

# CHANGES

-IN THE-

General Statutes of 1878,

EFFECTED BY THE

GENERAL LAWS OF 1879 AND 1881,

Arranged with reference to the Chapter and Section Amended.

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SAINT PAUL:  
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upon the duties of his office he shall take and subscribe an oath, as prescribed in the General Statutes for judicial officers, which oath shall be filed in the office of the city clerk of said city. He shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and, as a conservator of the peace, shall have all power and authority which is or may be by law vested in justices of the peace, or any other judicial officer. There shall be one special judge of said municipal court, whose manner of election, term of office, powers and duties, and qualifications, shall be the same as those of the municipal judge, except as otherwise provided in this act, and his successor shall be elected and vacancies filled in like manner. In case of a press of business in said court, at the request of the municipal judge, or in case of the absence or sickness of the municipal judge, at the request of the mayor or acting mayor of said city, the said special judge shall act as judge of said court, and when the special judge so acts at the request of the municipal judge, each may have and exercise the powers of said court. The said special judge shall not act as judge of said court, except as above provided; and when such special judge shall act as judge of said court at the request of the mayor or acting mayor of said city, as above provided for, he shall receive compensation therefor from said city, at the rate of eight dollars per day; but he shall not be entitled to compensation from said city when acting at the request of the municipal judge, unless the city council shall so direct previous to the performance of such services. This section shall not incapacitate such special judge from acting as attorney in any case in said court; but when he is acting as judge of said court he shall take no action in such case, save as to adjourn the same. (*Sp. Laws 1874, c. 141, § 3, as amended by Sp. Laws 1877, c. 178, § 1; Sp. Laws 1878, c. 65, § 2; and Sp. Laws 1879, c. 87, § 1.*)

See page 657.

#### MUNICIPAL COURT OF STILLWATER.

\*§ 136. Service of process outside of the county of Washington prohibited, and jurisdiction of court outside of Washington county abolished. (*Sp. Laws 1879, c. 341.*)

See page 666.

\*§ 148. Salary of judge fixed at one thousand dollars per annum, and clerk at five hundred dollars per annum. (*Sp. Laws 1879, c. 71.*)

### CHAPTER LXV.

#### COURTS OF JUSTICE OF PEACE.

##### STAY OF EXECUTION.

*Provided*, that the interest to be allowed shall be at the rate of seven per cent. per annum on the amount of the judgment, including the costs. (1871, c. 68, § 1, *as amended 1879, c. 24, § 1.*)

Amendment to second proviso of \*§ 84, p. 688.

On page 688, in 12th line of \*§ 86, for *twelve per cent.* read *seven per cent.* (1871, c. 68, § 3, *as amended 1879, c. 24, § 1.*)

### CHAPTER LXVI.

#### CIVIL ACTIONS.

##### THE PLACE OF TRIAL OF CIVIL ACTIONS.

\*§ 49a. *Changing place of trial—notice and affidavit.* In any civil action now pending or that may be hereafter commenced in any court of this state against one or more defendants residing in a county, or counties, other than that wherein such action

is pending, or may hereafter be instituted, and one or more defendants residing in the county wherein such action is pending, or may be commenced, and in which any of such defendants shall have demanded that the place of trial of such action be changed to the proper county, as required by section forty-nine, (49,) chapter sixty-six, (66,) of the General Statutes one thousand eight hundred and seventy-eight, (1878,) if any one or more of the defendants therein, having made such demand, shall make and file in the office of the clerk of the court of the county wherein such action has been or shall be commenced an affidavit stating that he or they have good reason to believe, and does believe, that any one or more of the parties to such action have been made defendants therein for the purpose of evading the law relating to changing place of trial, or to deprive any of the defendants therein of their right to have the place of trial of said action changed, and setting forth the reason of such belief, and shall execute and file a bond or undertaking, with one or more sureties, conditioned to pay to the other defendants, or any of them, all such additional costs and expenses as they shall incur by reason of the place of trial of said action being changed, and to pay to the plaintiff all such additional cost and expenses as he may incur in case he recover judgment against the defendant so joined with such non-resident defendants, in case such defendant in good faith defends such action, a copy of said affidavit shall be served upon the plaintiff's attorney, together with a notice that a motion will be made before the judge of the court in which said action is pending, at a time therein mentioned, for a change of place of trial to the county named in such demand. Said copy and notice shall be served at least eight (8) days before the day of hearing, and on such hearing the said judge shall, if he deems proper, make an order changing the place of trial to the county named in said demand. (1881, c. 132, § 1.)

See page 713.

#### SERVICES OF SUMMONS, ETC.

\*§ 58, requiring summons in Rousey county to be served by the sheriff, repealed; to take effect January 1, 1882. (*Sp. Laws 1881, c. —.*)

§ 64. (SEC. 49.) Service by publication—in what cases allowed.

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*Third.* When the defendant is not a resident of the state, but has property therein, and the court has jurisdiction of the subject of the action. (*As amended 1881, c. 28, § 1.*)

See page 716.

#### MOTIONS AND ORDERS.

\*§ 87. Where motions should be made. Motions must be made in the district in which the action is pending, or in an adjoining district: *provided*, that no motion shall be made in an adjoining district which shall require the hearing of such a motion at a greater distance from the county seat where the action is pending in which such motion is made, than the residence of the judge of the district wherein such action is pending, from such county seat, unless the place where such motion is made, in such adjoining district, is nearer by direct railway communication to said county seat than said residence of the judge of the district is by such railway communication. Orders made out of court, and without notice, may be made by any judge of a district court, at any place in the state; but no order to stay proceedings for a longer time than twenty days shall be made, except upon notice to the adverse party. Motions for judgment upon demurrer, or upon the pleadings, may be made and determined in vacation; and when any motion is made in a district court other than that in which the action is pending, the order, determination, or judgment thereon is to be entered in the same manner, and have the same force and effect, as when made in and by the judge of the district, and in the county in which the action is pending. (*As amended 1881, c. 7, § 1.*)

See page 719

THE ANSWER.

§ 99. (SEC. 82.) **What answers and demurrers may be stricken out.** Sham, irrelevant, or frivolous answers, defences, or replies, and frivolous demurrers, may be stricken out, or judgment rendered notwithstanding the same, on motion as for want of an answer. (*As amended* 1881, c. 49, § 1.)

THE REPLY.

§ 100. (SEC. 83.) **Plaintiff may reply, when—contents of reply.** When the answer contains new matter, the plaintiff shall within twenty days reply to such new matter, denying each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief, and he may allege in ordinary and concise language, without repetition, any new matter, not inconsistent with the complaint, constituting a defence to such new matter in the answer, or he may demur to an answer containing new matter when upon its face it does not constitute a counter claim or defence, and the plaintiff may demur to one or more of such defences or counter claims, and reply to the residue in the answer. (*As amended* 1879, c. 15, § 1.)

§ 101. (SEC. 84.) **Judgment for want of reply.** If the answer contains new matter, and the plaintiff fails to reply or demur thereto, within the time allowed by law, the defendant may move on notice for such judgment as he may be entitled to upon such statement, and the court may thereupon render judgment, or order a reference or assessment of damages by jury, as the case requires. (*As amended* 1881, c. 44, § 1.)

§ 102. **Demurrer to reply.** If a reply to any new matter set up in the answer is insufficient, the defendant may demur thereto, stating the ground thereof. (*As amended* 1881, c. 44, § 2.)

See page 721.

GENERAL RULES OF PLEADING

§ 119. (SEC. 99.) **What allegations admitted by failure to answer or reply.** Every material allegation of the complaint not specifically controverted by the answer as prescribed, and every material allegation of new matter in the answer not controverted by the reply as prescribed, shall, for the purpose of the action, be taken as true; but the allegation of new matter in a reply is to be deemed controverted by the defendant, who may on the trial controvert it by proofs, either in direct denial or by way of avoidance. (*As amended* 1881, c. 44, § 3.)

See page 724.

ATTACHMENT.

§ 151. (SEC. 134.) **Different kinds of property, how attached.**

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*Third.* When an attachment is made of articles of personal estate, which, by reason of their bulk or other cause cannot be immediately removed, a certified copy of the writ and of the return of the attachment may, at any time within three days thereafter, be deposited in the office of the town clerk of the town, or clerk or recorder of the village or city in which the attachment is made, and such attachment shall be as valid and effectual as if the articles had been retained in the possession and custody of the officer. (*As amended* 1881, c. 63, § 1.)

See page 729.

GARNISHMENT.

\*§ 198. **Discharge of garnishment, on defendant giving bond.** A defendant, when property, money, or effects has been garnished, may, at any time, execute to the plaintiff a bond, in double the amount claimed in the complaint, with two or more sureties, who shall justify and be approved by the judge of the district, or court commissioner of the county, in which the garnishee proceedings [were] instituted, conditioned

that if the plaintiff recover judgment in the action, he will pay such judgment, or an amount thereon equal to the value of the money, property, or effects so garnished. And the officer approving such bond shall make an order discharging such garnishment, and releasing such money, property, or effects therefrom, upon filing such bond with the court in which the garnishee proceedings were entitled, and serving upon the garnishee a copy of the order discharging such proceedings. The defendant shall have the same power to receive or collect the money, property and effects so garnished, in the same manner as if such garnishee proceedings had never been instituted. All of the provisions of this title shall apply to all actions in which the defendant has or shall recover a judgment against the plaintiff, and all actions in which a counter claim is interposed in the answer of the defendant, which counter claim exceeds in amount the amount admitted to be due in said answer, and in all such cases the defendant may institute proceedings under this title, and conduct them to a determination with like force and effect and in like manner as if he was a plaintiff; and in such cases the word "plaintiff," wherever it is used in this title, shall be construed to mean "defendant," and the word "complaint" shall be construed to mean "answer." (1871, c. 67, § 1, as amended 1881, c. 55, §§ 1, 2.)

