

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 65.

COURTS OF JUSTICES OF THE PEACE.

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TITLE 1.

JURISDICTION.

TERRITORIAL.

SEC. 4505. **Co-extensive with county.**— The jurisdiction of a justice of the peace is co-extensive with the limits of the county in which he resides, except in the following cases:

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First. Writs of attachment may be directed to the proper officer in any county, for the purpose of causing an attachment of property therein.

Second. Garnishee process issued in an action before a justice may run into, and be served on the garnishee in, any county in the state.

G. S. ch. 65, § 1. Acts 1870, ch. 79, added a third subdivision providing that, in actions on contracts, the summons might be served in any county adjoining that in which any justice resides by the sheriff or any constable; which was repealed by 1873, ch. 93.

SUBJECT MATTER.

SEC. 4506. **Jurisdiction in actions.**—Such justice has jurisdiction of the following actions and proceedings:

First. Of an action arising on contract, for the recovery of money only, if the sum claimed does not exceed one hundred dollars.

Second. Of an action for damages for an injury to the person, or to real property, or for taking, detaining or injuring personal property, if the damages claimed, or, in replevin, the value of the property in controversy, does not exceed one hundred dollars.

Third. Of an action for a penalty given by statute, not exceeding one hundred dollars.

Fourth. Of an action upon a bond, conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceeds that sum; the judgment to be given for the sum actually due. When the payments are to be made by instalments, an action may be brought for each instalment as it becomes due.

Fifth. Of an action upon an official bond, or bond taken by him, if the penalty does not exceed one hundred dollars.

Sixth. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

G. S. ch. 65, § 5. 2 M. 86; 18 M. 216; 20 M. 418; 23 M. 520.

SEC. 4507. **Same—Title to real estate.**—If it appears on the trial of any action before a justice of the peace, from the evidence of either party that the title to real estate is involved, which title is disputed by the other party, the justice shall immediately make an entry thereof in his docket, and cease all other proceedings in the cause; and shall certify and return to the district court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution, the same as if the action had been originally commenced therein.

G. S. ch. 65, § 35 (37). 8 M. 337; 9 M. 40; 18 M. 66; 33 M. 25; 28 M. 275; 25 M. 185; 24 M. 325; 36 M. 174; 37 M. 211.

SEC. 4508. **Actions not within jurisdiction.**—The jurisdiction conferred by the last section does not extend, however, to a civil action:

First. In a cause involving the title to real estate.

Second. Nor for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, or upon a promise to marry.

Third. Nor for an action against an executor or administrator as such.

G. S. ch. 65, § 6. 4 M. 298; 38 M. 477.

POWERS.

SEC. 4509. **General powers.**—A justice of the peace is authorized to hold a court for the trial of all actions in the next section¹ enumerated, and to hear, try and determine the same; and for that purpose, where no special provision is otherwise made by law, such court is vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature apply to such justice's court, so far as the same are appli-

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cable, and not inconsistent with the provisions of this title; but no justice of the peace shall charge the jury.

G. S. ch. 65, § 4. ¹ Sec. 4506, *ante*. 22 M. 245.

SEC. 4510. Office—Issue process.—Every justice of the peace shall keep his office in the town, city or ward for which he is elected; but he may issue process in any place in the county,* and may in his discretion, for the convenience of parties, make any process issued by him, either civil or criminal, returnable, and may hold his court at any place appointed by him in a town, or ward adjoining the town or ward in which he resides,* or in any incorporated village located within the town in which said justice resides; *provided*, the place so appointed be within his county. *Provided further*, that no justice of the peace shall hold his office or court in any saloon, or in any room adjacent to a saloon, where there is communication by door or otherwise between said place where said court is held and said saloon.

G. S. ch. 65, § 2, as amended 1868, ch. 92; 1885, ch. 124. Approved March 9th. Amendment of 1868 between * * and first proviso. Amendment 1885 below last * except first proviso. 26 M. 324.

SEC. 4511. Same.—No justice of the peace shall hold his office in the same room with a practising attorney, unless such attorney is his law partner; and in that case, such partner shall not appear or practise as an attorney in any case tried before such justice.

G. S. ch. 65, § 3. 26 M. 28; 38 M. 477.

SEC. 4512. Ineligible to office of county attorney.—Any person who may hold the office of justice of the peace shall be ineligible to hold the office of county attorney, and no person shall hold both said offices at the same time.

1874, ch. 87: "An act to prohibit persons who hold the office of justice of the peace from holding the office of county attorney at the same time." Approved March 9, 1874.

TITLE 2.

COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

SEC. 4513. Voluntary or by process.—Actions may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process; when the name of the defendant is not known to the plaintiff, an action may be commenced against him by a fictitious name, and his true name shall be inserted when discovered.

G. S. ch. 65, § 8 (10). 14 M. 16; 15 M. 447; 18 M. 312; 20 M. 100; 21 M. 30; 22 M. 129; 28 M. 402; 25 M. 43; 37 M. 240.

SUMMONS AND SERVICE.

SEC. 4514. Requisites of summons.—Every summons or process issued by a justice of the peace shall run in the name of the state of Minnesota, be dated on the day it issues, be signed by the justice issuing the same, and be directed to the sheriff or any constable of the proper county. It shall be entirely filled up, and have no blank, either in date, or otherwise, at the time of its delivery to an officer to be executed; every such process which is issued and delivered to an officer to be executed, contrary to the provisions of this section, shall be void.* That every summons or other process issued by a justice of the peace in a civil action shall not be returnable earlier than nine o'clock in the forenoon nor later than five o'clock in the afternoon.

G. S. ch. 65, § 10 (12), as amended 1885, ch. 66. Approved March 3d. Amendment below *. 31 M. 480; 25 M. 44.

SEC. 4515. Issuance and service.—In all cases not otherwise provided for, the first process is by summons, commanding the officer to summon the

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defendant to appear before such justice at a time and place expressed in such summons, not less than six nor more than twenty days from the date thereof, to answer to the plaintiff in a civil action, which summons shall be served at least six days before the time of appearance therein mentioned, by reading the same to the defendant, and delivering a copy thereof to him, if requested, if such defendant can be found, and if not found, by leaving a copy thereof at his or her last usual place of abode.

G. S. ch. 65, § 11 (13). 18 M. 312; 26 M. 156.

SEC. 4516. Special service.— Every justice issuing any summons authorized by this title, upon being satisfied * by the affidavit of the party applying for such summons, his agent or attorney, that the defendant is about to depart from this state, or is about to dispose of his property with the intention of defrauding his creditors, and setting forth that he has made due and diligent search for an officer to serve the same, and that no regular, qualified officer can be found in said county to serve such summons in time,* may empower any suitable person, not a party to the action, to execute the same by an endorsement upon the summons to the following effect: "At the request, cost and risk of the plaintiff, I authorize A. B. to execute and return this summons, E. F., justice of the peace;" and the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such summons, and be subject to the same obligations. *Provided*, that no such person so empowered shall charge or receive any fees either for service or mileage for serving such process.

G. S. ch. 65, § 14 (16), as amended 1889, ch. 158. Approved March 20th. Amendment struck out "that such process will not be executed for want of an officer to be had in time to execute the same," and inserted matter between * * and added the proviso.

SEC. 4517. Service on railroads.— The service of all process and papers in any civil action or proceeding before any justice of the peace, or in the district court against any railroad company within this state, may be made upon any acting ticket or freight agent of such company, within the county in which the action or proceeding shall be commenced, and shall be taken and held in all cases to be a legal service. *Provided*, that whenever any railroad company has appeared in an action by an attorney, thereafter such service shall be made upon the attorney of record.

1870, ch. 17, as amended 1871, ch. 64. Approved March 6th.

SEC. 4518. Service by publication.— When the plaintiff or his agent makes an affidavit stating that the plaintiff has a just cause of action against the defendant founded upon contract express or implied, and that the defendant cannot be found in the state, a justice may order that service be made on the defendant by publication of the summons, in the form hereinafter prescribed, in either of the following cases:

First. When the defendant is a foreign corporation.

Second. When the defendant, being a resident of the state, has departed therefrom with intent to defraud his creditors, or to evade the service of a summons, or keeps himself concealed therein with like intent.

Third. When the defendant is not a resident of the state, but has property, real or personal, therein, and the justice has jurisdiction of the action.

G. S. ch. 65, § 12 (14).

SEC. 4519. Same.— The order shall direct the publication to be made in a newspaper published in the county where the action is brought, and if there is no newspaper published in the county, in a newspaper published at the capital of the state, not less than once a week for three weeks. In case of publication, the summons shall be made returnable in not less than six nor more than twenty days from the expiration of the period of publication, and the justice shall direct a copy of the summons and complaint to be forthwith deposited in the post-office, directed to the defendant at his place of residence,

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unless it is stated in the affidavit that such residence is not known to the party making the application.

G. S. ch. 65, § 13 (15). 25 M. 146.

SEC. 4520. Failure to execute — False returns.—If any officer, without showing good cause therefor, fails to execute any process to him delivered, and make due return thereof, or makes false return, such officer, for every such offence, shall pay to the party injured, ten dollars, and all damages such party may have sustained by reason thereof, to be recovered in a civil action.

G. S. ch. 65, § 15 (17).

APPEARANCE.

SEC. 4521. Time for.—The parties are entitled to one hour in which to make their appearance after the time mentioned in the summons for appearance; but are not bound to remain longer than that time, unless both parties appear, and the justice, being present, is actually engaged in the trial of another action, or a special proceeding; in such case, he may postpone the time of appearance until the close of the trial.

G. S. ch. 65, § 19 (21). 22 M. 37.

SEC. 4522. Failure to appear — Defendant's offer.—If either party fails to appear within one hour after the time specified for the return of the process, or after the hour to which the cause is adjourned, the justice shall dismiss the action, or proceed to hear the evidence of the party present, and render judgment thereon: **provided*, that the defendant who has appeared, may, before answering the complaint of the plaintiff, offer to allow judgment to be taken against him for the sum or property in said offer specified, with costs. If the plaintiff accepts the offer, the justice shall thereupon enter judgment accordingly. If the plaintiff refuses to accept the offer, the same is to be deemed withdrawn, and cannot be given in evidence; and if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs subsequently made to such offer, but must pay the defendant's costs and disbursements made and expended subsequently to such offer.

G. S. ch. 65, § 20 (22), as amended 1872, ch. 68. Approved March 1st. Amendment below *. 8 M. 245.

INFANT PARTIES.

SEC. 4523. By next friend.—No action shall be instituted by an infant plaintiff until a next friend for such infant is appointed. Whenever requested, the justice shall appoint some suitable person, who consents thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein.

