

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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

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1859.

An Act to provide for the Salaries of the Judges of the Supreme and District Courts.

[Passed August 11, 1858.] c. 89

(17.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That the chief justice and associate justices of the supreme court shall severally receive a salary of two thousand dollars per annum. Salaries of the judges of supreme court.

(18.) SEC. II. The judges of the district courts shall severally receive a salary of two thousand dollars per annum. Salaries of judges of district courts.

(19.) SEC. III. The said salaries provided for in the foregoing sections of this act shall be payable quarterly by the state treasurer, on the order of the auditor, out of any money in the treasury of the state not otherwise appropriated. Salaries payable quarterly.

(20.) SEC. IV. The term of office of each of the said judges shall commence and date from the first Monday of January, 1858, and their several duties shall be and remain as now provided by law, until the same shall be changed by the legislature. Term of office.

(21.) SEC. V. This act shall take effect and be in force from and after its passage. Act takes effect on passage.

CHAPTER 57.

DISTRICT COURTS.

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*Chapter de courts de 1858*      *under Chap 15 h 136, 1861*

*Donner 1861*      *Chap 68 h 125 - 1863*

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[ Chapter 69, Revised Statutes, Article 2 ]

SEC. I. and II. [ *Obsolete.* ]

District court to have original jurisdiction.

(1.) SEC. III. [ *As amended on page 6 of the amendments of 1852 to the revised statutes.* ] The district courts of this territory shall have original jurisdiction in equity, as hereinafter prescribed; and original jurisdiction in all civil actions within their respective districts, when the sum in controversy shall exceed one hundred dollars; and in all civil actions of which a justice of the peace has not jurisdiction, whatever may be the amount in controversy; and appellate jurisdiction from courts of probate and justices of the peace, as hereinafter provided; and the said courts, respectively, shall have power and authority to hear and determine all cases of crimes and misdemeanors, of whatever kind, which shall have been committed in any county or place within their respective districts, or as otherwise provided by statute, and the judges of said courts shall be conservators of the peace.

Power and authority of district courts.

Powers of judges of district court.

(2.) SEC. IV. The said courts in term time, and the judges thereof in vacation, shall have power to award throughout the territory, returnable to the proper county, writs of injunction, *ne exeat*, and all other writs or processes which may or shall be necessary to the perfect exercise of the powers with which they are vested, and the due administration of justice.

Judge not to sit when interested.

(3.) SEC. V. No judge of any of the courts of record of this territory, shall sit in any cause in which he is interested, either directly or indirectly, or in which he would be excluded under the common law from sitting as a juror.

Not to practice as attorney or solicitor.

(4.) SEC. VI. No judge of any of the courts of record of this territory, shall practice as an attorney, counsellor or solicitor at law, or in equity, except it be in a cause in which he is a party in interest, nor shall he receive any fee for any legal or judicial services, other than those prescribed by law; nor shall he be the partner of any practising attorney in the business of his profession, nor shall any one of the judges aforesaid, hold any other office under the laws of this territory, during the term of his judgeship. And each of the judges of the several district courts shall reside permanently within their respective judicial districts, during their term of office.

Not to have law partner.

Court not to be open on Sunday except in certain cases

(5.) SEC. VII. No one of the courts of this territory shall be opened for any purpose on Sunday, other than the receiving of a verdict, or discharging of a jury; but this section shall not in any wise prevent the judges of any of said courts or any justice of the peace, exercising jurisdiction, in any case where it shall or may be necessary for the preservation of the peace, the sanctity of the day, or in arresting and committing any offender.

When judge is unable to hold court, clerk to notify governor.

(6.) SEC. VIII. In case any judge of a district court, from sickness or any other cause, shall be unable to hold any of his courts, or in case any vacancy shall occur in any of the districts, the clerk thereof shall in due time give notice of such fact to the governor, who shall assign to one of

the other district judges to hold the court or courts, in such district, until the inability of the judge shall be removed, or the vacancy filled.

(7.) SEC. IX. In case the judge of any of the district courts shall not attend at the place of holding the same, by four o'clock in the afternoon, on the first day of the term of such court, the sheriff or clerk shall forthwith open and adjourn the same until nine o'clock in the forenoon of the succeeding day; and if the said judge does not then appear, the court shall be adjourned by one of the aforesaid officers, without day, and the jury dismissed.

