1. A copy of the docket of the judgment, under which he claims the right to redeem, certified by the clerk of the court of the county, where the judgment is docketed, or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the clerk:

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto: and,

3. An affidavit of himself or his agent, showing the amount then actually due on the lien.

SEC. 118. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or judgment creditor; but it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family while he occupies the property.

Court may grant order to stay waste, until time of redemption expires.

SEC. 119. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom, in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor; such judgment creditor, if the recovery was in consequence of the irregularity, shall thereupon be entitled to a new execution on the judgment, for the price paid on the sale with interest; and for that purpose the judgment shall be deemed valid against

When purchaser is evicted, may recover price paid with interest.

the judgment debtor, his personal representatives, heirs, or devisees; but not against a purchaser in good faith, or an incumbrancer, whose title or incumbrance shall have accrued before a levy on such new execution.

In case of several defendants, when contribution may be compelled.

SEC. 120. When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pay without a sale, more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property, or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing, is entitled to the benefit of the judgment to enforce contribution or repayment, if within ten days after his payment he file with the clerk of the court where the judgment was rendered, notice of his payment, and claim to contribution or repayment; upon filing of such notice, the clerk must make an entry thereof in the margin of the docket.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

When judgment, debtor may be compelled to answer in regard to his property.

SEC. 121. When an execution against property of the judgment debtor, or of any one of several debtors, in the same judgment issued to the sheriff of the county where he resides, or if he do not reside in this territory, to the sheriff of the county where the judgment roll, or a transcript of a justice's judgment is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return made, is entitled to an order from a judge of the district court in which the execution was issued, requiring such judgment debtor to appear and answer concerning his property, before such judge, or a referee appointed by the judge of the court, at a time and place specified in the order.

Court may order judgment debtor before him to answer concerning property.

SEC. 122. After the issuing of an execution against property, and upon proof, by affidavit of a party, or otherwise, to the satisfaction of the court, or a judge thereof, that any judgment debtor has property, which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear, at a specified time and place, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor, towards the satisfaction of the judgment, as are provided upon the return of an execution.

Judge may issue a warrant to arrest debtor.

SEC. 123. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may upon proof, by affidavit or otherwise, to his satisfaction, that there is danger of the debtor leaving the territory, or concealing himself, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before such judge; upon being brought before the judge, he may be examined on oath, and ordered to enter into an undertaking with one or more sureties, that he will attend from time to time, before the judge, or referee, as he shall direct, during the pendency of the proceeding and until the final determination thereof, and will not in the meantime dispose of any portion of his property, not exempt from execution; in default of entering into such undertaking, he may be committed to prison by warrant of the judge.

Sheriff's receipt discharge for judgment.

SEC. 124. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the exe-

cution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 125. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of the judgment debtor, or is indebted to him in an amount exceeding ten dollars, the judge may by an order require such person or corporation, or any officer or member thereof, to appear at a specified time and place and answer concerning the same; the judge may also, in his discretion, require notice of such proceedings to be given to any party in the action, in such manner as may seem to him proper.

When garnishee may be summoned to appear before the judge.

SEC. 126. Witnesses may be required to appear and testify upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

Witness may be required to appear as in other cases.

SEC. 127. The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge; if before the referee, the examination must be taken by the referee, and certified by the judge; all examinations and answers before a judge or referee under this chapter, must be on oath, except that when a corporation answers, the answer must be on the oath of an officer thereof.

Proceedings when matter is referred to referee.

SEC. 128. The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment, except that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, cannot be so applied when it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Judge may order property to be applied to satisfaction of judgment.

SEC. 129. The judge may also by order appoint a receiver of the property of the judgment debtor in the same manner, and with the like authority as if the appointment were made by the court; the judge may also by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt from execution and any interference therewith.

Judge may appoint a receiver to take the property.

SEC. 130. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property, adverse to him, or denies the debt, such interest or debt is recoverable only in an action against such person or corporation, by the receiver; but the judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution; such order may be modified or vacated by the judge granting the same, at any time, on such security as he may direct.

Judge may by order, forbid a transfer of property in certain cases.

SEC. 131. The judge may, in his discretion, order a reference to a referee, agreed upon or appointed by him, to report the evidence or the facts.

Judge may order a reference.

SEC. 132. The judge may allow to the judgment creditor, or to any person so examined, whether a party to the action or not, his charges, and a fixed sum in addition, not exceeding ten dollars, as costs.

Charges and costs allowed.

SEC. 133. If any person, party, or witness, disobey an order of the judge or referee, duly served, such person, party, or witness, may be punished by the judge, as for a contempt; the proceedings therefor are prescribed in chapter ninety-two of this statute, respecting the punishment of contempt.

Person who disobey judge or referee, liable for contempt.

SEC. 134. The provisions hereinbefore, in relation to proceedings supplementary to the execution, shall apply to executions issued by a justice of the peace.

Foregoing provisions to apply to justice of the peace.