G. S. ch. 65, § 16 (18).

SEC. 4524. Guardian.—After the service and return of process against an infant defendant, the action shall not be further prosecuted until a guardian for such defendant is appointed. Upon the request of such defendant, the justice shall appoint some person, who consents thereto in writing, to be guardian of the defendant in defence of the action; and if the defendant does not appear on the return-day of the process, or if he neglects or refuses to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian; the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any cost in the action.

G. S. ch. 65, § 17 (19).

SECURITY FOR COSTS.

SEC. 4525. When required.—Any justice of the peace in this state may, in all actions instituted before him, before or after the process issues, require

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of the plaintiff security for costs; and the person giving such security shall sign a memorandum in writing to that effect, which such justice shall keep as a part of the record in the cause, and an action may be maintained thereon before said justice to recover the costs; and if the plaintiff refuses to give such security, the justice shall dismiss the action.

G. S. ch. 65, § 9 (11).

REMOVAL OF ACTIONS.

SEC. 4526. From one justice to another.— If, on the return of the process, or at any time before the trial commences, in any action or proceeding, civil or criminal, either party, his agent or attorney, makes affidavit that the justice before whom the same is pending is a material witness for said defendant, without whose testimony he cannot safely proceed to trial; or that from prejudice, bias, or other cause, he believes such justice will not decide impartially in the matter; or if it is proved that the justice is near of kin to the plaintiff, the justice shall transfer said action, and all papers appertaining to the same, to some other justice of the same or an adjoining election district, who may thereupon proceed to hear and determine the same in the same manner as the justice before whom the said action or proceeding was commenced might have done; but no cause or proceeding shall be removed more than once, and no justice is required to transfer any civil action until all his costs in the same are paid.

G. S. ch. 65, § 18 (20). 15 M. 447; 17 M. 41; 26 M. 28; 37 M. 408.

SEC. 4527. To county where defendant resides.— When an action has been instituted in any county of this state in any justice court of any county against any person not a resident of the county where the justice issuing the process resides, and said action shall be appealed to the district court in said county where said justice resides, the action may be transferred to the district court of the county where the defendant resides upon filing with the clerk of the district court of the county to which said action has been appealed, an affidavit of the defendant or his attorney setting forth that the defendant, or when there is more than one defendant, a majority, resides in some other county in this state, which affidavit shall be filed within ten days after the appeal has been perfected, and thereupon such action shall be transferred by order of the court to the district court of the county where the defendant or majority of the defendants reside, and the clerk of such district court shall thereupon transmit to the clerk of the district court of the proper county, certified copies of all papers and files in said cause.

1889, ch. 161, § 2: "An act providing for changing the place of trial of actions commenced in municipal courts and courts of justices of the peace in certain cases." Approved April 24, 1889. Section 1 of this act makes same provision for municipal court.

DOCKET.

SEC. 4528. What to contain.— Every justice of the peace shall keep a docket in which he shall enter:

First. The title of all causes commenced before him.

Second. The time when the process issued, the nature thereof, when returnable, and the return of the officer.

Third. The time when the parties appeared before him.

Fourth. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and, if any set-off was pleaded, a similar statement of the set-off.

Fifth. Every adjournment, stating at whose request, and to what time and place.

Sixth. The time when the trial was had, stating whether the same was by jury or by the justice.

Seventh. The verdict of the jury, and when rendered.

Eighth. The judgment, time of issuing execution, the name of the officer to whom delivered, an account of the debt, damages and costs, and the fees due to each person, separately.

Ninth. The fact that an appeal was taken and allowed, and the time thereof.

Tenth. Satisfaction of judgment when made.

Eleventh. All questions of law raised by either of the parties to any action or proceeding, the order made by the court thereon, any exception taken to such order by any party, and all other matters that are material.

G. S. ch. 65, § 7. 11 M. 78; 12 M. 216; 14 M. 357; 15 M. 447; 16 M. 329; 18 M. 312; 20 M. 100; 21 M. 30, 403, 458; 30 M. 50.

SEC. 4529. **Transfer to successor.**— Every justice of the peace who shall not receive a suitable docket from his predecessor in office shall provide himself with such docket at the expense of his town, and, at the expiration of his term, he shall deliver such docket, together with such docket, if any, as he may have received from his predecessor, to his successor in office: *provided*, however, that at the time of the expiration of his term of office, if no successor shall have been elected, it shall then be the duty of said justice to turn over and deliver to the clerk of the district court of his county all books, dockets and papers pertaining to his office, to be by said clerk delivered to the successor in office of said justice, whenever the same may be called for.

1867, ch. 88, § 1.

SEC. 4530. **Issue executions.**— Every justice of the peace is hereby authorized to issue execution upon any unsatisfied judgment duly entered in any docket received from his predecessor, in like manner and with the same effect as if said judgment had been entered by him during his term of office: *provided*, that no execution shall be issued on such judgment after the time prescribed by law.

1867, ch. 88, § 2.

TITLE 3.

PLEADINGS AND TRIAL.

PLEADINGS.

SEC. 4531. **Time for.**— The pleadings in justices' courts must take place at the time mentioned in the summons for the appearance of the parties, or at such time thereafter, not exceeding one week, as the justice may appoint, for the convenience of the parties, and by their consent.

G. S. ch. 65, § 21 (23). 8 M. 243; 14 M. 142; 38 M. 389.

SEC. 4532. **Name of.**— The pleadings in justice's court are:

First. The complaint stating the cause of action;

Second. The answer stating the grounds of defence.

Third. When the answer sets up a counterclaim by way of a set-off, the reply.

G. S. ch. 65, § 22 (24). 5 M. 455.

SEC. 4533. **Written or oral.**— The pleadings may be oral, or in writing; if oral, the substance of them shall be entered by the justice in his docket; if in writing, they shall be filed in his office, and a reference to them made in his docket.

G. S. ch. 65, § 23 (25).

SEC. 4534. **Complaint.**— The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

G. S. ch. 65, § 24 (26).

SEC. 4535. **Answer.**— The answer shall contain a denial of all the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defence or counterclaim, by way of set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

G. S. ch. 65, § 25 (27). 1 M. 225.

SEC. 4536. **Reply.**— When the answer contains a counterclaim, the plaintiff may reply, denying any of the material allegations relating thereto.

G. S. ch. 65, § 26 (28). 5 M. 455; 36 M. 301.

SEC. 4537. **Pleading when instrument for payment of money only.**— When the cause of action or counterclaim arises upon an account or instrument for the payment of money only, it is sufficient for the party to deliver the account or instrument to the court, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims to recover, or set off; the court may, at the time of pleading, require that such writing or account be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being afterward given in evidence.

G. S. ch. 65, § 28 (30). 17 M. 469; 21 M. 329.

RULES.

SEC. 4538. **Pleadings to be verified.**— Every complaint, answer or reply shall be verified by the oath of the party pleading, or if he is not present, by the oath of his agent or attorney, to the effect that he believes it to be true; the verification shall be oral or in writing, in conformity with the pleadings verified.

G. S. ch. 65, § 29 (31). 1 M. 225.

SEC. 4539. **Equivalent to denial.**— A statement in an answer or reply, that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, is equivalent to a denial.

G. S. ch. 65, § 27 (29).

SEC. 4540. **Failure to deny.**— Every material allegation in a complaint, or relating to a counterclaim in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint with the summons, fails to appear and answer, the plaintiff cannot recover without proving his case.

G. S. ch. 65, § 30 (32). 5 M. 455.

SEC. 4541. **Objections to pleadings.**— Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence. If the court deems the objection well founded, it shall order the pleadings to be amended; and if the party refuses to amend, the defective pleading shall be disregarded.

G. S. ch. 65, § 31 (33). 38 M. 389.

SEC. 4542. **Variance between pleading and proof.**— A variance between the evidence and the allegations in the pleadings shall be disregarded as immaterial, unless the court is satisfied that the adverse party is prejudiced thereby.

G. S. ch. 65, § 32 (34). 30 M. 311.

SEC. 4543. **Amendments.**— The pleadings may be amended at any time before the trial, or during the trial, to supply any deficiency or omission in the allegations necessary to support the action or defence. If the amendment is

made after the issue, and it appears to the satisfaction of the court that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment may be granted.

G. S. ch. 65, § 33 (35). 21 M. 329.

ADJOURNMENTS.

SEC. 4544. **When pleadings closed.**— When the pleadings are closed, the justice, on the application of either party, shall adjourn the case for not exceeding one week, or may, upon application upon oath, adjourn the case for any further time, not exceeding thirty days.

G. S. ch. 65, § 34 (36), as amended 1872, ch. 67. Approved March 1st. Amendment struck out the provision that costs be taxed, and "may be required to be paid as a condition for such adjournment." 1 M. 100; 3 M. 317; 5 M. 280; 22 M. 130.

SEC. 4545. **Subsequent adjournments.**— Every adjournment, after the first, shall be for such reasonable time as will enable the party to procure such absent testimony or witness as is necessary and material, which the party applying for the adjournment has not been able to procure by the use of proper diligence.

G. S. ch. 65, § 36 (38).

TITLE 4.

SET-OFFS.

CONSTITUTED.

SEC. 4546. **Counterclaims to be set off.**— Counterclaims may be set off in the following cases:

First. A demand arising upon a judgment, or contract express or implied; and if it is founded upon a bond or other contract having a penalty, the sum equitably due by virtue of the condition only shall be set off;

Second. It must be due to him in his own right, either as the original creditor or payee, or as the assignee and owner of the demand;

Third. It must be for real estate sold, or for personal property sold, or for money paid, or services done; or if it is not such a demand, the amount must be liquidated, or be capable of being liquidated by calculation;

Fourth. It must exist at the time of the commencement of the action, and then belong to the defendant;

Fifth. It can only be allowed in actions founded upon demands which could themselves be the subject of set-off:

Sixth. If there are several defendants, the demands set off must be due to all of them jointly;

Seventh. It must be a demand existing against the plaintiff, unless the action is brought in the name of a plaintiff who has no real interest in the contract upon which the action is founded, in which case no set-off of a demand against the plaintiff shall be allowed, except as hereinafter specified;

Eighth. If the action is founded upon a contract, other than a negotiable promissory note or a bill of exchange, which has been assigned by the plaintiff, a demand against such plaintiff or any assignee of such contract, existing at the time of assignment thereof, and belonging to the defendant in good faith before notice of such assignment, may be set off, to the amount of the plaintiff's demand, if the demand is such as might have been set off against such plaintiff or assignee while the contract belonged to him.

G. S. ch. 65, § 37 (39). 34 M. 237; 36 M. 301.

SEC. 4547. **Against note assigned after due.**— If the action is upon a negotiable promissory note or bill of exchange which has been assigned to the

plaintiff, after it becomes due, a set-off, to the amount of the plaintiff's demand, may be made of a demand existing against any person who has assigned or transferred such note or bill after it became due, if the demand is such as might have been set off against the assignor while the note or bill belonged to him.

