THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

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COMPLETE IN TWO VOLUMES

VOL. 2

CONTAINING

Sections 4822 to 8054 of the General Statutes, and the General Index

ST. PAUL, MINN.

WEST PUBLISHING CO.

1894

CHAPTER 106.

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

§ 7132. Process to apprehend offenders to issue at any time.

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

(G. S. 1866, c. 106, § 1; G. S. 1878, c. 106, § 1.)

See State v. Grant, 10 Minn. 39 (Gil. 22); State v. Bergman, 37 Minn. 407, 34 N. W. Rep. 737.

§ 7133. Proceedings on complaint made—Warrant.

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

(G. S. 1866, c. 106, § 2; G. S. 1878, c. 106, § 2.)

See Davis v. County of Le Sueur, 37 Minn. 491, 35 N. W. Rep. 364.

§ 7134. Warrant executed in any county, when.

If any person against whom a warrant is issued for an alleged offence committed in any county, either before or after the issuing of such warrant, escapes from or is out of the county, the sheriff or other officer to whom such warrant is directed may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority, as in his own county.

(G. S. 1866, c. 106, § 3; G. S. 1878, c. 106, § 3.)

§ 7135. Offender may give recognizance, when.

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

(G. S. 1866, c. 106, § 4; G. S. 1878, c. 106, § 4.)

§ 7136. Duty of magistrate taking bail.

The magistrate who so lets the person arrested to bail shall certify that fact upon the warrant, and deliver the same, with the recognizances by him taken, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and, on application of the complainant, the magis-

trate who issued the warrant, or the district attorney, shall cause such witnesses to be summoned to the same court as he thinks necessary.

(G. S. 1866, c. 106, § 5; G. S. 1878, c. 106, § 5.)

§ 7137. Proceedings when magistrate refuses bail.

If the magistrate in the county where the arrest was made refuses to bail the person so arrested and brought before him, or if no sufficient bail is offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereinafter directed.

(G. S. 1866, c. 106, § 6; G. S. 1878, c. 106, § 6.)

§ 7138. Officer, how to proceed in case of felony.

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

(G. S. 1866, c. 106, § 7; G. S. 1878, c. 106, § 7.)

§ 7139. Party arrested, before whom taken.

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

(G. S. 1866, c. 106, § 8; G. S. 1878, c. 106, § 8.)

§ 7140. Examination may be adjourned — Accused may give recognizance.

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

(G. S. 1866, c. 106, § 9; G. S. 1878, c. 106, § 9.)

A justice of the peace has no authority to receive a deposit of money, instead of a recognizance, as security for the appearance of the prisoner before him for examination, and, where he does so, the party entitled to it may demand and recover it from him. Cressey v. Gierman, 7 Minn. 398, (Gil. 316.)

Upon being brought up on *habeas corpus*, a person in custody charged with crime may waive objections to his caption and detention, and be admitted to bail without an examination. State v. Grant, 10 Minn. 39, (Gil. 22.)

§ 7141. Proceedings on failure of accused to appear.

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

(G. S. 1866, c. 106, § 10; G. S. 1878, c. 106, § 10.)

See Flanigan v. City of Minneapolis, 36 Minn. 406, 31 N. W. Rep. 359.

§ 7142. Accused, failing to recognize, shall be committed.

When such person fails to recognize, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal or-

der to the same officer by whom he was committed, or by an order in writing to a different person.

(G. S. 1866, c. 106, § 11; G. S. 1878, c. 106, § 11.)

§ 7143. Examination, how conducted.

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

(G. S. 1866, c. 106, § 12; G. S. 1878, c. 106, § 12.)

§ 4974, relating to transfer of actions from one justice to another, is not applicable to examinations under this chapter. State v. Bergman, 37 Minn. 407, 34 N. W. Rep. 737.

§ 7144. Same—Rights of accused.

After the testimony to support the prosecution is finished, the witnesses for the prisoner, if he has any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

(G. S. 1866, c. 106, § 13; G. S. 1878, c. 106, § 13.)

§ 7145. Witnesses may be kept separate during examination.

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

(G. S. 1866, c. 106, § 14; G. S. 1878, c. 106, § 14.)

§ 7146. Testimony, how taken.

The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses, if required by the magistrate.

(G. S. 1866, c. 106, § 15; G. S. 1878, c. 106, § 15.)

§ 7147. Prisoner discharged, when.

If it appears to the magistrate, upon the whole examination, that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged.

(G. S. 1866, c. 106, § 16; G. S. 1878, c. 106, § 16.)

§ 7148. Offences not bailable.

Persons charged with an offence punishable with death shall not be admitted to bail when the proof is evident or the presumption great; nor any person, charged with an offence punishable with death or imprisonment in the state prison for a term exceeding seven years, be admitted to bail by a justice of the peace; in all other cases bail may be taken in such sum as, in the opinion of the judge or magistrate, will secure the appearance of the person charged with the offence at the court where such person is to be tried.