If judge shall not attend, clerk to adjourn court.

(8.) SEC. X. All persons bound by recognizance, or otherwise to appear at any court, the term whereof shall not have been held, shall be bound to appear at the next succeeding term of the said court.

When person bound to appear at one term, to appear at the next term.

(9.) SEC. XI. [As amended on page 6 of the amendments of 1852 to the revised statutes.] No process, proceeding or writ, civil or criminal, before any of the said courts, shall abate or be discontinued by reason of any vacancy in the office, or change of any judge of said courts, but shall be proceeded in like manner, by his successor, or the judge who shall be assigned, as if the said vacancy or change had not occurred.

Process, &c., of court not to abate by reason of vacancy, &c., of office of judge.

(10.) SEC. XII. In case a stated term of any court shall not have been holden, any process issuing therefrom may be tested on the first or any other succeeding day, when such term should have been held.

Process how tested when term not held.

(11.) SEC. XIII. The adjournment of any one of the said courts before the end of its term shall not affect the test, service or return of any writ or process, made returnable to any day of such term subsequent to such adjournment.

Adjournment of court not to affect the return of writ.

(12.) SEC. XIV. All writs or processes issuing from or out of any of the said district courts, may be tested in the name of the presiding judge thereof, or in the name of any one of the judges of the supreme court.

Writs how tested.

SEC. XV. [Obsolete.]

(13.) SEC. XVI. [As amended on page 6 of the amendments of 1852 to the revised statutes.] In all cases where by the statutes of this territory, any writ or process is required to be issued out of any of the courts of record, the same shall be sealed with the seal of the court, dated on the day on which it issued, signed by the clerk, and made returnable on the first day of the term succeeding its date when no other time is fixed by law, or allowed by the rules or practice of the court, for the return thereof.

Writ or process of court to be sealed, &c.

When returnable.

(14.) SEC. XVII. All writs or processes issuing from or out of said courts shall, before the delivery thereof to the officer whose duty it is to serve the same, be indorsed by the clerk, with the name of the attorney or other person demanding the process.

Writs to be indorsed with name of attorney.

(15.) SEC. XVIII. The district courts shall have power in any action pending in them, or either of them, upon motion, and upon good and sufficient cause, being shown by affidavit, or affirmation, and due notice thereof being given, to order the parties or either of them to produce all books, papers or writing in their possession or power which contain evidence pertinent to the issue; and if either party shall fail to comply with such order, or to satisfy the said courts why they have not power so to do, it shall be lawful for the said courts, if the party so refusing shall be the plaintiff, to give judgment for the defendant, as in case of non-suit; and if a defendant, to give judgment against him or her by default, as far as relates to such part of the plaintiff or plaintiffs' demand, or of the defendant's defence, to which the books of the party are alleged to apply.

Court may require books and papers to be produced.

(16.) SEC. XIX. [As amended on page 6 of the amendments of 1852 to the revised statutes.] The judge of any of the district courts is hereby authorized to adjourn the same from time to time during any term thereof; to hold adjourned terms of said court, at any time he may deem proper,

Judges of district court may adjourn the same.

May appoint special term.

or appoint special terms in any county of his district, for the trial of civil and criminal cases and issues of law, or any or either of them, giving thirty days previous notice thereof, by advertisement, to be published four successive weeks in a newspaper printed in the said county, if there be one, and if not, in the nearest paper published in the territory, and also by posting a notice thereof on the door of the place for holding the court, in the county in which said term is to be held; and may in his discretion direct grand and petit jurors to be drawn and summoned for any adjourned or special term in the manner prescribed by law; and no grand or petit juror shall be drawn or summoned to attend any such adjourned or special term of the court, except by order of the judge thereof. The provisions of the statutes requiring jurors to be drawn for every term of the district court, shall only apply to the regular terms.

May direct grand or petit jurors to be drawn.

Application of provisions of these statutes.

Judges may appoint place of holding court in certain cases.