G. S. ch. 65, § 38 (40). 31 M. 37.

SEC. 4548. **Against trustees and nominal plaintiffs.**— If the plaintiff is a trustee for any other, or if the action is in the name of the plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's demand, if the same might have been set off in an action brought by those beneficially interested.

G. S. ch. 65, § 39 (41).

PLEADED.

SEC. 4549. **Must be pleaded.**— To entitle a defendant to set off a counterclaim, he shall specifically and clearly allege the same in his answer, stating the particular items of such counterclaim.

G. S. ch. 65, § 40 (42).

SEC. 4550. **Not an admission.**— The pleading of a set-off or counterclaim by a defendant 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, ch. 101: "An act in relation to counterclaims and offsets." Approved February 8, 1883.

JUDGMENT.

SEC. 4551. **Judgment, when established.**— If the amount of the counterclaim duly established is equal to the plaintiff's demand, judgment shall be entered for the defendant, for his costs; if it is less than the plaintiff's demand, the plaintiff shall have judgment for the residue only

G. S. ch. 65, § 41 (43).

SEC. 4552. **Same, against plaintiff.**— If a balance is found due from the plaintiff to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff where the contract which is the subject of the action has been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff.

G. S. ch. 65, § 42 (44).

TITLE 5.

WITNESSES AND DEPOSITIONS.

SUBPŒNAS.

SEC. 4553. **How served.**— A subpoena may be served by any person, by reading it to the witness, or by delivering a copy thereof to him.

G. S. ch. 65, § 43 (45).

SEC. 4554. **Attachment against witness.**— Whenever it appears to the satisfaction of the justice, by proof made before him, that any person duly subpoenaed to appear before him in an action has failed, without just cause, to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, makes oath that the testimony

of such witness is material, the justice has power to issue an attachment to compel the attendance of such witness; but no attachment shall issue against a witness, unless his mileage and one day's attendance has been tendered or paid in advance.

G. S. ch. 65, § 44 (46).

SEC. 4555. Same — Executed — Fees.— Every such attachment shall be executed by arresting the party named therein, and taking him before the justice issuing the warrant; and the fees for issuing and serving the same shall be paid by such person, unless he shows reasonable cause, to the satisfaction of the justice, for his omission to attend, in which case the party procuring such attachment shall pay all costs accruing thereon.

G. S. ch. 65, § 45 (47).

SEC. 4556. Same — Liability of witness.— Every person subpoenaed as aforesaid, and neglecting to appear, is also liable to the party in whose behalf he was subpoenaed, for damages which such party has sustained by his non-appearance; *provided*, that said witness had one day's attendance and mileage tendered or paid him in advance.

G. S. ch. 65, § 46 (48).

DEPOSITIONS.

SEC. 4557. When admissible.— The justice shall allow every deposition, taken, certified and returned according to the provisions of this title, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness whose deposition is offered:

First. Is dead, or resides out of the county.

Second. Is unable, or cannot easily attend before the justice, on account of sickness, age, or other bodily infirmity.

Third. Has gone out of the county, without the consent or collusion of the party offering the deposition.

G. S. ch. 65, § 49 (51).

SEC. 4558. Notice.— Either party in any civil action pending before a justice may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace, of any county in this state where the said witness may be.

G. S. ch. 65, § 47 (49).

SEC. 4559. How taken.— The deposition shall be taken, certified and returned according to the law concerning depositions.

G. S. ch. 65, § 48 (50).

COMMISSION TO EXAMINE WITNESS.

SEC. 4560. When to issue.— Whenever an issue of fact is joined in any action before a justice, and it appears, on the application of either party, that any witness not residing within the state where such action is pending, is material in the prosecution or defence of such action, the justice may award a commission to one or more competent persons, authorizing them or any of them to examine such witness on oath, upon the interrogatories, settled and approved by the justice, or by the written agreement or assent of the parties, annexed to such commission, to take and certify the deposition of such witness, and to return the same, according to the directions given, with such commission, in which commission both parties may unite.

G. S. ch. 65, § 50 (52).

SEC. 4561. Same.— Such commission may be granted at the instance of either party by such justice, at any time, upon proof that due notice of appli-

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cation for such commission was served on the adverse party at least two days before the time of making of such application; and whenever the defendant neglects to appear or plead in such action, and the plaintiff makes application for a commission to take the deposition of a material witness, the justice may award a commission, without notice, to one or more competent persons, to examine such witness on oath, upon interrogatories proposed by the plaintiff, to be settled by the justice, and certify the deposition, and return the same, according to the directions given in such commission.

G. S. ch. 65, § 51 (53).

SEC. 4562. **Same — Execution and return.**—The commission shall be executed and returned to the justice as is prescribed by statute when a commission issues out of a court of record; and the deposition and testimony taken in pursuance thereof shall be received on the trial as testimony in the cause, with the like effect as if such witness was personally examined at such trial.

G. S. ch. 65, § 52 (54).

SEC. 4563. **Same — Adjourn case.**—Whenever such commission is issued by any justice, the action may be adjourned for not more than ninety days, unless by consent and agreement of the parties to such action.

G. S. ch. 65, § 53 (55).

TITLE 6.

TRIAL BY JURY.

IMPANNELLING JURY.

SEC. 4564. **Manner of.**—In all civil actions before a justice in which either party demands a trial by jury, such jury shall be impanelled by said justice in the manner following, to wit: The justice shall direct the sheriff or any constable of the county, to make a list in writing of the names of twenty-four inhabitants of the county, qualified to serve as jurors in the district court.

G. S. ch. 65, § 54 (56).

SEC. 4565. **Selection — Venire.**—The parties may each strike out six names; in case of the refusal or neglect of either party so to strike out such names, the justice shall strike out the names for either or both; and upon such names being stricken out, the justice shall issue a venire directed to the sheriff or any constable of the county, directing him to summon the twelve persons whose names remain upon such list, to appear before such court, at the time and place named therein, as a jury for the trial of such action: *provided*, that upon consent of both parties, entered on the record, a jury of six may be ordered by the justice; and in such case a list of eighteen names shall be made, from which each party may strike six, and the said jury shall be selected, impanelled and summoned as provided in this section.

G. S. ch. 65, § 55 (57).

SEC. 4566. **Failure of juror to appear.**—Every person who is duly summoned as a juror, and does not appear, nor render a reasonable excuse for his default, is subject to a fine not exceeding ten dollars.

G. S. ch. 65, § 59 (61).

SEC. 4567. **Adjournment — Talesmen — Oath.**—If, in the opinion of the justice, the jurors above required cannot appear forthwith for the trial of the cause, the justice shall adjourn the same for such reasonable time as he deems proper, to enable the officer to summon the said jurors, and for them to appear. And if any of said jurors shall not attend at the time, or in case

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there are legal objections raised to any of those who appear, the officer shall summon a sufficient number of talesmen to supply the deficiency. The jury so selected shall take the oath required by law; and after the cause is submitted to them, they shall be kept together in some convenient place until they all agree upon a verdict, or are discharged by the justice, for which purpose an officer shall be sworn to take charge of them.

G. S. ch. 65, § 56 (58). 23 M. 138.

VERDICT.

SEC. 4568. Jury — Failure to agree.— Whenever a justice is satisfied that a jury sworn in any action before him, after having been out a reasonable time, cannot agree on a verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment.

G. S. ch. 65, § 58 (60).

SEC. 4569. Verdict — Judgment.— When the jurors have agreed on their verdict, they shall deliver the same to the justice, who shall give judgment thereupon, and award execution.

G. S. ch. 65, § 57 (59).

TITLE 7.

JUDGMENTS.

ENTRY OF JUDGMENT.

SEC. 4570. When to be made.— In cases where the plaintiff is nonsuited, or withdraws his action, or where judgment is confessed, and in all cases where a verdict is rendered, the justice shall forthwith render judgment, and enter the same in his docket. In all other cases, he shall render judgment, and enter the same in his docket, within three days after the action is submitted to him for decision.

G. S. ch. 65, § 66 (68).

SEC. 4571. On dismissal.— Whenever an action is dismissed for any cause, judgment shall be rendered for costs, and execution may issue to enforce such judgment, in the same manner and with the same effect as in other cases.

G. S. ch. 65, § 67 (69).

SEC. 4572. When no personal service.— In all cases where the service of the summons is made by leaving a copy thereof at the last usual place of abode of the defendant, and where the service of the summons is made by publication, before judgment is rendered, the plaintiff shall file or cause to be filed with the justice a bond with sufficient sureties, to be approved by said justice, in double the amount of the judgment claimed, conditioned that if the defendant, within six months from the rendition of the judgment, appears and is admitted to defend the action, the plaintiff will abide the order of the court therein, and will refund all amounts collected upon said judgment, and make restitution of all property received in virtue thereof, if ordered by said court, and pay all costs and damages that may be adjudged against him.

G. S. ch. 65, § 68 (70), as amended 1869, ch. 74, § 1. Before amendment this section was limited to service by publication, and the time to appear and defend was one year.

SEC. 4573. Same.— At any time within six months from the rendition of the judgment, as provided in the preceding section, the defendant therein shall be permitted to appear and defend said action, upon complying with the following conditions:

First. He shall serve a notice upon the plaintiff, his agent or attorney,

specifying that on a day therein named, which shall not be less than three nor more than ten days from the day of service thereof, that the defendant will apply to the justice of the peace before whom the judgment was rendered, or his successor in office, to have the said judgment reopened.

Second. He shall file a bond with said justice, with sureties to be approved by him, in a sum double the amount of the judgment, conditioned that he will abide the order of the court in the case, and pay all costs and damages that may be adjudged against him therein.

Third. He shall file a verified answer in said case. If said answer contains a good defence to the complaint in said action, or any material part thereof, said justice shall order said judgment reopened, and like proceedings shall thereafter be had therein as by law provided for actions in justices' courts.

G. S. ch. 65, § 69 (71), as amended 1869, ch. 74, § 2. Before amendment this section merely provided that defendant, or his representative, could defend within one year, "in like manner as judgments are reopened and defended" in district court.

JUDGMENT BY CONFESSION.

SEC. 4574. **Authorized.**— Any justice may enter a judgment by confession of the defendant in any case when the debt or damage does not exceed one hundred dollars.

G. S. ch. 65, § 63 (65).

SEC. 4575. **Requisites for.**— No confession shall be taken, or judgment rendered thereon, unless the following requisites are complied with:

First. The defendant shall personally appear before the justice.

Second. The confession shall be in writing, signed by the defendant, and verified by his oath, and filed with the justice.

