

# CHANGES

IN THE

# General Statutes of 1878,

OF THE

# STATE OF MINNESOTA,

EFFECTED BY THE GENERAL LAWS OF THE EXTRA  
SESSION OF 1881, AND THE REGULAR  
SESSION OF 1883.

Arranged with reference to the Chapter and Section Amended.

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SAINT PAUL:  
WEST PUBLISHING COMPANY.  
1883.

## CHAPTER LXV.

## COURTS OF JUSTICES OF THE PEACE.

## SET-OFFS.

§ 42a. **Not an admission of plaintiff's cause of action.** The pleading of a set-off or counter-claim in any action in any of the courts of this state shall not be held or construed to be an admission of any cause of action on the part of the plaintiff against such defendant. (1883, c. 101, § 1.)

See page 682.

## REPLEVIN.

§ 90. (SEC. 83.) **Bond to be filed—penalty—action on bond.** The plaintiff shall also execute a bond to the defendant with not less than two sureties, to be approved by the justice, in a sum not less than fifty dollars, conditioned that he will appear on the return-day of the writ, and prosecute his action to judgment, and to pay all costs and damages that may be adjudged against him. The bond shall be filed with the justice for the use of any person injured by the proceedings, and an action may be maintained on such bond to recover the amount of any judgment rendered on dismissal of the action for want of jurisdiction or any other cause, or for failure to abide by any such judgment, or for failure or neglect to pay all costs and damages that may or shall be incurred in such proceeding. (*As amended* 1881, *Ex. Sess.* c. 5, § 1.)

See page 689.

§ 91. (SEC. 84.) **Form of writ.** The justice shall thereupon issue a writ, directed to the sheriff or any constable of the county, commanding him to take the property therein described without delay, and to hold the same subject to the further order of the court, and to summon the defendant to appear and answer the same on the return-day mentioned in the writ. (*Id.* § 2.)

§ 92. (SEC. 85.) **Duty of officer.** In obedience to such writ the officer shall forthwith take possession of the property mentioned in the writ, if the same is in the possession of the defendant or his agent, for which purpose he may break open any dwelling-house or other inclosure, having first demanded entrance and exhibited his authority, if required, and shall return the writ immediately after the service thereof, and state in his return fully in [what] manner he has served and executed the same, and shall keep the goods and chattels in his possession until the cause is decided by the court. (*Id.* § 3.)

§ 94. (SEC. 87.) **Measure of damages on recovery by plaintiff.** If the property sought is not obtained by the officer serving the writ, the plaintiff, if he establishes his right thereto, shall recover the value of that right, and, whether obtained or not, he shall recover the damages and costs he has sustained in consequence of the illegal detention or taking and withholding thereof, and if the property or any part thereof is obtained, and it is found upon the trial that the plaintiff is entitled to the possession of the same or any part thereof, the justice shall immediately enter an order [in his docket] requiring the officer serving the writ to deliver the goods and chattels to the plaintiff, and issue execution for the costs and damages awarded the plaintiff, together with the amount due plaintiff as the value of the property not obtained, and to which plaintiff is entitled. (*Id.* § 4.)

§ 95. (SEC. 88.) **Measure of damages on recovery by defendant.** If the plaintiff fails to establish his right to the property, or the action is dismissed by the justice for want of jurisdiction or other cause, or the action is discontinued by the plaintiff, the defendant shall recover such damages and costs as under the circumstances he shows himself entitled, and in addition thereto may have judgment for the return of the property or the value thereof, if the same has been taken out of his possession, and the justice shall immediately enter an order in his docket requir-

ing the officer to deliver the same goods and chattels to the defendant and adjudge that he may recover such damages and costs of the action as he shows himself entitled to, and shall issue execution therefor; and whenever an order shall be entered by a justice, in an action for the recovery of the possession of personal property, for the delivery of property to either party, the property shall not be delivered to the party in whose favor the same is entered until the expiration of twenty-four hours after the entry of the order: *provided*, the losing party in the action does not file with the justice or his successor in office, within twenty-four hours after the entry of such [order,] an affidavit setting forth that he intends to appeal from the judgment rendered in the action, and that the appeal is made in good faith and not for the purpose of delay, in which case the officer will continue to hold and keep the property in his possession until an appeal is perfected as required by section one hundred and fourteen, chapter sixty-five, of the General Statutes of eighteen hundred and seventy-eight; and upon the perfection of said appeal the officer having such property in his possession shall transfer and deliver the same to the party appealing, upon receiving his fees, and reasonable compensation for the care and keeping of such property; such compensation to be fixed by the court or justice. (*Id.* § 5.)

See page 689.

#### JUSTICE'S CRIMINAL JURISDICTION.

§ 157. (SEC. 148.) **Complainant to pay costs, when.** Whenever the accused, tried under the provisions of this chapter, either by court or by a jury, shall be acquitted, he shall be immediately discharged, and if the court before whom the trial is had shall certify in his docket that the complaint was willful and malicious, and without probable cause, it shall enter a judgment against the complainant to pay all the costs that shall have accrued to the court and sheriff, or constable and jury, and the fees of witnesses in the proceeding had upon such complaint. The complainant may stay such judgment for thirty days, by giving satisfactory security by bond to the state, with one or more sureties, conditioned for the payment of such judgment at the expiration of thirty days; but if the complainant shall neglect to give such security, or shall neglect to pay such costs, then, in such case, the court before whom the cause is tried may issue execution on said judgment therefor; but the defendant in such judgment shall have the right of appeal therefrom, as in civil cases tried before a justice of the peace, and the case shall be tried and determined by the court on such appeal upon the records and evidence in the case duly certified and returned by the magistrate. (*As amended 1881, Ex. Sess. c. 32, § 1.*)

See page 700.

Add to § 159, (SEC. 150,) page 700:

*Provided*, that upon an appeal upon questions of law alone, the justice before whom the action is tried shall, upon the request of either party to the suit, return to the district court a true and certified transcript of all the evidence offered or received upon the trial, and the same shall be filed with the clerk of the district court as a part of the return of said justice. (1883, c. 61, § 1.)

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## CHAPTER LXVI.

### CIVIL ACTIONS.

#### THE TIME OF COMMENCING.

Add to § 25, p. 709, the following:

That all the provisions of this title as to the time of the commencement of civil actions shall apply to municipal and all other corporations with like power and effect as the same applies to natural persons. (1881, *Ex. Sess. c. 24, § 1.*)