(17.) SEC. XX. Whenever the court house, or place of holding court, in any county, shall by any means have been destroyed, or shall from any cause be unsafe, unfit or inconvenient for the holding of any court, or in case no court house shall have been provided, the judge of the district court of the county may appoint some convenient building in the vicinity of the place where the court is required to be held as a temporary place for the holding of said court.

Judge may order a special venire in certain cases.

(18.) SEC. XXI. It shall be lawful for the judge of the district court of either the counties of this territory, whenever there shall happen to be a deficiency of jurors for any cause whatever, to rule a special venire through the term or any days of the term, to the sheriff of the proper county, to summon a number of jurors sufficient to complete the number of the original panel.

An Act to authorize the exercise of all Equity Jurisdiction in the form of Civil Actions, and for other purposes.

[Passed March 5, 1853.] C. )

Equity proceedings as in civil actions.

(19.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* That all equity and chancery jurisdiction, authorized by the organic act of the territory, shall be exercised, and all suits or proceedings to be instituted for that purpose are to be commenced, prosecuted, and conducted to a final decision and judgment, by the like process, pleadings, trial, and proceedings as in civil actions, and shall be called civil actions.

Suits, &c., how conducted.

(20.) SEC. II. All suits, applications and proceedings, now authorized by statute to be commenced, prosecuted, and conducted in chancery, or enforced by chancery jurisdiction, including the foreclosure and satisfaction of mortgages, shall hereafter be commenced, prosecuted, and conducted to a final decision and judgment, by the like process, pleadings, trial and proceedings, as in civil actions.

Ne exeat and injunction, how granted; answer.

(21.) SEC. III. The district court, or any judge thereof, may grant writs of *ne exeat* and injunction in all civil actions, on complaint, and when a counter claim or equities in the nature of a counter claim are set up in an answer, then on such answer, and in such case there may be annexed to the duly verified complaint or answer, affidavits of persons other than the party, tending to show the truth of the facts and allegations relied upon for the allowance of such application.

Ne exeat and injunction, how granted.

(22.) SEC. IV. Such writs of *ne exeat* and injunction may be granted in the progress of any action, at any time before the final decision, judgment or decree therein, either by petition duly verified, or on affidavits, or both, provided that no injunction shall issue to stay proceedings in any civil action before final decision therein.

(23.) SEC. V. All equities existing at the time of the commencement of any action, in favor of a defendant therein, or discovered to exist after such commencement, or intervening before a final decision, in such action, shall be interposed, if at all, by way of defense to the action by answer or supplemental answer, in the nature of a counter claim, and issue taken thereon by a reply or supplemental reply thereto, and be determined as the other issues in said actions.

Equities, how interposed.

(24.) SEC. VI. In all civil actions commenced after this act shall take effect, when the party prosecuted has equities, claims, or demands which could heretofore only be enforced by cross action or cross bill, the same shall be interposed by way of answer in the nature of a counter claim, and the plaintiff may reply thereto, and put the same in issue. And if the same be admitted by the plaintiff, or the issue thereon be determined in favor of the defendant, he shall be entitled to such relief, equitable or otherwise, as the nature of the case demands, by judgment, or otherwise.

Counter claim.

(25.) SEC. VII. Whenever equity and justice requires a discovery which could before this act took effect be enforced by a bill or cross bill, such discovery may be compelled to be made under the oath of the parties of whom the discovery is sought, either by a verified complaint or answer, setting forth therein specifically the matters upon which a discovery is required, and the party seeking such discovery may have the answer or reply stricken out for insufficiency, and compel a further answer, or reply, in case such pleading does not contain the full and complete discovery sought, or give a good and sufficient reason for not making such discovery.

Discovery, how enforced.

(26.) SEC. VIII. In all cases wherein chancery suits and proceedings were authorized before this act took effect, and in which bonds, undertakings, or other securities were or might be required, the same may be hereafter required in the civil actions substituted therefor by virtue of this act.

Bonds, &c., may be required.

(27.) SEC. IX. In all civil actions wherein receivers may be necessary, or where in chancery suits or proceedings they were authorized to be appointed previous to this act taking effect, they may hereafter be appointed, if necessary, and they may be required to give such securities for the faithful performance of their duties, and the discharge of their trusts, as by law, rule of court, or former practice, were authorized.

Receivers may be appointed.