Third. If it is for money due, or to become due, the confession shall state concisely the facts out of which it arose, and show that the sum confessed therefor is honestly due, or to become due. If it is for the purpose of securing a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

G. S. ch. 65, § 64 (66).

SEC. 4576. **Judgment roll.**— The statement and affidavit shall be filed with the justice, who shall indorse upon it the time of filing, and enter upon his judgment book a judgment for the amount confessed, with one dollar costs. The statement and affidavit, with the judgment indorsed, thereupon become the judgment roll.

G. S. ch. 65, § 65 (67).

MUTUAL JUDGMENTS.

SEC. 4577. **May be set off.**— If there are mutual justices' judgments between the same parties, upon which the time for appealing has expired, on which there is no existing execution, one judgment, on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed was rendered.

G. S. ch. 65, § 60 (62). 3 M. 419; 5 M. 273.

SEC. 4578. **When rendered before another justice.**— If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off shall produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and that such transcript was obtained for the purpose of being a set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket, and

all further proceedings on such judgment shall be stayed, unless such transcript is returned, with the proper justice's certificate thereon, that it has not been allowed in set-off.

G. S. ch. 65, § 61 (63).

SEC. 4579. Entries to be made.— If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance due after such set-off. If a justice allows a transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off; if he refuses such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

G. S. ch. 65, § 62 (64).

TRANSCRIPT OF JUDGMENT.

SEC. 4580. Filed in district court.— Every justice, on demand of any person in whose favor he has rendered judgment for more than ten dollars exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the district court of the county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the district-court judgments, and shall note therein the time of filing such transcript; and every justice having custody, by virtue of his office, of the docket of any former justice, shall give a transcript of any judgment therein appearing, with like effect as if such judgment had been rendered before him.

G. S. ch. 65, § 70 (72). 32 M. 545.

SEC. 4581. Effect — Lien — Execution.— Every such judgment, from the time of filing the transcript thereof, shall become a lien on the real estate of the defendant in the county, to the same extent as a judgment of the district court of the same county, shall be equally under the control of the district court, and be carried into execution in the same manner and with like effect as the judgment of such district court; and upon filing with the clerk of the district court of any other county, a transcript of the original docket of a justice's judgment in the district court of the county where it was rendered, the same shall be therein docketed, and thereupon become a lien upon the real property in such county, in the same manner as provided upon the filing of transcripts of judgments in the district court; but no execution shall be issued thereon out of any district court, until an execution has been issued by the justice, and returned that the defendant has no goods or chattels whereon to levy the same, which shall appear by a certificate from the justice, filed with the clerk of the district court.

G. S. ch. 65, § 71 (73).

SEC. 4582. Levy of execution.— Every judgment, when a transcript thereof is filed in the clerk's office of any district court, shall become a lien upon the real estate of the defendant as in other cases; but in cases where the service of the summons was by publication, any execution issued out of the district or justice court shall be enforced only against the real estate upon which such judgment is a lien, or in case any property, money, effects or credits of the defendant have been seized or attached by virtue of any writ of attachment or garnishee process issued in the action, then upon the property, money, effects or credits, seized, attached or held by virtue of such process.

G. S. ch. 65, § 72 (74).

JUDGMENT — EVIDENCE OF JURISDICTION.

SEC. 4583. When prima facie.— In all cases where a judgment has been rendered by a justice of the peace, and the same has not been appealed from, or reversed, or annulled, and has remained undisturbed for a period of not less

than two years, such justice of the peace shall be presumed to have had jurisdiction of the subject-matter of the action and the parties thereto at the time of rendering such judgment, where it appears by the docket, or transcript thereof on file in the office of the clerk of the district court of the proper county, that, at the time of rendering such judgment, he did acquire such jurisdiction; and a duly certified transcript thereof shall be received as evidence of such judgment in all the courts of this state: *provided*, that where such transcript is to be used outside of the county in which such judgment was rendered, there shall be attached thereto a certificate of the clerk of the district court of the proper county, to the effect that at the date of the rendering of such judgment, such justice of the peace was such officer, duly elected and qualified as such.

1871, ch. 70: "An act to make certain judgments of justices of the peace *prima facie* evidence of jurisdiction." Approved March 7, 1871. 32 M. 546.

TITLE 8.

EXECUTION AND PROCEEDINGS THEREON.

ISSUANCE.

SEC. 4584. **When.**— Upon every judgment rendered by a justice, execution shall be issued by such justice, in the manner hereinafter prescribed, at any time, on demand, after the expiration of the period allowed by law for taking an appeal from said judgment.

G. S. ch. 65, § 73 (76).

SEC. 4585. **Entries.**— Before any execution is delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt or damages, and costs, separately; and the officer receiving such execution shall indorse thereon the time of the reception of the same.

G. S. ch. 65, § 75 (78).

LEVY.

SEC. 4586. **Proceedings.**— The execution shall command the officer to levy the debt or damages, together with the interest thereon and the costs, upon the goods and chattels of the person against whom the execution is granted, except such articles as are exempt by law from execution, and to pay the money, within thirty days from date, to the justice who issued the execution.

G. S. ch. 65, § 74 (77).

SEC. 4587. **Tender in payment.**— The officer who holds an execution shall receive all money tendered to him in payment thereof, and indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid.

G. S. ch. 65, § 80 (83).

SALE.

SEC. 4588. **Notice.**— The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice, by at least three advertisements, posted in three public places in the election district where the property is to be sold, of the time and place when and where the same will be exposed for sale. Such notice shall describe the goods and chattels taken, and be posted at least ten days before the day of sale.

G. S. ch. 65, § 77 (80).

SEC. 4589. **At public vendue — Return of execution.**— At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall in all cases return the execution, and have the money before the justice at the time of making such return.

G. S. ch. 65, § 78 (81).

SEC. 4590. **Officer not to purchase.**— No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution.

G. S. ch. 65, § 79 (82).

RENEWAL OF EXECUTION.

SEC. 4591. **When may be renewed.**— If any execution is not satisfied, it may, at the request of the plaintiff, be renewed from time to time, by the justice issuing the same, by an indorsement to that effect, dated and signed by him; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall renew the execution in full force in all respects, for thirty days, and no longer. An entry of such renewal shall be made in the docket of the justice.*

Execution after transcript.— If an execution shall not have been issued prior to the delivery of a transcript of the judgment to the judgment creditor, and filing of the same with the clerk of the district court, as provided in section¹ seventy of this chapter, the justice may issue an execution upon such judgment after such delivering or filing of such transcript; and on the return thereof unsatisfied, in whole or in part, shall, on demand of such creditor, deliver to him a certified transcript of the entries in his docket relating to the issuing and return of such execution, and the amount collected thereon, and the costs accrued since the entry of judgment. The judgment creditor may file such transcript with the clerk of the district court where the judgment is docketed, who shall thereupon make a note of the facts, in the docket of such judgment in his office; and thereafter execution may issue, as provided in section¹ seventy-one of this chapter, for the amount of the original judgment unsatisfied at the time of issuing the same, and interest and costs accrued.

G. S. ch. 65, § 76 (79), as amended 1871, ch. 71, February 24th. Amendment below *. ¹Sec. 4581, *ante*.

STAY OF EXECUTION.

SEC. 4592. **How obtained.**— Execution upon a judgment rendered by any justice of the peace in this state may be stayed as hereinafter provided: Upon a judgment for any sum not exceeding ten dollars, exclusive of costs, one month; upon a judgment not exceeding twenty-five dollars, exclusive of costs, two months; upon a judgment exceeding twenty-five dollars, and not exceeding fifty dollars, three months; upon a judgment exceeding fifty dollars, and not exceeding seventy-five dollars, exclusive of costs, four months; upon a judgment exceeding seventy-five dollars, exclusive of costs, six months; *provided*, that in order to obtain such stay, the party applying therefor shall, within ten days after judgment is rendered, file a recognizance, with one or more responsible persons, to be approved by the justice, as bail for him, conditioned that the judgment debtor will pay the amount of such judgment, interest and costs, within the time for which the stay is granted, and authorizing the justice to issue execution for such amount upon default of such payment: *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, ch. 68, § 1, as amended 1879, ch. 24. Amendment struck out twelve per cent. and inserted seven. "An act providing for a stay of execution on judgments rendered in courts of justices of the peace." Approved March 6, 1871.

SEC. 4593. **Form of stay.**— The recognizance provided for in section one of this act may be in the following form: We, A. B. and C. D., do hereby

acknowledge ourselves to owe and be indebted to E. F. in the sum of — dollars, to be levied and collected of our several goods and chattels if default be made in the condition following: Whereas, the above named E. F. did, on the — day of —, A. D. 18—, recover a judgment for the sum of — dollars against the above named A. B., in the justice's court of G. H., Esq., a justice of the peace in and for the county of — and state of Minnesota, and said A. B. desires a stay of execution thereon for the term of — month from the date thereof: Now, if said A. B. shall pay to said justice of the peace, or his successor in office, for the use of said E. F., the said sum of — dollars, and interest thereon at seven per cent. a year, said term of — month, then this obligation shall be void; but if default be made in such payment, execution may issue against said A. B. and C. D., for such amount as may be due on said judgment, and interest as aforesaid, and costs accruing.

Dated this — day of —, 18—.

A. B.
 C. D.

Taken and acknowledged before me the date aforesaid.

G. H., Justice of the Peace.

The recognizance shall be in double the amount of the judgment, including costs, and the bail shall justify in all cases, and shall possess the qualifications required by section one hundred and twenty-two of chapter sixty-six of the general statutes.

1871, ch. 68, § 3, as amended 1879, ch. 24. Amendment reduced interest from twelve to seven per cent.

SEC. 4594. **Expiration of stay.**— If the judgment, interest and costs be not paid at the expiration of the time for which the same may have been stayed, the judgment creditor may have execution issued against the judgment debtor and the bail, for the amount thereof and accruing costs and interest.

1871, ch. 68, § 2.

SEC. 4595. **Execution against bail.**— Every officer to whom an execution shall issue against bail as provided in the next preceding sections, shall certify in his return thereon whether the same, and what amount, if any, was collected from the bail, and the true date [of] such collection.

1871, ch. 68, § 4.

TITLE 9.

REPLEVIN.

ISSUANCE OF WRIT.

SEC. 4596. **Affidavit for.**— When the object of the action is to recover the possession of personal property, the plaintiff or some other person shall, before any writ is issued, make an affidavit, and file the same with the justice.

G. S. ch. 65, § 81 (88).

SEC. 4597. **Same — Contents.**— Such affidavit shall state that the property (describing it) is wrongfully detained by the defendant, that the plaintiff is entitled to the immediate possession thereof, that it was not taken from him by any process legally and properly issued against him, or if so taken, that it was exempt from seizure on such process; it shall also state the value of the property according to the best knowledge and belief of the affiant.