(G. S. 1866, c. 106, § 17; G. S. 1878, c. 106, § 17.)

§ 7149. Bail to be accepted, when—Accused committed, when.

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

(G. S. 1866, c. 106, § 18; G. S. 1878, c. 106, § 18.)

Sufficiency of a warrant of commitment to await the action of a grand jury, to justify the officer holding the prisoner, in an action for false imprisonment, see Collins v. Brackett, 34 Minn. 339, 25 N. W. Rep. 708.

§ 7150. Witnesses shall recognize.

When the prisoner is admitted to bail, or committed by the magistrate he shall also bind by recognizance such witnesses against the prisoner as he deems material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner is held to answer.

(G. S. 1866, c. 106, § 19; G. S. 1878, c. 106, § 19.)

§ 7151. Witness required to give other security, when.

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

(G. S. 1866, c. 106, § 20; G. S. 1878, c. 106, § 20.)

§ 7152. Married woman or minor may recognize as witness, how.

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

(G. S. 1866, c. 106, § 21; G. S. 1878, c. 106, § 21.)

§ 7153. Witnesses failing to recognize shall be committed.

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

(G. S. 1866, c. 106, § 22; G. S. 1878, c. 106, § 22.)

See State v. Grace, 18 Minn. 398, (Gil. 359.)

§ 7154. Witness' own recognizance sufficient—Exception—Compensation when committed.

It shall not be lawful, except in cases of murder in first degree, arson where human life is destroyed, and cruel abuse of children, to commit or imprison any witness who is willing and offers to enter into his or her own recognizance, without sureties, to appear and testify in the case or prosecution in which his or her testimony is required. All persons held as witnesses shall receive such compensation during confinement as the judge of the court in which the case is pending shall direct, not exceeding regular witness fees.

(1872, c. 77, § 1; G. S. 1878, c. 106, § 23.)

§ 7155. Magistrate may call another magistrate to act with him.

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

(G. S. 1866, c. 106, § 23; G. S. 1878, c. 106, § 24.)

§ 7156. Testimony, etc., to be certified to clerk of court—Penalty for refusal.

All examinations and recognizances taken by any magistrate, in pursuance of the provisions of this chapter, shall be certified and returned by him to the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof, and shall be filed in said court; and if such magistrate neglects or refuses to return the same, he may be compelled forthwith by rule of court, and, in case of disobedience, may be proceeded against by attachment as for contempt.

(G. S. 1866, c. 106, § 24; G. S. 1878, c. 106, § 25.)

If a recognizance is of record in the proper court, at the time when the parties who entered into it are called upon to perform its conditions, it is in time as respects filing.

The provision of § 7156, requiring a recognizance to be filed on or before the first day of the term of the district court before which the prisoner is bound to appear, is as to time directory. State v. Perry, 28 Minn. 455, 10 N. W. Rep. 778.

§§ 7146, 7156, simply relieve the proofs taken from their otherwise extrajudicial character; they are still mere secondary evidence. Chapman v. Dodd, 10 Minn. 350, (Gil. 277.) Depositions taken before a justice, in a criminal examination before him, are not part of his record. Id.

§ 7157. Proceedings when party under recognizance makes default.

When any person under recognizance in any crimipal prosecution, either to appear and answer, or to prosecute an appeal, or to testify in any court, fails to perform the condition of such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer directs.

(G. S. 1866, c. 106, § 25; G. S. 1878, c. 106, § 26.)

§ 7158. Surety may make payment and be discharged.

Any surety in such recognizance may, by leave of the court, after default, and either before or after the process is issued against him, pay to the county treasurer, or to the clerk of the court, the amount for which he was bound as surety, with such costs as the court directs, and be thereupon forever discharged.

(G. S. 1866, c. 106, § 26; G. S. 1878, c. 106, § 27.)

See Flanigan v. City of Minneapolis, 36 Minn. 406, 31 N. W. Rep. 359.

§ 7159. Penalty of recognizance may be remitted, when.

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

(G. S. 1866, c. 106, § 27; G. S. 1878, c. 106, § 28.)

§ 7160. Action on recognizance not barred or defeated, when.

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

(G. S. 1866, c. 106, § 28; G. S. 1878, c. 106, § 29.)

§ 7161. Proceedings in such action, or where payment is made.

Whenever, upon action brought upon any recognizance to prosecute an appeal, the penalty thereof is adjudged to be forfeited, or when, by leave of the court, such penalty has been paid to the county treasurer, or to the clerk of the court, without a suit, or before judgment has been given in a manner by law provided, if by law any forfeiture accrues to any person by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of such forfeiture.

(G. S. 1866, c. 106, § 29; G. S. 1878, c. 106, § 30.)