(28.) SEC. X. In all cases where, in chancery before this act took effect, masters and examiners were required to act, or might have acted, the like acts and duties shall and may hereafter be performed when necessary, by a referee or referees appointed as in civil actions.

Referees authorized.

(29.) SEC. XI. The supreme court shall have the power to provide general rules for its own conduct, and the conduct of the district courts of the territory, and the judges thereof and other officers of said courts, and to carry into effect legal rules and statutory provisions; and also to supply defects or omissions in practice, in respect to the commencement, prosecution and conducting all civil actions, special proceedings, appeals, writs of error and certiorari, and all other writs and statutory proceedings: *provided always*, that no legal rule or statutory provision is to be violated or abrogated thereby.

Rules of court, and defects provided for.

(30.) SEC. XII. All the statutory provisions authorizing appeals in civil actions, and appeals in chancery existing before the passage of this act, which are necessary and applicable, may be applied and used in appealing causes which under this act are intended to be conformed to and are called civil actions.

Appeals.

(31.) SEC. XIII. All the provisions respecting fees, costs, and disbursements, in civil actions and appeals, in force at the time of the passage of this act, shall be applicable to the civil actions, proceedings and appeals

Taxes and costs

authorized by this act, and all provisions for fees, costs, and disbursements in chancery suits and proceedings are hereby abolished: *provided*, that in actions for the foreclosure of mortgages and for the partition of real property, where no issue is joined, the costs of the plaintiff shall be the same as if issue had been joined therein.

Chancery proceedings abolished.

(32.) SEC. XIV. The court of chancery and the right to commence or institute chancery suits and proceedings, and all statutes and statutory provisions inconsistent with this act, shall be and are hereby abrogated and abolished: *provided, however*, that this act shall not apply to suits and proceedings commenced before this act takes effect, which shall be prosecuted and conducted to a final determination under the laws as they existed previous to the existence of this act.

Act when to take effect.

(33.) SEC. XV. This act shall take effect from and after its passage.

An Act to confer the authority of changing the names of Persons, Towns and Villages upon the District Court.

[Passed February 26, 1858.] c. / d

District court may change names.

(34.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That the district court shall have the authority to change the names of persons, and the names of towns and villages within this state.

Changing individual names; petition to be filed; what it shall set forth.

(35.) SEC. II. That any person desiring to change his or her name may file a petition with the clerk of the district court, in the county in which such person may be a resident, setting forth, first, that the petitioner has been a *bona fide* citizen of such county at least one year prior to the filing of the petition; second, the cause for which the change of petitioner's name is sought; third, the new name which is asked for. And it shall be the duty of the district court, at any term thereof, after the filing of such petition, upon being satisfied, by proof in open court, of the truth of the facts set forth in said petition, and that there exists proper and reasonable cause for changing the name of the petitioner, and that notice had been given in some newspaper in general circulation in such county, for three consecutive weeks next preceding the sitting of the court, or if no paper be printed at the county seat, then in some paper printed at the seat of government, of the intended application, to order and direct a change of the name of such petitioner, and that an order be made for that purpose upon the journals of such court.

Public notice to be given before hearing in court.

Changing names of towns.

(36.) SEC. III. That whenever it may be desirable to change the name of any town or village in any county of this state, a petition for that purpose may in like manner be filed with the clerk of the district court for such county, signed by at least twenty landholders of the vicinity, setting forth the cause why such change is desirable, and the name prayed to be substituted. And the court upon being satisfied, by proof, that the prayer of the petitioners is just and reasonable, and that notice as required in the foregoing section had been given, and that the inhabitants of such town, or the majority of the qualified voters thereof desire such change, and that there is no other town or village in this state with the same name with that which is prayed for, may order a change of the name of such town or village, as prayed for in such petition.

Proceedings.

Public notice.

Record on the journals of court.

(37.) SEC. IV. After such change of name as is contemplated in the foregoing section shall have been ordered to be entered upon the journals of such court, then it shall be the duty of such person or persons most directly [interested] in such change to cause notice thereof to be published in like manner as contemplated by the first section of this act.

Public notice of change.

(38.) SEC. V. It shall be the duty of the clerk of the district court to keep a separate book for recording the proceedings under this act. Clerk of court.