G. S. ch. 65, § 82 (89). 16 M. 51; 23 M. 520; 32 M. 494.

SEC. 4598. **Bond.**— The plaintiff shall also execute a bond to the defendant, with sufficient sureties, to be approved by the justice, in a penalty at least double the value of the property sought, as appears by the affidavit filed, con-

ditioned that he will appear on the return day of the writ and prosecute his action to judgment, and return the property to the defendant, if a return thereof is ordered by the court, and also 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 to return the property when ordered by the court upon such dismissal.

G. S. ch. 65, § 83, as amended 1881, Ex. S. ch. 5 (November 21); 1885, ch. 33 (March 5). Acts 1881 struck out "in a penalty, at least double the value of the property sought," and required the bond with not less than two sureties and not less than \$50. Acts 1885 re-enacted the section as it read in G. S.

SEC. 4599. Writ issue.—Upon the approval and filing by the justice of the bond required by section one of this act,* the justice shall issue a writ, directed to the sheriff or any constable of the county in which the action may be brought, commanding him to take the property described therein and deliver the same to the plaintiff, and summon the defendant to appear and answer the same on the return day mentioned in the writ.

G. S. ch. 65, § 84, as amended 1881, Ex. S. ch. 5, § 2; 1885, ch. 33, § 2. Below * is section before amendment. Acts 1881, Ex. S. ch. 5, struck out the provision that property be delivered to plaintiff, and inserted that officer hold it subject to further order of the court. Acts 1885, ch. 33, re-enacted as it read in G. S. and added matter above *. 27 M. 306.

SEC. 4600. Co-defendant.—If a third person claims the property, he shall be made a co-defendant.

G. S. ch. 65, § 86 (93).

SERVICE.

SEC. 4601. Service and return.—In obedience to such writ, the officer receiving such writ 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 served and executed the same.

G. S. ch. 65, § 85 (92), as amended 1881, Ex. S. ch. 5, § 3; 1885, ch. 33, § 3. Above * is section before amendment. Amendment of 1881 added matter below * and also that officer keep the property until cause decided, which acts 1885 left out.

JUDGMENT.

SEC. 4602. Judgment for plaintiff.—If the property sought be not obtained, the plaintiff if he establishes his right thereto, shall recover the value of that right; whether obtained or not, he shall recover the damages and costs he has sustained in consequence of the illegal detention, or the taking or withholding thereof; * and upon the entry of any such judgment the justice shall, at the expiration of ten days thereafter, if no appeal be taken from such judgment,* issue execution for the costs and damages awarded to said plaintiff, together with the amount due plaintiff as the value of the property not obtained, and to which plaintiff is entitled.

G. S. ch. 65, § 87, as amended 1881, Ex. S. ch. 5, § 4; 1885, ch. 33, § 4. Above * is section before amendment, except word "costs," inserted by acts 1881, Ex. S. which also provided for delivery of property to plaintiff upon recovery of judgment, which was struck out by acts 1885, ch. 33, which inserted matter between * *. 31 M. 429.

SEC. 4603. Judgment for 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 dismissed 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 shall have been taken out of his possession or delivered to the plaintiff.

G. S. ch. 65, § 88 (95), as amended 1881, Ex. S. ch. 5, § 5; 1885, ch. 33, § 5. Matter between * * inserted by acts 1881, Ex. S., and also provided for return and renewal of execution, which was left out by acts 1885. 14 M. 460; 36 M. 301.

SEC. 4604. **Same.**— If the property has been delivered to the plaintiff, and the action is dismissed before answer, or the defendant in his answer claims a return thereof, the defendant shall have judgment for a return of the property, and damages, if any, for the detention or taking and withholding thereof; but such judgment shall not be a bar to another action for the same property or any part thereof.

G. S. ch. 65, § 89 (96). 27 M. 306.

TITLE 10.

ATTACHMENT.

ISSUANCE — RETURN.

SEC. 4605. **Authorized.**— Any creditor is entitled to proceed by attachment, in a justice's court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this title.

G. S. ch. 65, § 90 (97).

SEC. 4606. **Pleadings.**— Like pleadings and proceedings shall be had, as far as practicable, in actions commenced by attachment, and actions founded on contracts and commenced by summons.

G. S. ch. 65, § 99 (109).

SEC. 4607. **Affidavit for.**— Before a writ of attachment is issued, the plaintiff, or some person in his behalf, shall make, and file with the justice, an affidavit stating that the defendant is indebted to the plaintiff in a sum exceeding five dollars, and specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs, and that the same is due upon contract, express or implied, or upon judgment or decree of some court, and containing a further statement that the affiant has good reason to believe, either —

First. That the defendant is a non-resident corporation; or

Second. That the defendant is not a resident of this state, and has not resided therein three months immediately preceding the time of making such affidavit;

Third. That the defendant has absconded, or is about to abscond, from the state;

Fourth. That the defendant has removed, or is about to remove, any of his property out of this state, with intent to defraud his creditors;

Fifth. That the defendant resides in any other county, and more than one hundred miles from the residence of the justice;

Sixth. That the defendant contracted the debt under fraudulent representations;

Seventh. That the defendant so conceals himself that the summons cannot be served upon him; or

Eighth. That the defendant has fraudulently conveyed or disposed of, or is about fraudulently to convey or dispose of, any of his property or effects, so as to hinder, delay or defraud his creditors.

G. S. ch. 65, § 91 (98). 3 M. 29.

SEC. 4608. **Bond.**— Before issuing a writ of attachment, the justice shall require a bond on the part of the plaintiff, with sufficient surety, conditioned

that if the plaintiff fails to recover judgment, the plaintiff will pay all costs that may be adjudged against him, and all damages which the defendant may sustain by reason of the attachment, not exceeding the sum of one hundred dollars.

G. S. ch. 65, § 93 (100).

SEC. 4609. **When returnable.**— In the first five cases mentioned in the preceding section, the writ of attachment shall be returnable in three days; but in all other cases, it shall be returnable as an ordinary summons.

G. S. ch. 65, § 92 (99).

SEC. 4610. **Returnable — How executed — Publication of summons.**— The writ of attachment shall be returnable as an ordinary summons, and the officer shall execute the same by summoning the defendant, if to be found within the county, and by attaching the goods and chattels, moneys and credits of the defendant, not exempt by law. In case the defendant cannot be found in the state, he may be summoned by the publication of the summons, as in other cases.

G. S. ch. 65, § 94 (101).

SERVICE BY PUBLICATION.

SEC. 4611. **When.**— Whenever, upon the return of a writ of attachment issued by a justice of the peace, it is made to appear to the satisfaction of the justice, by the return of the officer thereon, or by affidavit, that the defendant therein, or, in case of more than one defendant, either of them, cannot be found in the state, or keeps himself concealed therein to avoid the service of legal process, the justice may make an order that each defendant be served with a summons in the action by the publication thereof, as hereinafter provided, and shall thereupon issue a summons, directed to the defendant, requiring him to appear before the said justice, at a time and place in said summons to be specified, to answer to the plaintiff in a civil action, (naming the said plaintiff,) which summons shall be made returnable not less than six nor more than twenty days after the expiration of the period of publication. And whenever, upon the return of a writ of attachment, it shall appear by the returns of the officer that he has found and attached property in his county, but that the defendant cannot be found in the county, and it shall be made to appear by affidavit that the defendant resides in another county in the state, then and in that case the action shall be continued for a period not exceeding twenty days, and the summons shall be served upon the defendant in the same manner as a summons is served under like circumstances in the district court.

1871, ch. 69, § 1: "An act to provide for the service of summons by publication in attachment cases in justices' courts and regulating proceedings therein." Approved March 3, 1871.

SEC. 4612. **Same.**— The summons shall be published once in each week for three successive weeks in a newspaper published in the county in which the action is pending, if there is one, or, if there is no newspaper published in said county, then in a newspaper published in an adjoining county in this state, or, if there is no newspaper published in either of said counties, then in a newspaper published at the state capital. If such defendant's place of residence is known to the officer or person upon whose return or affidavit the order of publication is made, a copy of the summons and of the complaint in the action shall, within six days after the summons is issued, be deposited in the postoffice, addressed to the said defendant at his place of residence, and the postage thereon paid.

1871, ch. 69, § 3.

SEC. 4613. **Adjournment pending publication.**— Upon making such order, the justice shall adjourn the action to the time when said summons is made returnable, during which time his jurisdiction in the action shall con-

tinue, for the purpose of the subsequent proceedings therein, and the detention of any property attached by virtue of the writ of attachment in the custody of the officer to abide the result of the action, or the disposal of any such property in pursuance of section ¹ninety-seven of chapter sixty-five, of the general statutes.

1871, ch. 69, § 2. ¹Sec. 4605, *post*.

FORTHCOMING BOND.

SEC. 4614. **When and by whom.**—When property of the defendant is actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving a bond with sureties, to the satisfaction of the officer executing the writ, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

G. S. ch. 65, § 95 (105). 21 M. 434.

SEC. 4615. **Same — By third person.**—When the property of the defendant found in the hands or possession [of] any other person than the defendant, is attached, such person may retain the possession thereof, by giving bond with sureties, to the satisfaction of the officer executing the writ, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

G. S. ch. 65, § 96 (106).

SEC. 4616. **Same — Before final judgment.**—Attachments may be dissolved, on motion, at any time before final judgment, if the defendant appears and pleads to the action, and gives bond to the plaintiff, with good and sufficient surety, to be approved by the justice, in double the amount of property, effects and credits attached, conditioned that if judgment is rendered against him, he will pay the amount thereof, with costs and interest thereon.

G. S. ch. 65, § 100 (110). 37 M. 297.

SEC. 4617. **Same — Effect.**—When any attachment is dissolved, the property and effects attached shall be released, and the action proceed as if it had been commenced by a summons only.

G. S. ch. 65, § 101 (111).

EXECUTION.

SEC. 4618. **Sale under.**—When judgment is rendered in any attachment case, execution may issue thereon, and the property attached may be sold in the same manner as in other cases, except as otherwise provided in this title.

G. S. ch. 65, § 102 (112).

SEC. 4619. **Sale of perishable property.**—When property is seized on attachment, which is likely to perish or depreciate in value before the probable end of the action, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer, in the same manner and on the same notice as goods are required to be sold on an execution; and the proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

G. S. ch. 65, § 97 (107).

SEC. 4620. **Compensation for keeping property.**—When property is seized on attachment, the justice may allow to the officer having charge thereof such compensation for his trouble and expense in keeping and maintaining the same as is reasonable and just.