§ 7162. Defendant defaulting on recognizance may be arrested.

If a defendant in any indictment has been let to bail after verdict or trial, and neglects to appear before any court or officer at any time or place at

which he is bound to appear and submit to the jurisdiction of the proper court or officer, the court or officer before which he is bound to appear may cause such defendant to be arrested, in the same manner as upon the finding of an indictment, and may forfeit his recognizance, and direct the same to be prosecuted.

(G. S. 1866, c. 106, § 30; G. S. 1878, c. 106, § 31.)

§ 7163. Proceedings on application to judge for bail.

When in any case a party in custody is desirous of giving bail, the offence being bailable, and the district court is not in session in the county, he may apply to the judge thereof, or a judge of the supreme court, upon his affidavit showing the nature of the application and the names of the persons to be offered as bail, with a copy of the mittimus or papers upon which he is held in custody. The judge may thereupon by order direct the sheriff to bring up said party, at a time and place named, for the purpose of giving bail. Notice of such application shall be given to the county attorney, if he is within the county, and no matters can be inquired into except such as relate to the amount of bail and the sufficiency of the sureties.

(G. S. 1866, c. 106, § 31; G. S. 1878, c. 106, § 32.)

If the officer in charge brings before a magistrate, having general jurisdiction to admit to bail, a prisoner, who is there permitted to make his application to be admitted to bail, all the substantial purposes of the statutory provisions as to the mode of bringing him up are accomplished, and, so far as they are concerned, any recognizance which the prisoner may enter into is well taken. State v. Perry, 28 Minn. 455, 10 N. W. Rep. 778.

§ 7164. Bail to justify in all cases.

Bail shall in all cases justify by affidavit, or upon oral examination before the court, judge or magistrate, as the case may be.

(G. S. 1866, c. 106, § 32; G. S. 1878, c. 106, § 33.)

§ 7165. Surrender of principal by bail.

Whenever the surety or sureties for any person held to answer upon any charge or otherwise, or any of them, shall believe that the person or principal for whom they are such sureties is about to abscond, or that he will not appear as required by [the] recognizance or other instrument of bail, which they have executed with or for him, or that he will not otherwise perform the conditions thereof, such sureties or bail, or either of them, may arrest and take such principal, or cause him to be arrested and taken, as hereinafter stated, before the officer who admitted him to bail, or the judge of the court before which person or principal was required thereby to appear, and surrender him up to such officer or judge; such surety or sureties, or either of them, may have such person or principal so arrested by the sheriff of the county by delivering to such sheriff a certified copy of the recognizance, or instrument of bail, under which he or they are held as sureties, with a direction to such sheriff indorsed thereon, requiring him to arrest such principal, and bring him before such officer or judge, to be so surrendered, and it shall be the duty of such sheriff, upon the receipt of any such copy so indorsed, and a tender or payment to him of his fees for so doing, to so arrest such principal and bring him before such officer or judge to be so surrendered.

(1881, c. 105, § 1;[1] G. S. 1878, v. 2, c. 106, § 34.)

§ 7166. Same—Notice to sheriff.

Before any such surety or sureties shall personally so surrender the person for whom he or they are bail, the sheriff of the county shall be notified to be, and he or one of his deputies shall be, present to take such person so surrendered into custody, if he fails or refuses to give new bail, as herein provided.

(1881, c. 105, § 2; G. S. 1878, v. 2, c. 106, § 35.)

[1] An act to provide for the surrender of a principal by his sureties or bail. Approved March 7, 1881.

§ 7167. Commitment of principal.

When any such person is so surrendered, the officer or judge to whom he is surrendered shall, by a new commitment, commit him to jail, unless he shall give sufficient bail, with new sureties, as he was required by law to do in the first instance.

(1881, c. 105, § 3; G. S. 1878, v. 2, c. 106, § 36.)

§ 7168. Fees of sheriff.

The sheriff is allowed the same fees and mileage for making an arrest or attending before said officer or judge under this act as he is allowed for arresting a person under a bench-warrant; and in all cases his fees shall be paid by the surety or sureties surrendering any principal as herein provided for.

(1881, c. 105, § 4; G. S. 1878, v. 2, c. 106, § 37.)

§ 7169. Examination before justice—Removal.

Whenever any person charged with having committed an offence shall be brought before any justice of the peace for examination in accordance with the provisions of this chapter, if such person shall, before the commencement of the examination, make oath that from prejudice or other cause, he believes the justice will not decide impartially in the matter, then said justice shall immediately transmit all the papers in the case to a justice of the peace of the same or an adjoining election district, qualified by law to conduct the examination, who shall proceed with the examination in the same manner as though said person had first been brought before him; but no case shall be so removed after a second adjournment had therein, and only one removal shall be allowed in the same case.

(1889, c. 92, § 1.)