(39.) SEC. VI. All proceedings under this act shall be at the cost of the petitioners: *provided always*, that any change of name under the provisions of this act shall not, in any manner, affect or alter any right of action, legal process, or property. Costs.

(40.) SEC. VII. This act shall take effect and be in force from and after the first day of May, one thousand eight hundred and fifty-eight. Take effect when.

An Act relating to the Powers and Duties of the District Courts and District Judges.

[Passed August 11, 1858.] c. 49

(41.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That whenever the records of the proceedings in the several cases in which judgments or decrees have been ordered or rendered in the late territorial courts, shall be transferred to and deposited in the district courts of the state, the said district courts and the judges thereof shall possess the same powers, and perform the same duties in reference to such judgments and decrees as if the same had been ordered or rendered in said district courts. Powers of district court over cases from territorial court.

(42.) SEC. II. In all cases not heretofore otherwise provided for by law, the district courts and district judges of the state shall possess and exercise the same powers, general and special, and perform the same duties as the district courts and district judges of the late territory of Minnesota. Same subject continued.

(43.) SEC. III. This act shall take effect and be in force from and after its passage. Takes effect on passage.

An Act to require Clerks of District Courts, Judges of District Courts and District Attorneys to file copies of their official Bonds and Oaths in the Office of the Clerk of the Supreme Court.

[Passed July 22, 1858.] c. 63

(44.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* The several judges of the district courts, clerks of the district courts, and district attorneys, are hereby required to file or cause to be filed in the office of the clerk of the supreme court, certified copies of their official oaths or bonds, or both, as the case may be. Oath of office and bonds of judges and clerks of district courts to be filed with clerk of supreme court.

(45.) SEC. II. It is hereby made the duty of the clerk of the supreme court to file the said oaths and bonds in his said office, free of all charges whatsoever, and it is further made the duty of the clerk of the supreme court, in case of the failure of any of the officers herein enumerated so to do, to notify said officers of this requirement, and request compliance with the same. Duty of supreme court clerk.

(46.) SEC. III. The certificate of the clerk of the supreme court to the official acts of any of the said officers shall be taken as *prima facie* evidence of their official character, in any of the courts of this state. Certificate of clerk to be evidence.

(47.) SEC. IV. This act shall take effect and be in force from and after its passage. Takes effect on passage.

An Act to establish the Terms of the District Court of the State of Minnesota.

[Passed August 12, 1858.] a. 67

(48.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* The general terms of the district court shall be held at the times and places following: District court terms.



In the first  
district.

1. In the first judicial district:  
In the county of Washington, on the first Monday of April and the first Monday of November in each year.

In the county of Chisago, on the fourth Monday of April and the second Monday of October in each year.

In the county of Anoka, on the fourth Monday of May in each year.

In the county of St. Louis, on the first Monday of August in each year.

In the second  
district.

2. In the second judicial district:

In the county of Ramsey, on the first Monday of May and the second Monday of September in each year.

In the third  
district.

3. In the third judicial district:

In the county of Wabasha, on the third Monday of April and the second Monday of October in each year.

In the county of Olmsted, on the first Monday of May and the third Monday of October in each year.

In the county of Houston, on the third Monday of May and the first Monday of November of each year.

In the county of Fillmore, on the first Monday of June and the second Monday of November in each year.

In the county of Winona, on the third Monday of June and the fourth Monday of November in each year.

In the fourth  
district.

4. In the fourth judicial district:

In the county of Stearns, on the second Monday after the first Tuesday in March and September.

In the county of Wright, on the fourth Monday after the first Tuesday in March and September.

In the county of Meeker, on the fifth Monday after the first Tuesday in March and September.

In the county of Carver, on the sixth Monday after the first Tuesday in March and September.

In the county of Hennepin, on the eighth Monday after the first Tuesday in March, September and December.

In the county of Benton, on the thirteenth Monday after the first Tuesday in March and September.

In the county of Morrison, on the fifteenth Monday after the first Tuesday in March and September.

In the county of Crow Wing, on the sixteenth Monday after the first Tuesday in March and September.

In the fifth  
district.

5. In the fifth judicial district:

In the county of Waseca, on the first Monday of April and the first Monday of September of each year.