G. S. ch. 65, § 98 (108).

TITLE 11.

APPEALS.

WHEN AND HOW OBTAINED.

SEC. 4621. **When allowed.**— Any person aggrieved by any judgment rendered by any justice, when the judgment exceeds fifteen dollars, or, in an action of replevin, when the value of the property as sworn to in the affidavit exceeds fifteen dollars, or when the amount claimed in the complaint exceeds thirty dollars, may appeal, by himself or agent, to the district court of the county where the same was rendered; but this does not apply to an action of forcible entry and detainer: *provided*, that an appeal upon questions of law, as herein provided, may be taken in any action without reference to the amount in controversy, or the amount of the judgment.

G. S. ch. 65, § 103 (113). 1 M. 289; 11 M. 164; 30 M. 207; 38 N. W. 804.

SEC. 4622. **Procedure — Time for.**— No appeal shall be allowed in any case unless the following requisites are complied with, within ten days after judgment rendered, viz:

First. An affidavit shall be filed with the justice before whom the cause was tried, stating that the appeal is made in good faith, and not for the purpose of delay.

Second. A bond shall be executed by the party appealing, his agent or attorney, to the adverse party, in a sum sufficient to secure such judgment and costs of appeal, with one or more sureties, to be approved by the justice, conditioned that the appellant shall prosecute his appeal with effect, and abide the order of the court therein.

Third. The party appealing shall serve a notice upon the opposite party, his agent or attorney who appeared for him on the trial, specifying the ground of the appeal, generally, as follows: That the appeal is taken upon questions of law alone, or upon questions of fact alone, or upon questions of both law and fact. Said notice shall be served by delivering a copy thereof to the person upon whom service is made, or by leaving a copy at the residence of such person; and the original notice, with proof of service thereof, shall be filed with the justice who rendered the judgment appealed from, within ten days after such service is made.

Fourth. The party appealing shall pay to the justice his fees for making the return, if demanded by the justice.

G. S. ch. 65, § 104 (114), as amended 1863, ch. 93. Amendment added fourth subdivision. 10 M. 220; 11 M. 72; 15 M. 196, 447; 22 M. 551; 23 M. 4; 26 M. 28.

SEC. 4623. **Allowance of appeal.**— Upon a compliance with the foregoing provisions, the justice shall allow the appeal, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal.

G. S. ch. 65, § 105 (115).

SEC. 4624. **Same — Compelled.**— If a justice fails to allow an appeal in a cause, when the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may, by attachment, compel him to allow the same, and to return his proceedings in the action, together with all papers required to be returned by him.

G. S. ch. 65, § 110 (120).

TRANSCRIPT.

SEC. 4625. **Transcript from justice.**— Within twenty days after filing the notice of appeal, and * before the first day of the next term of the district court, the justice shall file in the office of the clerk of the district court wherein

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he resides, a transcript of all the entries made in his docket, together with all the process and other papers relating to the action, and filed with the justice; and upon the filing of his return, the district court shall become possessed of the action, and shall proceed therein in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided: *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 transcript of all the evidence given 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.

G. S. ch. 65, § 106 (116), as amended 1872, ch. 66 (March 4); 1873, ch. 66. Amendment of 1872 added matter before *, and amendment of 1873 added the proviso. 11 M. 72; 12 M. 216; 15 M. 196; 30 M. 51; 27 M. 501; 38 M. 415.

SEC. 4626. Same — By successor in office.—Whenever an appeal is taken after any justice has gone out of office, from a judgment rendered by him while in office, such person shall make return to such appeal, in like manner and with like effect as if such appeal had been taken while he was in office.

G. S. ch. 65, § 118 (127).

SEC. 4627. Transcript — Compelled.—Upon an appeal being made and allowed, the district court may, by attachment, compel a return by a justice of the proceedings in the action, and of the papers required of him to be returned.

G. S. ch. 65, § 109 (119).

SEC. 4628. Amendment of.—Whenever the court is satisfied that the return of the justice is essentially erroneous or defective, the court may, by attachment, compel him to amend the same.

G. S. ch. 65, § 111 (121).

TRIAL — JUDGMENT — EXECUTION.

SEC. 4629. Entry of appeal for trial.—The appellant shall cause an entry of the appeal to be made by the clerk of the district court, upon the calendar of actions for trial, on or before the second day of the term, unless otherwise ordered by said court; and the plaintiff in the court below shall be plaintiff in said district court. And if the appellant fails or neglects to enter the appeal as aforesaid, the appellee may have the same entered at any time during that or some succeeding term, and the judgment of the court below shall be entered against the appellant for the same, with interest and the costs of both courts: *provided*, that it shall not be necessary for either party to notice the appeal for trial, nor file a note of issue with the clerk.

G. S. ch. 65, § 108 (118), as amended 1871, ch. 73 (February 27). Amendment added the proviso and inserted "upon the calendar of actions for trial." 8 M. 258.

SEC. 4630. Trial of appeals.—Upon an appeal upon questions of law alone, the action shall be tried in the district court upon the return of the justice; upon an appeal taken upon questions of fact alone, or upon questions of both law and fact, the action shall be tried in the same manner as actions originally commenced in the district court.

G. S. ch. 65, § 107 (117), as amended 1868, ch. 93. Amendment struck out the provision that no question of law shall be tried in district court but that raised in court below and excepted to at the time, except objection to jurisdiction and that complaint or answer does not state facts sufficient to constitute cause of action. 14 M. 214, 460; 18 M. 217; 24 M. 96; 27 M. 30; 38 M. 415.

SEC. 4631. When.—All appeals allowed thirty days before the first day of the term of the district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

G. S. ch. 65, § 113 (123). 27 M. 501.

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SEC. 4632. **No dismissal, when.**— No appeal allowed by a justice shall be dismissed on account of there being no bond, or that the bond given is defective, if the appellant will, before the motion to dismiss is determined, execute such bond as he ought to have executed before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

G. S. ch. 65, § 112 (122).

SEC. 4633. **Judgment on appeal.**— In all cases of appeal from a justice's court, the district court has power to affirm the judgment of the justice, upon any default of the appellant to appear and prosecute his appeal; and in all cases, if the judgment is against the appellant, such judgment shall be rendered against him and his sureties in the bond.

G. S. ch. 65, § 114 (124). 8 M. 258; 28 M. 39.

SEC. 4634. **Execution.**— If, upon an execution issued upon such judgment, the principal shall not pay the amount thereof, and the officer cannot find sufficient property of said principal to satisfy the same, such execution shall be enforced against the sureties; and the officer shall specify on his return by whom the money was paid, and the time thereof.

G. S. ch. 65, § 115 (125).

SEC. 4635. **Judgment for surety.**— After the return of an execution satisfied in whole or in part out of the property of the surety, such surety is entitled to a judgment, on motion, against the principal, for the amount so paid by him, together with interest from the time of payment; such motion shall be made within one year after the return-day of the execution, and the return of the officer is evidence, upon the hearing of such motion, of the facts therein stated.

G. S. ch. 65 § 116 (126).

TITLE 12.

CONTEMPTS.

SEC. 4636. **What constitutes.**— In the following cases a justice may punish for contempt:

First.— Persons guilty of disorderly, contemptuous and insolent behavior toward such justice; whilst engaged in the trial of an action, or in rendering judgment, or in any judicial proceeding, which tends to interrupt such proceedings, or to impair the respect due to his authority.

Second.— Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

Third.— Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

G. S. ch. 65, § 119 (128).

SEC. 4637. **To be heard in defense.**— No person shall be punished for contempt before a justice of the peace, until an opportunity is given him to be heard in his defence; and for that purpose the justice may issue his warrant to bring the offender before him.

G. S. ch. 65, § 121 (130).

SEC. 4638. **Summarily arraigned.**— If the offender is present, he may be summarily arraigned by the justice, and proceeded against in the same

manner as if a warrant had been previously issued, and the offender arrested thereon.

G. S. ch. 65, § 122 (181).

SEC. 4639. Punishment.— Punishment for contempt may be by fine, not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days.

G. S. ch. 65, § 120 (129).

SEC. 4640. Warrant of commitment.— The warrant of commitment for any constable shall set forth the particular circumstances of the offence, or it shall be void.

G. S. ch. 65, § 124 (183).

BY WITNESSES.

SEC. 4641. Witness failing to attend.— If any person duly subpoenaed, and obliged to attend as a witness, fails to do so, he shall be considered guilty of a contempt, and shall be fined all the costs for his apprehension, unless he shows reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such appearance shall pay the costs thereof.

G. S. ch. 65, § 128 (187).

SEC. 4642. Refusal to answer or be sworn.— When any witness attending before a justice of the peace, in any cause, refuses to be sworn in some form prescribed by law, or to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county.

G. S. ch. 65, § 125 (184).

SEC. 4643. Order of commitment.— Such order shall specify the cause for which the same is issued; and if it is for refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he submits to be sworn, or to answer, as the case may be.

G. S. ch. 65, § 126 (135).

SEC. 4644. Same — Adjournment of case.— The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

G. S. ch. 65, § 127 (186).

RECORD ON CONVICTION.

SEC. 4645. Filed in district court.— Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on the conviction, stating the particular circumstances of the offence, and the judgment rendered thereon, and shall file the same in the office of the clerk of the district court, and shall also enter the same in his docket as in civil cases.

G. S. ch. 65, § 123 (132).

TITLE 13.

FORMS IN CIVIL ACTIONS.

SEC. 4646. **The following or equivalent.**— The following or equivalent forms shall be used by justices of the peace, in proceedings to be had under the provisions of this chapter, to wit:

SUMMONS.

STATE OF MINNESOTA, }
County of ———. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

You are hereby commanded to summon ———, if he shall be found in your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the ——— day of ———, 18—, at ——— o'clock in the ———noon, at ———, in said county, to answer to ——— in a civil action; and have you then and there this writ.

Given under my hand, this ——— day of ———, A. D. 18—.

J. P., Justice of the Peace.

SUMMONS IN CASE OF PUBLICATION.

STATE OF MINNESOTA, }
County of ———. } ss.

THE STATE OF MINNESOTA, *To ———, Defendant:*

You are hereby summoned to be and appear before the undersigned, one of the justices of the peace in and for said county, on the ——— day of ———, 18—, at ——— o'clock in the ———noon, at my office, in the ——— of ———, in said county, to answer to ——— in a civil action. Should you fail to appear at the time and place aforesaid, judgment will be rendered against you, upon the evidence adduced by said ——— for such sum as he shall show himself entitled to.

Given under my hand, this ——— day of ———, A. D. 18—.

A. B., Justice of the Peace.

SUBPCENA.

STATE OF MINNESOTA, }
County of ———. } ss.