See page 738.

JUDGMENT ON FAILURE TO ANSWER.

Add to third subdivision of § 210, p. 740:

*Provided, further,* that in all actions involving the title to or brought to quiet the title to real estate, judgment may be entered without filing the security above provided. (As amended 1881, c. 13, §1.)

THE EXECUTION.

§ 303. (SEC. 272.) **Levy on bulky articles.** When an execution is levied upon articles of personal estate which, by reason of their bulk or other cause, cannot be immediately removed, a certified copy of the execution and return may, within three days thereafter, be deposited in the office of the clerk or recorder of the city, village, or town in which said articles are; and such levy shall be as valid and effectual as if the articles had been retained in the possession and custody of the officer. (As amended 1881, c. 63, § 2.)

See page 755.

§ 306. (SEC. 275.) **Service on judgment debtor.** The officer shall, at or before the time of posting of notices of sale, serve a copy of the execution and inventory, certified by him, upon the judgment debtor, if he can be found within the county. If he is a resident thereof, but cannot be found therein, the said officer shall leave such copy at the usual place of abode of the said judgment debtor, with some person of suitable age and discretion then resident therein. (As amended 1875, c. 63, § 1, and 1879, c. 22, § 1.)

See page 756.

§ 310. (SEC. 279.) **Property exempt from execution.**

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*Eighth.* The tools and instruments of any mechanic, miner, or other person, used and kept for the purpose of carrying on his trade, and, in addition thereto, stock in trade, including articles or goods manufactured in whole or in part by him, not exceeding four hundred dollars in value; the library and implements of any professional man; all of which articles hereinbefore intended to be exempt shall be chosen by the debtor, his agent, clerk, or legal representative, as the case may be. In addition to the articles enumerated in this section, all the presses, stones, type, cases, and other tools and implements used by any copartnership, or by any printer, publisher, or editor of any newspaper, and in the printing or publication of the same, whether used personally by said copartnership, or by any such printer, publisher, or editor, or by any persons hired by him to use them, not to exceed in value the sum of two thousand dollars, together with stock in trade not exceeding four

hundred dollars in value, shall be exempt from attachment or sale on any final process, issued from any court in this state. (*As amended 1876, c. 43, § 1; 1881, c. 25, § 1.*)

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In eleventh paragraph, as to amount of wages of laborer exempt, for *fifty dollars* read *twenty dollars*. (*As amended 1879, c. 5, § 1.*)

See page 756.

CHAPTER LXVII.

COSTS.

COSTS IN CRIMINAL PROCEEDINGS.\*

\*§ 15a. **Costs in criminal proceeding.** In all criminal actions, upon the conviction of the defendant, the court may, in its discretion, in addition to the punishment now or hereafter provided by law for such offence, and as a part of the sentence to be pronounced, adjudge that the defendant shall pay the whole or any part of the costs and disbursements of the prosecution, and payment thereof may be enforced in the same manner as is or may be provided for enforcing such sentence, or by execution against his property. (1881, c. 122, § 1.)

\*§ 15b. **To be paid into county treasury.** The costs and disbursements, when collected, shall be paid into the treasury of the county where the conviction is had, for the use and benefit of such county: *provided*, the provisions of this act shall in no manner interfere with or change the payment of officers', witnesses', or jurors' fees, as now provided by law. (*Id.* § 2.)

\*§ 15c. **To what cases not applicable.** The provisions of this act shall not apply nor extend to any act done nor offence committed prior to the passage hereof. (*Id.* § 3.)

See page 766.

CHAPTER LXX.

FEES.

FEES OF CLERKS OF DISTRICT COURT.

§ 2a. **Clerks' fees in counties where compensation is \$800 or less.** That in counties where the clerks of district courts do not receive compensation for their services to exceed the amount of eight hundred (800) dollars per annum, they shall be entitled to charge and receive fees as follows:

For issuing and sealing every writ, summons, subpoena or process, seventy-five (75) cents.

Certified copy of such writ when required, ten (10) cents per folio and twenty-five (25) cents for certificate.

Entering the return of every writ and filing such writ, fifteen (15) cents per folio.

Entering an appearance, *retraxit*, discontinuance, nonsuit, or default, twenty (20) cents.

Entering every rule, order, or motion in term, fifteen (15) cents per folio.

Certified copies of rules or orders, ten (10) cents for each folio and twenty-five (25) cents for certificate.

Every report on assessment of damages or other matter referred to him, seventy-five (75) cents and (15) cents per folio for such report when it exceeds five folios

Every certificate, twenty-five (25) cents.

Calling and swearing grand jury, one (1) dollar.

(\* An act relating to costs and disbursements in criminal actions. Approved February 13, 1881.)