In the county of Dodge, on the second Monday of April and the second Monday of September in each year,

In the county of Mower, on the third Monday of April and the third Monday of September in each year.

In the county of Freeborn, on the fourth Monday of April and the fourth Monday of September in each year.

In the county of Rice, on the first Monday of May and the first Monday of October in each year.

In the county of Goodhue, on the third Monday of May and the third Monday of October in each year.

In the county of Dakota, on the first Monday of June and the first Monday of November in each year.

In the county of Scott, on the third Monday of June and the third Monday of November in each year.

In the county of Steele, on the first Monday of July and the first Monday of December in each year.

6. In the sixth judicial district :

In the sixth district.

In the county of McLeod, on the fourth Monday of February in each year.

In the county of Sibley, on the first Monday of March and September in each year.

In the county of LeSueur, on the third Mondays of March and September in each year.

In the county of Nicollet, on the first Monday of June and the third Monday of November in each year.

In the county of Blue Earth, on the third Mondays of June and December in each year.

In the county of Faribault, on the first Monday of April in each year.

In the county of Brown, on the third Monday of April of each year, and the judge of this district is hereby empowered to hold further terms of court, in and for any other county attached to, and made a part of, this district, whenever in his discretion any such term may be expedient and may be required to promote the ends of public justice ; but in such case, due notice of any such term shall be given by publication of the same in all the newspapers published in this district, at least once a week, for four successive weeks previous to the opening of any such term.

(49.) SEC. II. For judicial and other purposes to enforce civil rights and criminal justice, the counties of Buchanan, Kanabec and Pine are hereby attached to and made part of the county of Chisago, and for that purpose all the officers necessary to effect the same, belonging to the county of Chisago, shall have and exercise full jurisdiction, power and authority over, and act in and for the counties of Buchanan, Kanabec and Pine, as fully as if they were part of the same ; and for the like purposes, and to the same extent, the counties of Manomin, Monroe, and Isanti are hereby attached to the county of St. Louis ; and for the like purposes, and to the same extent, the county of Todd is hereby attached to the county of Stearns ; and for like purposes, and to the same extent, the counties of Crow Wing, Mille Lac, Itasca, Pembina and Cass, are hereby attached to the county of Morrison ; *provided*, that the act shall not interfere with the legal exercise of authority of the officers of the counties attached.

Buchanan, Kanabec and Pine counties attached to Chisago county for judicial purposes.

Manomin, Monroe and Isanti, attached to St. Louis county.

Todd county attached to Stearns county.

Crow Wing, Mille Lac, Itasca, Pembina and Cass counties attached to Morrison.

(50.) SEC. III. That whenever a judge of the district court shall be interested as counsel, or otherwise, in the event of any cause or matters pending before said court, in any county of his district, it shall be the duty of the other district judges, or one of them, when thereunto requested by said judge so interested as aforesaid, to attend and hold the court wherein such cause or matter is pending, for the trial of the same, and it shall be the duty of the judge of any district to discharge the duties of the judge of any other district not his own, when convenient or the public interest requires it.

In suits wherein the judge is interested, another judge to hear the cause.

(51.) SEC. IV. All acts and parts of acts inconsistent with this act, are hereby repealed.

Conflicting acts repealed.

(52.) SEC. V. This act shall take effect and be in force from and after its passage.

To take effect when.

(53.) SEC. XXIII. (a) That whenever any term or terms of court are authorized by law to be held in any county and no time specified for holding the same, it shall be the duty of the judge of the district, of which such county shall compose a part, to order and prescribe the time for holding the term or terms for such county by causing a copy of the order to be

Notice of holding courts.

e. 5

(a) Sections XXIII and XXIV are part of an act passed March 1st, 1856, and are applicable where a court is ordered and no time appointed by law.

filed in the office of the clerk of the district court in such county, and cause the same to be published in some newspaper in such county, and in one paper published in the city of St. Paul, at least six weeks before the time of holding such terms; if no paper be published in said county, then in a paper published in some adjoining county, having a circulation in such county.

Duty of clerks of courts. (54.) SEC. XXIV. Such clerk of the district court shall file in the office of the clerk of the board of county commissioners of his county, an attested copy of such order filed in his office, and shall deliver to the sheriff of his county a like attested copy of such order.