THE STATE OF MINNESOTA:

You are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, at ———, on the ——— day of ———, at ——— o'clock in the ———noon of said day, to give evidence in a certain cause then and there to be tried, between ———, plaintiff, and ———, defendant, on the part of the ———.

Given under my hand, this ——— day of ———, A. D. 18—.

J. P., Justice of the Peace.

WRIT OF ATTACHMENT.

STATE OF MINNESOTA, }
County of ———. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

You are hereby commanded to attach the goods and chattels, moneys, effects and credits of ———, or so much thereof as shall be sufficient to satisfy the sum of ———, with interest and cost of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached may be subject to further proceedings thereon, as the law requires; and also to summon the said ———, if to be found, to be and

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appear in my office in said county, on the — day of —, A. D. 18—, at — o'clock in the — noon, to answer to —, in a civil action, to his damage one hundred dollars or under.

Given under my hand at —, this — day of —, A. D. 18—.

J. P., Justice of the Peace.

WRIT OF REPLEVIN.

STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

Whereas, A. B. complains that C. D. has taken and does unjustly detain, (or does unjustly detain, as the case may be, particularly describing the goods and chattels to be replevied, and the value thereof,) therefore you are commanded that you cause the same goods and chattels to be replevied without delay; and if the said A. B. shall give security as required by law, that you cause the said goods and chattels to be delivered to the said A. B.; and also that you summon the said C. D. to be and appear before me, one of the justices of the peace in and for said county, on the — day of —, A. D. 18—, at — o'clock in the — noon, at —, in said county, to answer complaint of —.

Given under my hand this — day of —, A. D. 18—.

J. P., Justice of the Peace.

EXECUTION.

STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

Whereas judgment against —, for the sum of —, lawful money of the United States, and for —, costs of suit, was recovered the — day of —, before me, at the suit of —; these are therefore to command you to levy distress on the goods and chattels of the said —, (excepting such as the law exempts,) and make sale thereof according to law in such case made and provided, to the amount of the said sum, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said —, for — said — and costs. Hereof fail not, under penalty of the law.

Given under my hand this — day of —, A. D. 18—.

J. P., Justice of the Peace.

VENIRE FOR A JURY.

STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

You are hereby commanded to summon — to be and appear before the undersigned, one of the justices of the peace in and for said county, on the — day of —, at — o'clock in the — noon of said day, in the town of —, to make a jury for the trial of a civil action between —, plaintiff, and —, defendant, and have you then and there this writ.

Given under my hand this — day of —, A. D. 18—.

J. P., Justice of the Peace.

WARRANT FOR CONTEMPT.

STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

You are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he, the said A. B., should not be convicted of a criminal con-

tempt alleged to have been committed on the — day of —, A. D. 18—, before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this — day of —, A. D. 18—.

J. P., Justice of the Peace.

RECORD OF CONVICTION FOR CONTEMPT.

STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA:

Whereas, on the — day of —, A. D. 18—, while we, the undersigned, one of the justices of the peace of the said county, was engaged in the trial of a cause between C. D., plaintiff, and E. F., defendant, in said county, according to the statute in such case made and provided, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly) and whereas the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas the said A. B. did not show any cause against the said charge: Be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted, of a criminal contempt aforesaid, before the undersigned, and is adjudged by the undersigned to pay a fine of — dollars, or to be imprisoned in the common jail of said county for the term of two days, or until he is discharged from imprisonment according to law.

Dated this — day of —, A. D. 18—.

J. P., Justice of the Peace.

G. S. ch. 65, § 129 (138).

TITLE 14.

JURISDICTION IN CRIMINAL CASES, AND PROCEEDINGS THEREIN.

JURISDICTION.

SEC. 4647. **To try and determine.**—Justices of the peace have power to hold a court, subject to the provisions hereinafter contained, to hear, try and determine all charges for offences arising within their respective counties, where the punishment prescribed by law does not exceed a fine of one hundred dollars, or imprisonment for three months.

G. S. ch. 65, § 131 (140). 27 M. 16; 25 M. 372; 41 N. W. 363.

SEC. 4648. **Limits of jurisdiction.**—Justices of the peace have power and jurisdiction, throughout their respective counties, as follows:

First. To cause to be kept all laws made for the preservation of the peace;

Second. To cause to come before them, or any of them, persons who break the peace, and commit them to jail, or bail them, as the case may require;

Third. To arrest, and cause to come before them, persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior, and to keep the peace;

Fourth. To cause to come before them persons who are charged with committing any criminal offence, and commit them to jail, or bail them, as the case may require.

G. S. ch. 66, § 130 (139).

SEC. 4649. **In assault, battery or affray.**—No assault, battery or affray is indictable; but all such offences shall be prosecuted and determined in a

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summary manner, by complaint made before a justice of the peace, and, on conviction thereof, the offender may be punished by fine not less than five dollars nor more than one hundred dollars.

G. S. ch. 65, § 157 (166).

SEC. 4650. In breach of the peace.— If any justice of the peace has any knowledge that any of the offences mentioned in the last section are about to be committed, he shall issue his warrant, and proceed as is directed when complaint has been made; and if any such offence is committed, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done; and for this purpose no warrant or process is necessary, but the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice or any of his assistants in the performance of their duty; and any person who, when summoned to aid in arresting and securing an offender, refuses to give such assistance, shall forfeit five dollars to the use of the county.

G. S. ch. 65, § 158 (167).

SEC. 4651. Same — Recognizance.— In case of the breach of any recognizance entered into in a criminal case, the same shall be certified and returned to the district court, to be proceeded in according to law.

G. S. ch. 65, § 159 (168).

SEC. 4652. When no jurisdiction.— If, in the progress of any trial before a justice, under the provisions of this title, it appears to the justice that he has not final jurisdiction in the case before him, and that the accused ought to be put upon his trial for an offence cognizable before the district court, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases cognizable before the district court.

G. S. ch. 65, § 160 (169). 33 M. 24.

ARREST — BAIL.

SEC. 4653. Complaint — Warrant.— Upon complaint made to any justice by any constable or other person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it appears that such offence has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to arrest the accused, and to bring him before such justice, or some other justice of the same county, to be dealt with according to law; and, in the same warrant, may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial.

G. S. ch. 65, § 132 (141). 37 M. 492.

SEC. 4654. Security.— The justice may require of the complainant to give security for costs, and, if he refuses, the justice may dismiss the complaint.

G. S. ch. 65, § 164 (173).

SEC. 4655. Title of action.— The justice shall enter the action in his docket, in which the state of Minnesota shall be plaintiff, and the accused defendant, and he shall keep all such other entries as are required in civil actions.

G. S. ch. 65, § 133 (142). 16 M. 122; 34 M. 256; 30 M. 50; 26 M. 1.

SEC. 4656. Arraignment — Plea.— The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him, and he shall be required to plead thereto, which plea the justice shall enter in his

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minutes; if the accused refuses to plead, the justice shall enter the fact, with a plea of not guilty in behalf of such accused, in his minutes.

G. S. ch. 65, § 136 (145).

SEC. 4657. Bail.— From the time of the return of the warrant, until the time of the trial, the accused may give bail, with one or more sufficient sureties, for his appearance at the time fixed for the trial; or, in the event of failure to do so, he may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

G. S. ch. 65, § 135 (144).

TRIAL.

SEC. 4658. Time of.— On the return of the warrant with the accused, the said justice shall proceed to hear, try and determine the action within one day, unless continued for cause.

G. S. ch. 65, § 134 (143).

SEC. 4659. Plea of guilty.— If the accused pleads guilty to such charge, the court shall thereupon convict him of the offence charged, and render judgment thereon.

G. S. ch. 65, § 138 (147).

SEC. 4660. Summon witnesses.— In all cases arising under this title, the justice shall summon the injured party, and all others whose testimony is deemed material, as witnesses at the trial, and enforce their attendance by attachment, if necessary.

G. S. ch. 65, § 161 (170).

SEC. 4661. Same — When cause continued.— When a trial under the provisions of this title is continued by the justice, it shall not be necessary for the justice to summon any witness who may be present to appear at the continuance; but the justice shall verbally notify such witnesses as either party may require, to attend before him to testify in the cause on the day set for trial.

G. S. ch. 65, § 163 (172).

SEC. 4662. Trial without jury.— If the plea of the accused is not guilty, and a jury is waived by him, the said justice shall proceed to try such issue, and to determine the same according to the evidence which may be produced against, and in behalf of, such accused.

G. S. ch. 65, § 137 (146).

SEC. 4663. Juror or witness in contempt.— In case any person summoned to appear before a justice, pursuant to the provisions of this title, as a juror or witness, fails to appear, or if any witness appearing refuses to be sworn or to testify, he is liable to the same penalties, and may be proceeded against in the same manner, as provided by law in respect to jurors and witnesses in justices' courts in civil actions.

G. S. ch. 65, § 154 (163).

TRIAL BY JURY.

SEC. 4664. Jury list.— After the joining of issue, and before the court proceeds to an investigation of the merits of the action, unless the accused expressly waives his right to a trial by jury, the court shall direct the sheriff, or any constable of the county, to make a list in writing of the names of twenty-four inhabitants of the county, qualified to serve as jurors in the district court, from which list the complainant and accused may each strike out six names.

G. S. ch. 65, § 139 (148), as amended 1867, ch. 81; 1870, ch. 78.

SEC. 4665. Selection — Venire.— In case the complainant or the accused neglects to strike out such names, the justice shall direct some suitable disinterested person to strike out the names for either or both of the parties so

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neglecting; and upon such names being stricken out, the justice shall issue a venire, directed to the sheriff or any constable of the county, requiring him to summon the twelve persons whose names remain upon such list, to appear before such justice, at the time and place to be named therein, as a jury for the trial of such offence.

G. S. ch. 65, § 140 (140), as amended 1867, ch. 81; 1870, ch. 78. 14 M. 439.

SEC. 4666. **Summoning.**—The officer to whom such venire is delivered shall summon such jury personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same, with such venire, to the justice, within the time therein specified.

G. S. ch. 65, § 141 (150).

SEC. 4667. **By-standers to fill panel.**—If any of the jurors named in such venire fail to attend in pursuance thereof, or if there is any legal objection to any that appear, the justice shall supply the deficiency by directing the sheriff, or any constable who may be present and disinterested, to summon any of the by-standers or others who are competent, and against whom no cause of challenge appears, to act as jurors in the action.

G. S. ch. 65, § 142 (151).

SEC. 4668. **Challenge for cause.**—In all trials for criminal offences before a justice, either party may challenge any juror for cause.

G. S. ch. 65, § 144 (153).

SEC. 4669. **New jury.**—If the officer to whom the venire is delivered fails to return the same, as thereby required, or if the jury fail to agree, and are discharged by the justice, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had, as herein prescribed in respect to the first jury, unless the accused consents to be tried by the justice; in which case the justice shall proceed to the trial of the issue, as if no jury had been demanded.

G. S. ch. 65, § 143 (152).

SEC. 4670. **Conduct of trial.**—After the jury are sworn, they shall sit together and hear the evidence and allegations in the action, which shall be delivered in public, and in the presence of the accused; and after hearing the same, the jury shall be kept together in some convenient place, until they agree on a verdict, or are discharged by the justice; and a sheriff or constable shall be sworn to take charge of the jury, in like manner as upon trial in justices' courts in civil proceedings.

G. S. ch. 65, § 145 (154). 21 M. 47.

SEC. 4671. **Verdict.**—When the jurors have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it in his docket.

G. S. ch. 65, § 146 (155). 25 M. 371.

JUDGMENT.

SEC. 4672. **On conviction.**—Whenever the accused is tried under the preceding provisions of this title, and found guilty, either by the justice or by a jury, or is convicted of the charge made against him on a plea of guilty, the justice shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require.

G. S. ch. 65, § 147 (156).

SEC. 4673. **Certificate of conviction.**—Whenever any conviction is had before a justice, he shall make a certificate of such conviction, under his hand, in which it shall be sufficient briefly to state the offence charged, and the conviction and judgment thereon, and, if any fine has been collected, the amount thereof.

G. S. ch. 65, § 155 (164).

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SEC. 4674. To be filed in district court.— Within twenty days after such conviction, the said justice shall cause such certificate to be filed in the office of the clerk of the district court of the county in which the conviction was had:

G. S. ch. 65, § 156 (165).

SEC. 4675. On acquittal.— 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 proceedings 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.

G. S. ch. 65, § 148 (157), as amended 1881, Ex. S. ch. 32. Approved November 22d. Amendment below *. 30 M. 517.

SEC. 4676. Punishment.— In all cases of conviction under the provisions of this title, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county: *provided*, that no justice shall commit a defendant, under the provisions of this section, for a longer period than three months.

G. S. ch. 65, § 162 (171). 31 M. 44; 25 M. 372.

SEC. 4677. Collection of fine.— All fines imposed by a justice, if paid before the accused is committed, shall be received by the justice, and by him paid over to the county treasurer, within thirty days after the receipt thereof.

G. S. ch. 65, § 165 (174).

SEC. 4678. Same — Paid after commitment.— If the accused is committed, payment of any fine imposed upon him shall be made to the sheriff of the county, who shall, within thirty days after the receipt thereof, pay over the same to the county treasurer.

G. S. ch. 65, § 166 (175).

APPEAL.

SEC. 4679. Procedure.— The person charged with and convicted by any such justice of any such offence may appeal from the judgment of such justice to the district court: *provided*, that no appeal shall be allowed in any case, unless the following requisites are complied with within ten days after such conviction, viz:

First. The person so appealing shall enter into a recognizance, with one or more sufficient sureties, to be approved by such justice, conditioned to appear before the district court on the first day of the general term thereof, next to be holden in and for the same county, and abide the judgment of said court therein, and in the meantime to keep the peace and be of good behavior.

Second. The party appealing shall serve a notice upon the county attorney of the county, or in case of his absence from the county, or in case there is no county attorney, on the clerk of the district court of said county, specifying

generally the grounds of his appeal, as follows, to wit: that the appeal is taken upon questions of law alone, or upon questions of fact alone, or upon questions of law and fact.

G. S. ch. 65, § 149 (158), as amended 1867, ch. 81; 1871, ch. 72. 9 M. 166; 21 M. 500.

SEC. 4680. Allowance—Transcript—Trial of.—Upon a compliance with the foregoing provisions, the justice shall allow the appeal, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal. The justice shall thereupon make a return of all the proceedings had before him, and cause the complaint, warrant, recognizance, original notice of appeal, with proof of service thereof, and return, and all other papers relating to said cause and filed with him, to be filed in the district court of the same county, on or before the first day of the general term thereof next to be holden in and for said county. And the complainant and witnesses may also be required to enter into recognizance, with or without sureties in the discretion of the justice, to appear at said district court at the time last aforesaid, and to abide the order of the court therein. Upon an appeal on questions of law alone, the cause shall be tried in the district court upon the return of the justice; on an appeal taken upon questions of fact alone, or upon questions of both law and fact, the cause shall be tried in the same manner as if commenced in the district court: *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.

G. S. ch. 65, § 150 (159), as amended 1867, ch. 81; 1871, ch. 72; 1883, ch. 61. 13 M. 520; 21 M. 458; 30 M. 50.

SEC. 4681. Costs.—The appellant shall not be required to advance any fees in claiming his appeal, or in prosecuting the same; but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of his sentence, to pay the whole or any part of the costs of prosecution, in both courts.

G. S. ch. 65, § 151 (160).

SEC. 4682. Failure to prosecute.—If the appellant fails to enter and prosecute his appeal, he shall be defaulted on his recognizance; and the district court may award sentence against him for the offence whereof he was convicted, in like manner as if he had been convicted thereof in that court; and if he is not then in custody, process may be issued to bring him into court to receive sentence.

G. S. ch. 65, § 152 (161).

SEC. 4683. Judgment against defendant and sureties.—If the judgment of the justice is affirmed, or, upon any trial in the district court, the defendant is convicted, and any fine assessed, judgment shall be rendered for such fine, and costs in both courts, against the defendant and his sureties.

G. S. ch. 65, § 153 (162). 1 M. 207.

TITLE 15.

FORMS OF WRITS IN CRIMINAL PROCEEDINGS.

SEC. 4684. **Schedule of forms.**—The following forms may be used under the last title:

FORM OF WARRANT.

STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or Constable of said County:*

Whereas, — — has this day complained in writing to me, on oath, that — — did, on the — — day of — —, A. D. 18—, at — —, in said county (here insert the complaint, whatever it may be,) and prayed that the said — — might be arrested and dealt with according to law; now, therefore, you are commanded forthwith to apprehend the said — — and bring him before me, to be dealt with according to law.

Given under my hand, this — — day of — —, A. D. 18—.

J. P., Justice of the Peace.

COMMITMENT WHERE JUSTICE, ON THE TRIAL, SHALL FIND THAT HE HAS NOT JURISDICTION OF THE CASE.

*STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

Whereas, — —, of, etc., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of — —, with having, on the — — day of — —, A. D. 18—, — in said county, committed the offence of (here state the offence charged in the warrant,) and, in the progress of the trial on said charge, it appearing to the said justice that the said — — had been guilty of the offence of (here state the new offence found on the trial,) committed at the time and place aforesaid, of which offence the said justice has not final jurisdiction; and whereas, after examination had, in due form of law, touching the said charge and offence last aforesaid, the said justice did adjudge that the said offence had been committed, and that there was probable cause to believe the said — — to be guilty thereof; and whereas the said — — has not offered sufficient bail for his appearance to answer for said offence, you are therefore commanded forthwith to take the said — —, and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody, in said jail, until he shall be thence discharged according to law.

Given under my hand, this — — day of — —, A. D. 18—.

J. P., Justice of the Peace.

COMMITMENT, AFTER ARREST AND BEFORE TRIAL.

STATE OF MINNESOTA, }
County of —. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable, and to the Keeper of the Common Jail of said County:*

Whereas — — has been this day brought before the undersigned, one of the justices of the peace in and for said county, charged on the — — day of — —, A. D. 18—, — in said county, (here state the offence, as in the war-

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rant,) and the said — — not having given bail to appear and answer for the said offence, therefore you, the said constable, are commanded forthwith to convey, and deliver into the custody of the said keeper, the body of the said — —; and you, the said keeper, are hereby commanded to receive the said — — into your custody in the said jail, and him there safely keep, until he shall be required to be brought before the court to be tried, or shall be otherwise discharged by due course of law.

Given under my hand, this — day of —, A. D. 18—.
J. P., Justice of the Peace.

ORDER TO BRING UP PRISONER.

STATE OF MINNESOTA, }
County of —, } ss.

THE STATE OF MINNESOTA, *To the Keeper of the Common Jail, of said County:*
The undersigned, one of the justices of the peace in and for said county, sitting at a court for the trial of — —, now in your custody in the common jail of said county, doth hereby order and direct you to bring the said — — forthwith before me, at my office in said county, together with the warrant by which he was committed to your custody, in order that he may be tried.

Given under my hand, this — day of —, A. D. 18—.
J. P., Justice of the Peace.

COMMITMENT UPON SENTENCE.

STATE OF MINNESOTA, }
County of —, } ss.

THE STATE OF MINNESOTA, *To any Constable, and the Keeper of the Common Jail of said County:*

Whereas, at a justice's court held at my office in said county, for the trial of — —, for the offence hereinafter stated, the said — —, of, etc., was convicted of having, on the — day of —, A. D. 18—, in the said county; (here state the offence as in the warrant,) and, upon conviction, the said court did adjudge and determine that the said — — should be imprisoned in the common county jail of said county for — days; therefore, you, the said constable, are commanded forthwith to convey and deliver the said — — to the said keeper; and you, the said keeper, are hereby commanded to receive the said — — into your custody, in the said jail, and him there safely keep until the expiration of said — days, or until he shall be thence discharged by due course of law.

Given under my hand, this — day of —, A. D. 18—.
J. P., Justice of the Peace.

CERTIFICATE OF CONVICTION.

STATE OF MINNESOTA, }
County of —, } ss.

At a justice's court, held at my office in said county, before me, — —, a justice of the peace in and for said county, for the trial of — — for the offence hereinafter stated, the said — —, of, etc., was convicted of having, on the — day of —, A. D. 18—, at — in said county (here state the offence as in the warrant), and upon such conviction, the said court did adjudge and determine that the said — — should pay a fine of — dollars (and if imprisonment be allowed, add), and be imprisoned in the county jail — days (if the fine be paid, add), and the said fine has been paid to me.

Given under my hand, this — day of —, A. D. 18—.
J. P., Justice of the Peace.

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EXECUTION.

STATE OF MINNESOTA, }
County of ———. } ss.

THE STATE OF MINNESOTA, *To the Sheriff or any Constable of said County:*

Whereas, at a justice's court held at my office in said county, for the trial of ———, for the offence hereinafter stated, the said ——— of, etc., was convicted of having, on the ——— day of ———, A. D. 18—, in said county (here state the offence in the warrant), and, upon conviction, the said court did adjudge and determine that the said ——— should pay a fine of ——— dollars; and whereas the said fine has not been paid by the said ———, these are therefore to command you to levy distress on the goods and chattels (etc., as in execution against the goods in civil cases),

G. S. ch. 65, § 167 (176).