

James C. Child
35
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
MOSES SHERBURNE and WILLIAM HOLLINSHEAD, Esqrs.,
COMMISSIONERS.

PUBLISHED BY STATE AUTHORITY.

SAINT PAUL:
THE PIONEER PRINTING COMPANY.

1859.

ence of magis-
trate.

of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been before him on a warrant of arrest.

ARREST BY A PRIVATE PERSON.

When private
person may
arrest person.

(17.) SEC. XVII. A private person may arrest another :
1. For a public offense committed or attempted in his presence ;
2. When the person arrested has committed a felony, although not in his presence ;
3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Must inform per-
son the cause
of arrest.

(18.) SEC. XVIII. He must, before making the arrest, inform the person to be arrested, of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

Person making
such arrest may
break open door.

(19.) SEC. XIX. If the person to be arrested had committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the same.

Person arrested
must be taken
before magis-
trate.

(20.) SEC. XX. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

RETAKING AFTER AN ESCAPE OR RESCUE.

Defendant may
be retaken if he
escape.

(21.) SEC. XXI. If a person arrested, escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time and in any place in the territory.

When pursuer
may break win-
dow or door.

(22.) SEC. XXII. [*As amended on page 26 of the amendments of 1852 to the revised statutes :*] To retake the person escaping or rescued, the person pursuing may, after notice of his intention, and refusal of admittance, break open an outer or inner door or window of a dwelling house.

CHAPTER 103.

EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

SECTION.

1. What officers authorized to issue process under this chapter.
2. Proceedings upon complaint being made ; justice to issue warrant.
3. Officer having process may apprehend defendant in any county.
4. Defendant may enter recognizance without examination.
5. Duty of magistrate taking the recognizance.

SECTION.

6. Proceedings when magistrate refuses to take bail.
7. Proceedings in case of felonies.
8. Before whom prisoner to be brought on arrest.
9. Justice may adjourn hearing for ten days.
10. Proceeding when defendant does not appear on adjourn day.
11. If person fail to recognize, must be committed.

- SECTION.
- 12. Examination how conducted.
 - 13. Examination how conducted.
 - 14. Examination how conducted.
 - 15. Testimony to be reduced to writing.
 - 16. Defendant when to be discharged.
 - 17. When defendant may be bailed.
 - 18. When defendant to be discharged.
 - 19. When witnesses may be held to bail.
 - 20. When justice may require other security of witnesses.
 - 21. When married woman or minor is witness.
 - 22. When witnesses may be committed.
 - 23. When prisoner may be released from.

- SECTION.
- 24. Justice may associate with himself another justice.
 - 25. Examination and recognizance how returned.
 - 26. Magistrate may discharge recognizance in certain cases.
 - 27. Order discharging recognizance when filed.
 - 28. Proceeding in case of forfeiture of recognizance.
 - 29. Security in recognizance may pay amount to county.
 - 30. Action on recognizance.
 - 31. Such action when barred or defeated.

[Chapter 114, Revised Statutes.]

(1.) SEC. I. For the apprehension of persons charged with offenses, the judges of the several courts of record, in vacation as well as in term time, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this chapter.

What officers authorized to issue process under this chapter.

(2.) SEC. II. Upon complaint being made to any such magistrate that a criminal offense has been committed, he shall examine on oath the complainant and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offense has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Proceedings upon complaint being made.

Justice to issue warrant.

(3.) SEC. III. If any person against whom a warrant may be issued for an alleged offense committed in any county, shall either before or after the issuing of such warrant, escape from or be out of the county, the sheriff or other officer to whom such warrant may be directed may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid and exercise the same authority as in his own county.

Officer having process may apprehend defendant in any county.

(4.) SEC. IV. In all cases where the offense charged in the warrant is not punishable by death or imprisonment in the territorial prison, if the person arrested request that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer making the arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offense, and next holden in the county where it shall be alleged to have been committed; and the party arrested shall thereupon be liberated.

Defendant may enter recognizance without examination.

(5.) SEC. V. The magistrate who shall so let the person arrested to bail, shall certify that fact upon the warrant, and shall deliver the same, with the recognizances by him taken, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district attorney, shall cause such witnesses to be summoned to the same court as he shall think necessary.

Duty of magistrate taking the recognizance.

(6.) SEC. VI. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall

Proceedings when magistrate refuses to take bail.

take him before the magistrate who issued the warrant, or in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereinafter directed.

Proceedings in case of felonies.

(7.) SEC. VII. When the offense charged in any warrant is punishable with death or by imprisonment in the territorial prison, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following section.

Before whom prisoner to be brought on arrest.