An Act for an Act relating to District Courts and for other purposes.

[Passed May 23, 1857.] c. 83

Laws in force so far as the same were repealed. (55.) SECTION I. (b) *Be it enacted by the legislative assembly of the territory of Minnesota:* The laws in force in the territory of Minnesota prior to the 16th day of August, A. D. 1856, so far as the same were repealed or in anywise affected by the act of congress, approved on the 16th day of August, A. D. 1856, entitled "An act to amend the acts regulating the fees, costs and other judicial expenses of the government in the states, territories and district of Columbia, and for other purposes," are hereby re-enacted and declared to be in force as fully to all intents and purposes as the same were before the passage of the act aforesaid, so far as the said laws are not inconsistent with the laws of the United States or with the provisions hereinafter contained.

Duty of judge. (56.) SEC. II. Whenever any term or terms of court are authorized to be held in any county, it shall be the duty of the judge of the district of which such county shall compose a part, to prescribe the time for holding the term or terms for such county by causing a copy of the order therefor, to be filed in the office of the clerk of the district court in such county, and by causing the same to be published in some newspaper in such county, and in one newspaper published in the city of St. Paul at least four weeks before the time of holding such term or terms, and if no paper be published in such county, then in a paper published in some adjoining county.

File copy. (57.) SEC. III. Such clerks shall file in the office of the clerk of the board of county commissioners of his county, an attested copy of such order, and shall deliver a like attested copy to the sheriff of his county.

SEC. IV. [Obsolete.]

Expenses, how paid. (58.) SEC. V. The expenses of holding district courts in the several counties not otherwise provided for by the laws of the United States, shall be audited by the several clerks thereof, who shall issue certificates for the same, to be paid out of the county treasury respectively.

SEC. VI. [Superseded by section 13, article 6 of the constitution.]

Acts repealed. (59.) SEC. VII. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Take effect. (60.) SEC. VIII. This act shall take effect and be in force from and after its passage.

(b) Sections I and II of the act of 1857 are nearly similar to sections XXIII and XXIV of the act of 1856, just above; but as there are no other provisions for calling courts for which the time is not fixed by statute, they are all inserted.

An Act providing for the transfer of the Records of the late Territorial Courts to the State Courts.

[Passed July 12, 1858.] c. 22-

(61.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That all cases and proceedings pending in the late supreme court of the territory, together with the records and files thereof, not transferred by any law of the United States to any court or tribunal of the United States, and which are not cognizable in the courts of the United States, shall be and are hereby transferred to the supreme court of the state of Minnesota, to be proceeded and finished or decided in the manner provided by law; and the said supreme court of the state shall take cognizance of all such cases, and shall proceed to hear and determine the same, and the mandates and all writs necessary to the exercise of the jurisdiction of the supreme court of the state in such cases; and the carrying into effect the judgments, orders and decrees thereon shall be directed to the district court of the state and county in which said case or cases originated, and said district courts of the state shall cause the same to be duly executed and obeyed. The said supreme court of the state shall also execute the mandates and writs of the supreme court of the United States in all cases of actions removed to that court from said late supreme court of the territory, as fully in all respects as the supreme court of the territory could have executed the same had it not been superseded by the state court.

Transfer of cases from supreme court of territory to supreme court of state.

Supreme court to execute mandates of U. S. supreme court.

(62.) SEC. II. That all and singular the records and files in the cases and proceedings pending in the several district courts of the territory of Minnesota, except such as are exclusively cognizable in the circuit or district courts of the United States, and all and singular the records of the proceedings in the several cases in which judgments or decrees have been ordered in said courts, shall, from and after the passage of this act, be transferred to and deposited in the district courts of the state of Minnesota, in the counties respectively in which said actions or proceedings originated.

Transfer from district courts of territory to those of the state.

(63.) SEC. III. That whenever the records of the proceedings in any action or proceeding now pending and undetermined in any of the district courts of the territory shall be transferred to and deposited in the district courts of the state pursuant to the provisions of this act, the district court of the state to which the same has been so transferred, shall thenceforth be deemed to have jurisdiction of such action or proceeding, and shall take cognizance thereof and proceed to hear and determine the same; and from judgments or decrees rendered therein a writ of error may be sued out or an appeal may be taken to the supreme court of the state of Minnesota, which shall determine the cause in the same manner as if such judgment or decree had been rendered in the district court of the state of Minnesota; and the mandates and all writs necessary to the exercise of the appellate jurisdiction of the said supreme court in such case shall be directed to the district court of the state from which the said appeal was taken or to which the said writ of error was directed, and the said district court shall cause the same to be duly executed and obeyed.

State courts to have jurisdiction of pending and undetermined actions in territorial courts.

Appellate jurisdiction.

(64.) SEC. IV. It shall be the duty of each clerk of the district court of each county of the state, immediately after the passage of this act, upon the order of the judge of his district, to demand of the clerk of the district court of the territory of his county, or other person or officer having in his custody or possession, records of the proceedings referred to in the preceding section—the delivery of the said records to be deposited as in and by the preceding section of this act required; and if such clerk or other person shall refuse to comply with such demand, such refusal shall

Records, &c., in possession of clerks of territorial courts to be given up on the order of district judges; refusal deemed contempt.

be deemed a contempt of court, and the said judge making such order, is hereby authorized and required to compel the delivery of said records, by attachment or otherwise, according to law.

Unfinished business before supreme judges imposing special duties to be transferred to judge in district where trust is situated.

(65.) SEC. V. That any unfinished business or proceedings now remaining or pending before the late supreme court judges of the territory of Minnesota, or either of them, as judge or judges of the district court of said territory or otherwise, under any general law of the United States or of the territory of Minnesota, or both, or under any other act or granting special powers or imposing special duties or trusts upon said judge or judges, be and the same is hereby transferred to the district judge of the state of the district in which such business or proceedings originated or the subject of the trust is situated, to be proceeded in, finished, decided or executed, in the same manner provided for by the law; and the said district judge of the state shall have, exercise and possess the same rights, powers and duties which have been possessed or exercised by the said judges of the said territory, so far as may be necessary to enable him to determine, execute and finish any such matter, business, trust or proceeding so pending and unexecuted, or undetermined as aforesaid; any law of said territory to the contrary notwithstanding.

Take effect when.

(66.) SEC. VI. This act shall take effect and be in force from and after its passage.

## CHAPTER 58.

### PROBATE COURTS.

#### SECTION

1. Court of probate established.
2. Jurisdiction of probate court.
3. Jurisdiction of probate court.
4. Jurisdiction acquired by one judge of probate exclusive.
5. Probate court to be held by the judge, in his absence by the district attorney.
6. Probate court is always open.
7. No pleading in probate court, proceedings, &c.
8. Judge of probate must keep office open at all hours.
9. Books of record to be kept by judge of probate.
10. Register what to contain.
11. Each book to contain an index of entries.
12. Successor may complete unfinished business.
13. Judge of probate cannot be attorney in certain cases.
14. Costs may be allowed by judge of probate.
15. Judge may issue execution as in district courts.
16. Process by whom executed.
17. Judge of probate to have custody of insane persons and drunkards.
18. Guardians appointed, their powers and duties.
19. County commissioners or justice may apply for the appointment of such guardian.
20. Application how to be made, and what to contain, &c.
21. Judge to appoint time and place for hearing.
22. Judge to issue citation to such person, how served.

#### SECTION

23. Jury impaneled to try matters of the application.
24. Judge of probate to preside at the trial, and decide questions of law as in a civil action.
25. Party complained of may appear by counsel on trial.
26. Inquisition of the jury how made and what to contain.
27. When the judge to appoint one or more guardians.
28. Appointment of guardian how made and what to contain.
29. Guardian must be sworn, and give bond.
30. Judge must appoint appraisers to make inventory and appraisal of effects.
31. Power and responsibilities of guardians.
32. Guardians how to pay the debts, &c., of ward.
33. When judge may order real property to be sold to pay debts.
34. When disability is not permanent, how judge to proceed.
35. Sale or mortgage of real estate how conducted.
36. Guardian may be required to give new bond and may be removed.
37. Guardian may execute conveyance of property.
38. When powers of guardian cease.
39. Judge how to proceed upon application to remove guardian.
40. Judge how to proceed upon application to remove guardian.