(8.) SEC. VIII. Every person arrested by warrant, for any offense where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he be absent or unable to attend, before some other magistrate of the same county, and the warrant with the proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

Justice may adjourn hearing for ten days.

(9.) SEC. IX. Any magistrate may adjourn an examination or trial pending before himself from time to time as occasion shall require, not exceeding ten days at one time, without the consent of the defendant or person charged, and at the same or a different place in the county as he shall think proper, and in such case, if the party is charged with a capital offense, he shall be committed in the mean time; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrates for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

Proceeding when defendant does not appear on adjourn day.

(10.) SEC. X. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default, to the district court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

If person fail to recognize must be committed.

(11.) SEC. XI. When such person shall fail to recognize, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

Examination how conducted.

(12.) SEC. XII. The magistrate before whom any person is brought upon a charge of having committed an offense, shall, as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matter connected with such charge, which may be deemed pertinent.

Examination how conducted.

(13.) SEC. XIII. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

Examination how conducted.

(14.) SEC. XIV. The magistrate while examining any witness may in his discretion exclude from the place of examination all the other witnesses; he may also, if requested, or if he see cause, direct the witnesses for or against the prisoner, to be kept separate so that they cannot converse with each other, until they shall have been examined.

Testimony to be reduced to writing.

(15.) SEC. XV. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate.

Defendant when to be discharged.

(16.) SEC. XVI. If it shall appear to the magistrate upon the whole examination that no offense has been committed, or that there is not

probable cause for charging the prisoner with the offense, he shall be discharged.

(17.) SEC. XVII. [As amended on page 26 of the amendments of 1852 to the revised statutes:] Persons charged with an offense punishable with death shall not be admitted to bail when the proof is evident or the presumption great; nor any person charged with an offense punishable with death or imprisonment in the territorial prison for a term exceeding seven years, be admitted to bail by a justice of the peace; in all other cases, bail may be taken in such sum as in the opinion of the judge or magistrate will secure the appearance of the person charged with the offense at the court where such person is to be tried.

When bail to be taken, and when not.

(18.) SEC. XVIII. If it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner guilty, and if the offense be bailable by the magistrate, and the prisoner offer sufficient bail, or the amount of money in lieu thereof, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offense be not bailable by the magistrate, the prisoner shall be committed for trial.

When defendant to be discharged.

(19.) SEC. XIX. When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offense, and in which the prisoner shall be held to answer.

When witnesses may be held to bail.

(20.) SEC. XX. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into a recognizance with such sureties as may be deemed necessary for his appearance at court.

When justice may require other security of witness.

16
18 61

(21.) SEC. XXI. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may in his discretion take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

When married woman or minor is witness.

(22.) SEC. XXII. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

When witness may be committed.

(23.) SEC. XXIII. Any judge of a court of record on application of any prisoner committed for a bailable offense, may inquire into the case and admit such prisoner to bail; and any person committed for not finding sufficient sureties to recognize for him, may be admitted to bail by either of said judges.

When prisoner may be released.

(24.) SEC. XXIV. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties before mentioned, but no fees shall be taxed for such associates.

Justice may associate with himself another justice.

(25.) SEC. XXV. All examinations and recognizances taken by any magistrate in pursuance of the provisions of this chapter, shall be certified and returned by him to the district attorney or the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for contempt.

Examination and recognizance how returned.

Magistrate may discharge recognizance in certain cases.

(26.) SEC. XXVI. When any person shall be committed to prison, or shall be under recognizance to any charge of assault and battery or other misdemeanor, for which the party injured may have a remedy by civil action, except when the offense was committed by or upon any sheriff or other officer of justice, or riotously or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on payment of all the costs which have accrued, discharge the recognizance or supersede the commitment by an order under his hand; and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

Order discharging recognizance when filed.

(27.) SEC. XXVII. Every such order of the magistrate discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk, before the sitting of the court before which they are bound to appear; and every order superseding the commitment of the party charged, or any witnesses, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Proceeding in case of forfeiture of recognizance.

(28.) SEC. XXVIII. When any person under recognizance in any criminal prosecution, either to appear and answer or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct.

Security in recognizance may pay amount to county.

(29.) SEC. XXIX. Any surety in such recognizance may by leave of the court, after default, and either before or after the process has been issued against him, pay to the county treasurer or to the clerk of the court, the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

Action on recognizance.

(30.) SEC. XXX. When any action is brought in the name of the territory of Minnesota against a principal or surety in any recognizance entered into, either by a party or a witness in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may, on application of any party defendant, remit any part of the whole of such penalty and may render judgment thereon for the territory, according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

Such action when barred or defeated.

(31.) SEC. XXXI. No such action brought on a recognizance as mentioned in the preceding section shall be barred or defeated, nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any such defect in the form of the recognizance; if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance.