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

COMPILED AND EDITED BY

HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY

FRANCIS B. TIFFANY and Others

AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL REPORTER SYSTEM

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 65.

COURTS OF JUSTICES OF THE PEACE.

TITLE 1.

JURISDICTION.

§ 4955. Jurisdiction limited to county—Exceptions.

The jurisdiction of justices of the peace is co-extensive with the limits of the county in which they reside, and this applies to every county in the state of Minnesota, anything appearing in any special law heretofore enacted to the contrary notwithstanding, except in the following cases: 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 of the peace may run into and be served on the garnishee, in any county in the state. Provided, that this act shall not repeal or affect the jurisdiction of any city justice or justice of the peace under the charter of any incorporated city or village situated in two or more counties.

(G. S. 1866, c. 65, § 1; G. S. 1878, c. 65, § 1; as amended 1893, c. 85, § 1.)

§ 2 repeals all inconsistent acts.

§ 4956. Place of holding office and court.

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.

§ 2. 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.

(G. S. 1866, c. 65, § 2, as amended 1868, c. 92, § 1; G. S. 1878, c. 65, § 2; 1885, c. 124.)

Jurisdiction of justices of the peace of offenses in relation to obscene books, etc., see §§ 6973, 6974.

For duties of justices of the peace to make reports to county attorneys, see § 806.

The effect of this section is to require a justice to transact his judicial business in the town, city, or ward for which he is elected, except that he may issue process in any place in his county, and may, in his discretion, for the convenience of parties, make any process issued by him returnable, and may hold any court which he is by law authorized to hold at any place appointed by him in a town adjoining the town for which he is elected, or a ward adjoining the ward for which he is elected, as the case may be, provided the place so appointed is within his county. State v. Marvin, 26 Minn. 323, 3 N. W. Rep. 991.

A justice has jurisdiction to make a warrant returnable in a city ward adjoining that for which he was elected, and there proceed to judgment. Such judgment, even though erroneous, will sustain a plea of former conviction. State v. Bowen, 45 Minn. 145, 47 N. W. Rep. 650.

See Beseman v. Weber, 53 Minn. 174, 54 N. W. Rep. 1053.

§ 4957. Not to keep office with attorney.

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. 1866, c. 65, § 3; G. S. 1878, c. 65, § 3.)

§ 4958. Powers of justice—Laws applicable to justice's court.

A justice of the peace is authorized to hold a court for the trial of all actions in the next section 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 applicable, and not inconsistent with the provisions of this title; but no justice of the peace shall charge the jury.

(G. S. 1866, c. 65, § 4; G. S. 1878, c. 65, § 4.)

A search-warrant issued by a justice of the peace, commanding search to be made for certain property of such justice, alleged to have been stolen, is void, and the fact that the property to be searched for is the property of the justice appearing upon the face of the warrant, the warrant furnishes no protection to the constable who executes the same. Jordan v. Henry, 22 Minn. 245.

§ 4959. Actions within jurisdiction of justice.

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. 1866, c. 65, § 5; G. S. 1878, c. 65, § 5.)

SUBD. 1. Justices of the peace have (with the exceptions stated in the statute) exclusive original jurisdiction of all matters where the amount in controversy does not exceed $100. The district courts have original jurisdiction only where justices have not. Castner v. Chandler, 2 Minn. 86, (Gil. 68.)

A justice has no jurisdiction of an action for damages to real estate, where the damages claimed exceed $100. Turner v. Holleran, 8 Minn. 451, (Gil. 401.)

Under section 62, c. 5, Laws 1873, an appeal lies to the district court from the order

of town supervisors laying out a highway, where the damages claimed by appellant exceed $100. Gorman v. Town of St. Mary, 20 Minn. 392, (Gil. 343.)

This section is not in contravention of the constitutional provision that no justice shall have jurisdiction in any civil action in which the amount in controversy exceeds $100. The words "the sum claimed" and "amount in controversy" are synonymous. Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

In actions before a justice, on contract for money, the sum claimed in the complaint determines the jurisdiction, and it cannot be affected by any counter-claim in the answer. Id.

SUBD. 2. A justice has no jurisdiction in an action in replevin where the value of the property and amount of damages claimed, taken together, appear from the complaint to exceed $100. Stevers v. Gunz, 23 Minn. 520.

In replevin before a justice the jurisdiction is not derived from the complaint, but from the filing of an affidavit stating the value of the property at $100 or less, and a bond; and where the answer does not allege a greater value on appeal, proof in the district court of a greater value does not affect the jurisdiction. Hecklin v. Ess, 16 Minn. 51, (Gil. 38.)

Where the damages claimed in the district court exceed the jurisdiction of a justice of the peace, the plaintiff, recovering only $50, is entitled to costs and disbursements. Greenman v. Smith, 20 Minn. 418, (Gil. 370.)

§ 4960. 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. 1866, c. 65, § 6; G. S. 1878, c. 65, § 6.)

A justice has no jurisdiction of an action to recover possession of real estate, sold at judicial sale, until the time to redeem expires. Stone v. Bassett, 4 Minn. 298, (Gil. 215.)

When replevin for a deed is within the jurisdiction. Simmonsen v. Curtis, 43 Minn. 539, 45 N. W. Rep. 1135.

An action by landlord against tenant for restitution does not involve title to real estate. Suchaneck v. Smith, 45 Minn. 26, 47 N. W. Rep. 397.

Where one has sold growing timber, and, after receiving the price, has sold the land, an action to recover the price does not involve the title to real estate. Herrick v. Newell, 49 Minn. 198, 51 N. W. Rep. 819.

A justice has no jurisdiction of a purely equitable action. Fox v. Ellison, 43 Minn. 41, 44 N. W. Rep. 671.

TITLE 2.

COMMENCEMENT OF ACTIONS; SERVICE AND RETURN OF PROCESS.

§ 4961. Justice to keep docket—Its contents.

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. 1866, c. 65, § 7; G. S. 1878, c. 65, § 7.)

Where a justice has jurisdiction, the same presumption as to regularity and formality attaches to his proceedings as to those of a court of record. Clague v. Hodgson, 16 Minn. 329, (Gil. 291.)

The record must show facts which confer jurisdiction both of the person and cause of action. Barnes v. Holton, 14 Minn. 357, (Gil. 275.) Neither the nature of the action, nor the justice's jurisdiction therein, can be shown by the judgment. Id.

An entry in a justice's docket, "Nov. 19, 1852. Summons returned served by copy by Officer Brott," sufficiently shows jurisdiction of the justice over the person. Bidwell v. Coleman, 11 Minn. 78, (Gil. 45.)

The failure of the justice's docket to show when the parties appeared does not affect the regularity of the judgment. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.) The justice's docket need not contain the verifications of the pleadings. Id.

Where the record of the proceedings, in an action in a justice's court, is silent as to the verification of a complaint in such action, it will be presumed that it was verified. Burt v. Bailey, 21 Minn. 403.

Where, in an action before a justice, the pleadings are in writing, and filed, the omission of the justice to make a statement of plaintiff's demand in his docket does not invalidate the judgment. Payson v. Everett, 12 Minn. 216, (Gil. 138.)

A docket entry, "By consent of parties, the case is adjourned till Monday, September 23, 1873, at 1 o'clock in the afternoon," sufficiently complies with the statute requiring that the justice shall enter in his docket "every adjournment, stating to what time and place." Anderson v. Southern Minnesota R. Co., 21 Minn. 30.

It is not necessary that a justice of the peace should sign judgments entered by him. State of Minnesota v. Bliss, 21 Minn. 459.

The return of the justice, on appeal, need not show of what county he is justice, nor contain his minutes of the trial. Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

A decision of a justice upon an objection to evidence not excepted to, will not be reviewed on appeal. Witherspoon v. Price, 17 Minn. 337, (Gil. 313.)

As to the requisites of the justice's record in a criminal action, see State v. McGinnis, 30 Minn. 48, 14 N. W. Rep. 256.

See Rahilly v. Lane, cited in note to § 4974.

The omission of the justice to state in his docket the fees due to each person separately does not render the judgment erroneous. Meister v. Russell, 53 Minn. 54, 54 N. W. Rep. 935.

§ 4962. Disposition of docket at end of justice's term.

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, c. 88, § 1; G. S. 1878, c. 65, § 8.)

§ 4963. Execution on judgments of predecessor in office.

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, c. 88, § 2; G. S. 1878, c. 65, § 9.)

§ 4964. Actions, how commenced — When defendant's name is unknown.

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. 1866, c. 65, § 8; G. S. 1878, c. 65, § 10.)

It was obviously the object of the statute to enable the parties to a controversy, of which a justice might, by the ordinary process of his court, acquire jurisdiction, to dis-

pense with the delay and expense incident to jurisdictional proceedings, and, by mere consent and summarily, to submit the matter for adjudication. Anderson v. Hanson, 28 Minn. 402, 10 N. W. Rep. 429.

The consent necessary to confer jurisdiction may be not only express, but may be implied from a voluntary appearance and participation in the proceedings before the court, without objection seasonably made. One may not thus voluntarily invoke the jurisdiction of a court, or seek the benefits of its exercise, and afterwards be heard to object that the court had not the right to adjudicate as to him. Overruling Rahilly v. Lane, 15 Minn. 447, (Gil. 360.) Id.

Objections to the summons are waived by a general appearance, (in this case by appeal on questions of law from a judgment of a justice taken by default.) Johnson v. Knoblauch, 14 Minn. 16, (Gil. 4.)

Irregularities in the service of a summons issued by a justice are waived by appearing and objecting to the jurisdiction on other grounds. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.)

A corporation, after appearing generally, and pleading to the merits in an action in a justice's court, cannot afterwards object that the summons was not served in conformity with the requirements of statute. Anderson v. Southern Minnesota R. Co., 21 Minn. 30.

The amount claimed in the complaint exceeded the jurisdictional limits of a justice's court. Issue was joined, and parties proceeded to trial. On the close of plaintiff's testimony defendant moved to dismiss because of want of jurisdiction, and plaintiff then, by leave of the court, amended his complaint so as to reduce the amount of his claim to $100. Both parties then proceeded with the trial, and judgment was rendered for the plaintiff. Held, that the conduct of the parties after the amendment, and the proceedings subsequent thereto, gave the justice ample jurisdiction to render the judgment. Lamberton v. Raymond, 22 Minn. 129.

See Morse v. Barrows, 37 Minn. 239, 33 N. W. Rep. 706; Craighead v. Martin, 25 Minn. 41, 43.

The justice may amend by inserting the defendant's true name after a plea in abatement for misnomer. Morse v. Barrows, 37 Minn. 239, 33 N. W. Rep. 706.

§ 4965. Security for costs.

Any justice of the peace in this state may, in all actions instituted before him, before or after the process issues, require 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. 1866, c. 65, § 9; G. S. 1878, c. 65, § 11.)

The obligation assumed by giving the statutory security for costs in an action in a justice's court extends to costs incurred in the district court, upon appeal thereto. Starlocki v. Williams, 34 Minn. 543, 26 N. W. Rep. 909.

An action to enforce such obligation is not required to be before the justice in whose court such security was given; nor in a justice's court. It may be prosecuted in the district court. Id.

§ 4966. Requisites of summons and process.

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: *provided*, 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. 1866, c. 65, § 10; G. S. 1878, c. 65, § 12; as amended 1885, c. 66.)

A summons in justice court, designating the time for the appearance of the defendant at "10 o'clock in the * * * noon," on a day named, is void. Seurer v. Horst, 31 Minn. 479, 18 N. W. Rep. 283.

A summons issued by a justice of the peace, in blank as to the return-day, is void. The service and return of such a summons, with the blank filled by any person, other than the justice, is insufficient to confer jurisdiction. Craighead v. Martin, 25 Minn. 41.

§ 4967. Summons and service thereof.

In all cases not otherwise provided for, the first process is by summons, commanding the officer to summon the 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. 1866, c. 65, § 11; G. S. 1878, c. 65, § 13.)

See § 5202.

The following properly-signed indorsement upon a summons is a sufficient return of sufficient service, to-wit: "[Venue.] I hereby certify and return that, at the town St. Augusta, in said county and state, on the 7th day of November, 1877, I served the within summons upon the within-named defendant, Jacob Woll, by leaving a true and certified copy at his usual place of abode, with his wife, she being a suitable person, of age and discretion, and then a resident therein; and further, that the person so served, as aforesaid, is the identical person named as defendant herein." Goener v. Woll, 26 Minn. 154, 2 N. W. Rep. 163.

Where a public officer is required to perform a ministerial duty in one of two ways, according to circumstances, and he performs it in one of them, the general presumption that officers of that kind do their duty operates as a presumption that the mode of performance was that which the circumstances authorized. Id.

Irregularities in the service of a summons issued by a justice are waived by appearing and objecting to the jurisdiction on other grounds. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.)

See Craighead v. Martin, 25 Minn. 41, 43; Beseman v. Weber, 53 Minn. 174, 54 N. W. Rep. 1053.

§ 4968. Service of summons 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 can not 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. 1866, c. 65, § 12; G. S. 1878, c. 65, § 14.)

See Beecher v. Stephens, 25 Minn. 146.

§ 4969. Publication of summons, when returnable—Deposit in post-office.

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

(G. S. 1866, c. 65, § 13; G. S. 1878, c. 65, § 15.)

§ 4970. Serving summons—By suitable person, when.

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 indorsement 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. 1866, c. 65, § 14; G. S. 1878, c. 65, § 16; as amended 1889, c. 158, § 1.)

§ 4971. Failure to execute process—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. 1866, c. 65, § 15; G. S. 1878, c. 65, § 17.)

§ 4972. Next friend for infant plaintiff.

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. 1866, c. 65, § 16; G. S. 1878, c. 65, § 18.)

§ 4973. Guardian for infant defendant.

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. 1866, c. 65, § 17; G. S. 1878, c. 65, § 19.)

§ 4974. Transfer of action to another justice.

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. 1866, c. 65, § 18; G. S. 1878, c. 65, § 20.)

This section does not apply to an examination for an offense charged under c. 106. State v. Bergman, 37 Minn. 407, 34 N. W. Rep. 737.

Where a cause in justice court is transferred to another justice, the fact of the transfer must be entered in the docket of the justice from whom the cause is transferred, otherwise the justice to whom it is sent acquires no jurisdiction. Rahilly v. Lane, 15 Minn. 447, (Gil. 360.) But see Anderson v. Hanson, 28 Minn. 400, 10 N. W. Rep. 429, where this case is overruled.

The affidavit for change of venue, in an action before a justice, need not be entered

nor its substance set forth in the docket. McGinty v. Warner, 17 Minn. 41, (Gil. 23.) Where the transcript of docket entries showed that an affidavit for a change was filed, but there was no affidavit in the papers transmitted, and the certificate accompanying the papers stated that they were all the papers in the cause, and a copy of the docket, held, the absence of the affidavit did not go to the jurisdiction, but was a case only of diminution of the record. Id.

The provision that no justice is required to transfer an action "until all his costs are paid" is inapplicable to a change of venue from one municipal court to another, where the judge is a salaried officer and has no interest in the costs. Lueck v. St. Paul & D. R. Co. (Minn.) 58 N. W. Rep. 821.

§ 4975. Time for parties to appear.

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. 1866, c. 65, § 19; G. S. 1878, c. 65, § 21.)

In proceedings of forcible entry and detainer, under *c.* 84, *infra*, the parties are not entitled to an hour after the time named in the summons in which to appear. This section is not applicable to proceedings under such chapter. Spooner v. French, 22 Minn. 37.

§ 4976. Failure to appear—Offer of judgment.

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. 1866, c. 65, § 20, as amended 1872, c. 68, § 1; G. S. 1878, c. 65, § 22.)

TITLE 3.

PLEADINGS AND TRIAL.

§ 4977. When pleadings shall take place.

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. 1866, c. 65, § 21; G. S. 1878, c. 65, § 23.)

This section is imperative, and unless complied with the justice loses his jurisdiction. Mattice v. Litcherding, 14 Minn. 142, (Gil. 110.)

As to effect of pleading counter-claim, see § 5238.

A justice of the peace has no power to receive pleadings in an action after one week from the return-day of the summons. Holgate v. Broome, 8 Minn. 243, (Gil. 209.)

See, also, Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

The objection that jurisdiction is lost by adjournment for more than one week without pleadings may be waived by written stipulation for adjournment. Johnson v. Hagberg, 48 Minn. 221, 50 N. W. Rep. 1037.

See Rauen v. Burg, 38 Minn. 389, 37 N. W. Rep. 946; Universalist General Convention v. Bottineau, 42 Minn. 35, 43 N. W. Rep. 687.

§ 4978. Pleadings—Name and contents.

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. 1866, c. 65, § 22; G. S. 1878, c. 65, § 24.)

§ 4979. Pleadings—Oral and in writing.

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. 1866, c. 65, § 23; G. S. 1878, c. 65, § 25.)

Unless the record show the contrary, on appeal or writ of error, all the proceedings of the court below are presumed to have been regular. It will be intended that there were proper pleadings unless the record shows there were not. Davidson v. Farrell, 8 Minn. 258, (Gil. 225.)

Oral pleadings to be liberally construed. Rauen v. Burg, 38 Minn. 389, 37 N. W. Rep. 946.

Pleadings in justice court to be liberally construed. McGrath v. O'Brien, 42 Minn. 13, 43 N. W. Rep. 486.

§ 4980. Complaint, what to contain.

The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

(G. S. 1866, c. 65, § 24; G. S. 1878, c. 65, § 26.)

§ 4981. Answer, what to contain.

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. 1866, c. 65, § 25; G. S. 1878, c. 65, § 27.)

Defendant cannot oust the justice of jurisdiction by putting in a counter-claim, which, together with plaintiff's claim or by itself, exceeds $100. Barber v. Kennedy, 18 Minn. 218, (Gil. 196.)

In an action before a justice an answer which alleges a set-off, and to which there is no reply, is taken as true, and the plaintiff will not be permitted to disprove the set-off. Taylor v. Bissell, 1 Minn. 225, (Gil. 186.)

§ 4982. Reply to counterclaim.

When the answer contains a counterclaim, the plaintiff may reply, denying any of the material allegations relating thereto.

(G. S. 1866, c. 65, § 26; G. S. 1878, c. 65, § 28.)

In a justice's court nothing but a counter-claim is admitted by failure to reply. Walker v. McDonald, 5 Minn. 455, (Gil. 368.)

See Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890.

A reply to an answer containing no counterclaim may be treated as a formal admission. Warder, Bushnell & Glessner Co. v. Willyard, 46 Minn. 531, 49 N. W. Rep. 300.

§ 4983. Denial of knowledge or information.

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. 1866, c. 65, § 27; G. S. 1878, c. 65, § 29.)

§ 4984. Actions, etc., on instrument for payment of money only—Inspection of writings.

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. 1866, c. 65, § 28; G. S. 1878, c. 65, § 30.)

An account headed "Rodney Parker to August Taylor, Dr.," containing items of debit and credit, and the balance struck, subscribed by the plaintiff and sworn to before the

justice to whom it is delivered by the plaintiff as his complaint, is good as a complaint. Taylor v. Parker, 17 Minn. 469, (Gil. 447.)

Where, in an action in a justice's court on a promissory note, the complaint was defective in failing to state that defendant made the note, and that plaintiff was the owner or holder, upon the trial, (defendant having withdrawn his answer,) plaintiff, without objection, introduced in evidence and filed with the justice a note from defendant to plaintiff, and in other respects corresponding to the allegations of the one described in the complaint. Held, that the filing of the note might be treated as an amendment, the effect being to make a good complaint, in accordance with this section and § 4989. Royce v. Gray, 21 Minn. 329.

§ 4985. 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. 1866, c. 65, § 29; G. S. 1878, c. 65, § 31.)

As to the power of the parties to waive verification of pleadings, see Taylor v. Bissell, 1 Minn. 225, (Gil. 186.)

The justice's docket need not show that the pleadings were verified. Tyrrell v. Jones, 18 Minn. 312, (Gil. 281.)

§ 4986. Admission by failure to deny—Plaintiff to prove his case, when.

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. 1866, c. 65, § 30; G. S. 1878, c. 65, § 32.)

See note to § 4982.

§ 4987. 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. 1866, c. 65, § 31; G. S. 1878, c. 65, § 33.)

A defective complaint in an action in a justice's court is cured by intendment after verdict or judgment, when the defendant has answered and gone to trial upon the merits without making any objection to the defective pleading, if the defects arise wholly out of an omission to plead expressly such facts as may be fairly implied from the allegations of the complaint. Chesterson v. Munson, 27 Minn. 493, 8 N. W. Rep. 593. See Rauen v. Burg, 38 Minn. 389, 37 N. W. Rep. 946.

§ 4988. Variances 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. 1866, c. 65, § 32; G. S. 1878, c. 65, § 34.)

Applied, Johnson Harvester Co. v. Clark, 30 Minn. 308, 15 N. W. Rep. 252.

§ 4989. 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. 1866, c. 65, § 33; G. S. 1878, c. 65, § 35.)

See Royce v. Gray, cited in note to § 4984.

§ 4990. Adjournments.

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 ap-

plication upon oath, adjourn the case for any further time, not exceeding thirty days.

(G. S. 1866, c. 65, § 34, as amended 1872, c. 67, § 1; G. S. 1878, c. 65, § 36.)

A justice cannot adjourn a cause of his own motion. An adjournment must be either by consent or sufficient cause shown. The party applying for it must show due diligence to obtain his evidence. School-Dist. No. 7 of Wright County v. Thompson, 5 Minn. 280, (Gil. 221.)

A party who, in a suit before a justice, asks for an adjournment after the first adjournment, must, in his affidavit, show by facts that he has used due diligence to obtain the evidence for which the adjournment is asked. Washington County v. McCoy, 1 Minn. 100, (Gil. 78.)

When a justice has adjourned a cause, and entered the adjournment in his docket, he cannot, in the absence of the parties, change the day to which it was adjourned. Wardlow v. Besser, 3 Minn. 317, (Gil. 223.)

Where the complaint is filed on the return-day of the summons, and the defendant, omitting to plead, consents to an adjournment for more than a week, the pleadings are closed, within this section, and his right to answer is gone. O'Brien v. Pomroy, 22 Minn. 130.

§ 4991. Proceedings when title to real estate is involved.

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. 1866, c. 65, § 35; G. S. 1878, c. 65, § 37.)

A justice cannot certify a cause to the district court until the title to real estate comes in question on the evidence. Goenen v. Schroeder, 8 Minn. 387, (Gil. 344.) Distinguished in Merriam v. Baker, 9 Minn. 40, (Gil. 34.)

Plaintiff claimed possession of real estate on the ground that after a foreclosure of a mortgage under a power of sale, the time to redeem had expired, and the title became absolute in him. The answer claimed that defendant had three years, instead of one, as claimed by plaintiff, in which to redeem, and that he had redeemed within the time. Held, the issue did not raise question of title. Id.

The docket entry of a justice of the certificate and return to the district court, under this section, of a cause, on the ground that the same involves the title to real estate, the pleadings showing that the title may be involved, and the cause otherwise being one within the justice's jurisdiction, is *prima facie* sufficient to invest the district court with complete jurisdiction. Lindekugel v. Angelhofer, 24 Minn. 324.

See, also, Goenen v. Schroeder, 18 Minn. 69, (Gil. 54;) Ferguson v. Kumler, 25 Minn. 183; Steele v. Bond, 28 Minn. 267, 9 N. W. Rep. 772; State v. Sweeney, 33 Minn. 23, 21 N. W. Rep. 847; Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890; Tordsen v. Gimmer, 34 N. W. Rep. 20; Radley v. O'Leary, 36 Minn. 173, 30 N. W. Rep. 457; Herrick v. Newell, 49 Minn. 198, 51 N. W. Rep. 819.

§ 4992. Adjournments subsequent to the first.

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. 1866, c. 65, § 36; G. S. 1878, c. 65, § 38.)

TITLE 4.

SET-OFFS.

§ 4993. Counterclaims.

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 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. 1866, c. 65, § 37; G. S. 1878, c. 65, § 39.)

In an action on contract a claim for use and occupation of real estate, held adversely by plaintiff, cannot be pleaded as a counter-claim. Folsom v. Carli, 6 Minn. 420, (Gil. 284.) See Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890.

§ 4994. Set-offs against assignees in certain cases.

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. 1866, c. 65, § 38; G. S. 1878, c. 65, § 40.)

Applied, La Due v. First Nat. Bank, 31 Minn. 33, 16 N. W. Rep. 426.

§ 4995. Set-offs 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. 1866, c. 65, § 39; G. S. 1878, c. 65, § 41.)

§ 4996. Counterclaim not allowed unless 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. 1866, c. 65, § 40; G. S. 1878, c. 65, § 42.)

§ 4997. Judgment in case counterclaim is 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. 1866, c. 65, § 41; G. S. 1878, c. 65, § 43.)

§ 4998. Judgment in case balance is found due defendant.

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. 1866, c. 65, § 42; G. S. 1878, c. 65, § 44.)

TITLE 5.

WITNESSES AND DEPOSITIONS.

§ 4999. Subpœnas, 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. 1866, c. 65, § 43; G. S. 1878, c. 65, § 45.)

For additional provisions relating to the taking of depositions, see § 5688 et seq.

See Hendershott v. County of Fillmore, 45 Minn. 281, 282, 47 N. W. Rep. 810.

§ 5000. Attachment against witness failing to appear.

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. 1866, c. 65, § 44; G. S. 1878, c. 65, § 46.)

§ 5001. Attachment, how 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. 1866, c. 65, § 45; G. S. 1878, c. 65, § 47.)

§ 5002. Delinquent witness liable for damages.

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. 1866, c. 65, § 46; G. S. 1878, c. 65, § 48.)

§ 5003. Depositions de bene esse.

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. 1866, c. 65, § 47; G. S. 1878, c. 65, § 49.)

§ 5004. Same—How taken, etc.

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

(G. S. 1866, c. 65, § 48; G. S. 1878, c. 65, § 50.)

§ 5005. Same—May be read on trial, when.

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. 1866, c. 65, § 49; G. S. 1878, c. 65, § 51.)

§ 5006. Commission to examine witness.

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. 1866, c. 65, § 50; G. S. 1878, c. 65, § 52.)

§ 5007. Same—For whom and how granted.

Such commission may be granted at the instance of either party by such justice, at any time, upon proof that due notice of application for such commission was served on the adverse party at least two days before the time of making 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. 1866, c. 65, § 51; G. S. 1878, c. 65, § 53.)

§ 5008. Same—How executed and returned.

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. 1866, c. 65, § 52; G. S. 1878, c. 65, § 54.)

§ 5009. Same—Adjournment of action.

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. 1866, c. 65, § 53; G. S. 1878, c. 65, § 55.)

TITLE 6.

TRIAL BY JURY.

§ 5010. Jury, how impannelled.

In all civil actions before a justice in which either party demands a trial by jury, such jury shall be impannelled 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. 1866, c. 65, § 54; G. S. 1878, c. 65, § 56.)

§ 5011. Selection of jurors—Venires.

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, impannelled and summoned as provided in this section.

(G. S. 1866, c. 65, § 55; G. S. 1878, c. 65, § 57.)

§ 5012. Adjournment—Talesmen—Oath of jury, etc.

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 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. 1866, c. 65, § 56; G. S. 1878, c. 65, § 58.)

The oath required by this section to be administered to the officer in whose charge a jury in a justice's court retires, may be waived by the parties, and will be deemed waived if omitted, and no objection is made at the time. Robert v. Brooks, 23 Minn. 138. See Watson v. St. Paul City Ry. Co., 42 Minn. 46, 47, 43 N. W. Rep. 904.

§ 5013. Verdict and 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. 1866, c. 65, § 57; G. S. 1878, c. 65, § 59.)

§ 5014. Discharge of jury when failing 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. 1866, c. 65, § 58; G. S. 1878, c. 65, § 60.)

See Rollins v. Nolting, 53 Minn. 232, 54 N. W. Rep. 1118.

§ 5015. Juror failing to appear may be fined.

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. 1866, c. 65, § 59; G. S. 1878, c. 65, § 61.)

TITLE 7.

JUDGMENTS.

§ 5016. Mutual judgments 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. 1866, c. 65, § 60; G. S. 1878, c. 65, § 62.)

For provisions as to fees and costs, see §§ 5558–5566.

A judgment recovered for the value of personal property, exempt from execution, levied upon and sold by the judgment creditor, is not itself exempt, and may be set-off against a judgment held by the judgment debtor against the judgment creditor in it. Temple v. Scott, 3 Minn. 419, (Gil. 306.)

The assignee of a judgment takes subject to all equities existing at the time between the judgment debtor and the assignor. Brisbin v. Newhall, 5 Minn. 273, (Gil. 217.)

§ 5017. Same—Set-off, how obtained.

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. 1866, c. 65, § 61; G. S. 1878, c. 65, § 63.)

§ 5018. Same—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. 1866, c. 65, § 62; G. S. 1878, c. 65, § 64.)

§ 5019. Judgment by confession.

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. 1866, c. 65, § 63; G. S. 1878, c. 65, § 65.)

§ 5020. Same—Requisites to be complied with.

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. 1866, c. 65, § 64; G. S. 1878, c. 65, § 66.)

§ 5021. Same—Papers to be filed—Costs—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. 1866, c. 65, § 65; G. S. 1878, c. 65, § 67.)

§ 5022. Time when judgment shall be entered.

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. 1866, c. 65, § 66; G. S. 1878, c. 65, § 68.)

"Forthwith" means within a reasonable time. Sorenson v. Swensen (Minn.) 56 N. W. Rep. 350.

A purported judgment, on its face appearing to have been rendered and docketed after the time fixed by this section, is void. Murray v. Mills (Minn.) 57 N. W. Rep. 324.

§ 5023. Judgment for costs 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. 1866, c. 65, § 67; G. S. 1878, c. 65, § 69.)

§ 5024. Summons not personally served—Bond for restitution.

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. 1866, c. 65, § 68, as amended 1869, c. 74, § 1; G. S. 1878, c. 65, § 70.)

§ 5025. Same—Defendant let in to defend after judgment.

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. 1866, c. 65, § 69, as amended 1869, c. 74, § 1; G. S. 1878, c. 65, § 71.)

Payment by garnishees, without execution, of the judgment against them in an action before a justice of the peace, discharges them, though the judgment against the defendant was upon default, upon service of the summons by publication, and subsequent to the payment, and within the year, it was set aside, and the defendant was permitted to defend, and succeeded in his defense. Troyer v. Schweizer, 15 Minn. 241, (Gil. 187.)

§ 5026. Transcript of judgment—Filing and docketing 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. 1866, c. 65, § 70; G. S. 1878, c. 65, § 72.)

After the filing of a transcript of a justice's judgment in the office of the clerk of the district court, and the entry of such judgment in the docket of district court judgments, exemplifications of such transcript and docket entry, attested by the clerk, with the seal of the court annexed, are competent evidence to prove the judgment. Herrick v. Ammerman, 32 Minn. 544, 21 N. W. Rep. 836.

See, also, Todd v. Johnson, 50 Minn. 310, 52 N. W. Rep. 864.

§ 5027. Same—Effect of filing transcript—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. 1866, c. 65, § 71; G. S. 1878, c. 65, § 73.)

It is not necessary that a party claiming title to real estate sold on execution issued out of the district court on such judgments should affirmatively prove that execution had been previously issued by the justice; the presumption being that the clerk of the district court acted in accordance with law. What the effect would be if it affirmatively appeared that no execution had in fact been issued by the justice, not considered. Herrick v. Ammerman, 32 Minn. 544, 21 N. W. Rep. 836.

§ 5028. Same—Execution, on what leviable.

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. 1866, c. 65, § 72; G. S. 1878, c. 65, § 74.)

§ 5029. Presumption in favor of judgment.

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, c. 70, § 1; G. S. 1878, c. 65, § 75.)

See note to § 5026.

TITLE 8.

EXECUTION AND PROCEEDINGS THEREON.

§ 5030. Execution, when to be issued.

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. 1866, c. 65, § 73; G. S. 1878, c. 65, § 76.)

§ 5031. Form of execution.

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. 1866, c. 65, § 74; G. S. 1878, c. 65, § 77.)

§ 5032. Entries in docket—Indorsement on execution.

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. 1866, c. 65, § 75; G. S. 1878, c. 65, § 78.)

§ 5033. Execution may be renewed—Execution after filing of transcript.

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. 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 section 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 section 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. 1866, c. 65, § 76, as amended 1871, c. 71, § 1; G. S. 1878, c. 65, § 79.)

See Troyer v. Schweizer, 15 Minn. 244, (Gil. 189.)

§ 5034. Notice of sale of property levied on.

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. 1866, c. 65, § 77; G. S. 1878, c. 65, § 80.)

§ 5035. Sale, how made—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. 1866, c. 65, § 78; G. S. 1878, c. 65, § 81.)

§ 5036. Officer not to be purchaser.

No officer shall, directly or indirectly purchase any goods and chattels at any sale made by him upon execution.

(G. S. 1866, c. 65, § 79; G. S. 1878, c. 65, § 82.)

§ 5037. Officer to receive money tendered, and give receipt.

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. 1866, c. 65, § 80; G. S. 1878, c. 65, § 83.)

§ 5038. Stay of execution—Recognizance.

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, c. 68, § 1; G. S. 1878, c. 65, § 84; as amended 1879, c. 24, § 1.)

§ 5039. Same—Execution at 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, c. 68, § 2; G. S. 1878, c. 65, § 85.)

§ 5040. Form of recognizance.

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 ———, A. D. 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, c. 68, § 3; G. S. 1878, c. 65, § 86; as amended 1879, c. 24.)

§ 5041. Certificate of amount collected from 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, c. 68, § 4; G. S. 1878, c. 65, § 87.)

TITLE 9.

REPLEVIN.

§ 5042. Writ of replevin may issue, when.

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. 1866, c. 65, § 81; G. S. 1878, c. 65, § 88.)

§ 5043. Affidavit shall state what.

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. 1866, c. 65, § 82; G. S. 1878, c. 65, § 89.)

In an action to recover exempt property in justice court, a replevin affidavit, which states in the statute language that the property in question was not taken from the plaintiff "by any process legally or properly issued against him, or, if so taken, it was exempt from seizure on such process," is not invalid on account of the retention of the alternative clause, and substantially states that the property was exempt whether taken under lawful process or not. Carlson v. Small, 32 Minn. 492, 21 N. W. Rep. 737.

A complaint in such suit is sufficient which alleges generally plaintiff's ownership, etc., without stating the particulars of his title, or the levy by defendant, and the exemption of the property from seizure. Id.

And if the defendant justify under process, this is matter of avoidance, and not a counter-claim; and no reply in such case being authorized in that court, plaintiff may, upon the trial, show in rebuttal that the property taken is exempt from process. Id.

See Hecklin v. Ess and Stevers v. Gunz, cited in note to § 4959.

See Whitney v. Swensen, 43 Minn. 337, 338, 45 N. W. Rep. 609.

§ 5044. 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, conditioned 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. 1866, c. 65, § 83; G. S. 1878, c. 65, § 90; as amended 1881, Ex. S. c. 5, § 1; 1885, c. 33, § 1.)

By act of 1885, c. 33, § 6, all laws or parts of laws inconsistent with the provisions of this act are thereby repealed.

§ 5045. Writ.

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. 1866, c. 65, § 84; G. S. 1878, c. 65, § 91; as amended 1881, Ex. S. c. 5, § 2; 1885, c. 33, § 2.)

The defendant, by answering without objecting to defects in the writ, or in the papers on which it issued, waives such objections, and gives the justice jurisdiction to try the action. McKee v. Metraw, 31 Minn. 429, 18 N. W. Rep. 148.

See Terryll v. Bailey, 27 Minn. 304, 7 N. W. Rep. 261.

§ 5046. Duty and power of officer.

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. 1866, c. 65, § 85; G. S. 1878, c. 65, § 92; as amended 1881, Ex. S. c. 5, § 3; 1885, c. 33, § 3.)

§ 5047. Claimant to be made codefendant.

If a third person claims the property, he shall be made a codefendant.

(G. S. 1866, c. 65, § 86; G. S. 1878, c. 65, § 93.)

§ 5048. Recovery by plaintiff—Damages—Execution.

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. 1866, c. 65, § 87; G. S. 1878, c. 65, § 94; as amended 1881, Ex. S. c. 5, § 4; 1885, c. 33, § 4.)

See McKee v. Metraw, 31 Minn. 429, 18 N. W. Rep. 148.

§ 5049. Recovery by defendant—Damages—Judgment.

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. 1866, c. 65, § 88; G. S. 1878, c. 65, § 95; as amended 1881, Ex. S. c. 5, § 5; 1885, c. 33, § 5.)

The judgment must be in the alternative, but on appeal upon questions of law alone the district court may correct the judgment in that particular. Kates v. Thomas, 14 Minn. 460, (Gil. 343.)

See Ward v. Anderberg, 36 Minn. 300, 30 N. W. Rep. 890; Terryll v. Bailey, 27 Minn. 304, 7 N. W. Rep. 261.

§ 5050. Judgment for defendant for return—Its effect.

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. 1866, c. 65, § 89; G. S. 1878, c. 65, § 96.)

In replevin, where the property has been delivered to plaintiff, if upon appeal on questions of law alone the district court reverses the judgment of the justice, without deciding the merits of the action, the defendant is entitled, as upon dismissal, to judgment for a return of the property, and if it cannot be had, for its value. An answer alleging, as a bar to an action in replevin, the recovery of judgment by plaintiff against defendant before a justice of the peace, in replevin, for the same property, an appeal by defendant to the district court on questions of law alone, and the judgment of the district court reversing the judgment of the justice, and adjudging a return of the property to defendant, and the recovery by him of its value if a return cannot be had, does not show a bar unless it allege or show that the judgment of the district court was rendered on the merits. That judgment alone does not show it. Terryll v. Bailey, 27 Minn. 304, 7 N. W. Rep. 261.

TITLE 10.

PROCEEDINGS BY ATTACHMENT.

§ 5051. Attachment allowed, when.

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. 1866, c. 65, § 90; G. S. 1878, c. 65, § 97.)

Proceedings by garnishment in justices' courts are regulated by § 5306 et seq.

§ 5052. Affidavit for attachment—Requisites thereof.

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. 1866, c. 65, § 91; G. S. 1878, c. 65, § 98.)

An affidavit for an attachment stating the facts justifying the issuance of an attachment, in the words of the statute, is sufficient. It need not, as is required in the district court, set forth the evidence of such facts. Curtis v. Moore, 3 Minn. 29, (Gil. 7.)

An affidavit that the defendant is indebted to the plaintiff "in a sum exceeding $5, to wit, the sum of $90, as nearly as he can ascertain the same, over and above all legal set-offs," and that "the same is due upon contract for breach of warranty, and contract in the sale of a certain drill, made," etc., held sufficient. Baumgardner v. Dowagiac Manuf'g Co., 50 Minn. 381, 52 N. W. Rep. 964.

An affidavit showing by recital that the party procuring it was plaintiff's agent held sufficient. Smith v. Victorin, 54 Minn. 338, 56 N. W. Rep. 47.

§ 5053. Writ, 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. 1866, c. 65, § 92; G. S. 1878, c. 65, § 99.)

If the affidavit state facts authorizing an attachment returnable in three days, and also facts authorizing one returnable in six days, and it is issued returnable in six days, the justice has jurisdiction. Curtis v. Moore, 3 Minn. 29 (Gil. 7).

§ 5054. Plaintiff to file bond—Condition of 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. 1866, c. 65, § 93; G. S. 1878, c. 65, § 100.)

§ 5055. Writ, 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. 1866, c. 65, § 94; G. S. 1878, c. 65, § 101.)

§ 5056. Service of summons and publication.

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, c. 69, § 1; G. S. 1878, c. 65, § 102.)

Judgment held without jurisdiction and void where a summons was properly ordered served by publication, but the return day was less than six days after the period of publication, and on that day the justice entered judgment for the plaintiff by default. Bird v. Norquist, 46 Minn. 318, 48 N. W. Rep. 1132.

§ 5057. 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 continue, 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 ninety-seven of chapter sixty-five, of the General Statutes.

(1871, c. 69, § 2; G. S. 1878, c. 65, § 103.)

See Bird v. Norquist, cited in note to § 5056.

§ 5058. Time for publication—Deposit in post-office.

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 post-office, addressed to the said defendant at his place of residence, and the postage thereon paid.

(1871, c. 69, § 3; G. S. 1878, c. 65, § 104.)

§ 5059. Forthcoming bond by defendant.

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. 1866, c. 65, § 95; G. S. 1878, c. 65, § 105.)

Where personal property was attached by an officer, and subsequently a bond was given, under this section, and possession obtained from the officer, held, in a suit brought upon the bond, that the obligors could not object to want of sureties on the bond, though sureties were required by statute, nor could they question the validity of the officer's levy. Scanlan v. O'Brien, 21 Minn. 434.

§ 5060. Same—By third person in possession of property.

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. 1866, c. 65, § 96; G. S. 1878, c. 65, § 106.)

§ 5061. 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. 1866, c. 65, § 97; G. S. 1878, c. 65, § 107.)

§ 5062. Officer's compensation.

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. 1866, c. 65, § 98; G. S. 1878, c. 65, § 108.)

§ 5063. Pleadings, etc., in actions commenced by attachment.

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. 1866, c. 65, § 99; G. S. 1878, c. 65, § 109.)

§ 5064. Dissolution of attachments.

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. 1866, c. 65, § 100; G. S. 1878, c. 65, § 110.)

Cited, Rossiter v. Minnesota Bradner-Smith Paper Co., 37 Minn. 296, 33 N. W. Rep. 855.

§ 5065. Effect of dissolution of attachment.

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. 1866, c. 65, § 101; G. S. 1878, c. 65, § 111.)

§ 5066. Execution—Sale of attached property.

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. 1866, c. 65, § 102; G. S. 1878, c. 65, § 112.)

TITLE 11.

APPEALS.

§ 5067. Appeal may be taken, when.

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. 1866, c. 65, § 103; G. S. 1878, c. 65, § 113.)

The provision giving an appeal "where the amount claimed in the complaint shall exceed thirty dollars," applies to all actions save those excepted in a subsequent part of the section. Shunk v. Hellmiller, 11 Minn. 164, (Gil. 104.) Followed in Koetke v. Ringer, 46 Minn. 259, 48 N. W. Rep. 917.

Appeal cannot be taken where the judgment of the justice court is less than $15, exclusive of costs. Dodd v. Cady, 1 Minn. 289, (Gil. 223.) On such appeal from a judgment for less than $15, exclusive of costs, the district court gets no jurisdiction, and in such case the consent of parties does not confer it. Id.

Where neither the amount of the judgment nor the claim in the plaintiff's complaint is sufficient to allow an appeal from a judgment, such appeal is not saved to the aggrieved party by the fact that the answer contains a counter-claim for more than $30. The words "amount claimed in the complaint," in the statute, are not equivalent to "the amount claimed in the pleadings of either party." Ross v. Evans, 30 Minn. 206, 14 N. W. Rep. 897.

An appeal from a judgment of a justice, upon questions of law and fact, does not waive objections to the jurisdiction. Rahilly v. Lane, 15 Minn. 447, (Gil. 360;) Barber v. Kennedy, 18 Minn. 216, (Gil. 196.)

§ 5068. Requisites to allowance of appeal.

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. 1866, c. 65, § 104, as amended 1868, c. 93, § 1; G. S. 1878, c. 65, § 114.)

SUBD. 1. Where the return of a justice, on appeal, does not include an affidavit for appeal, it is presumed that there was none, and the district court has not jurisdiction. McFarland v. Butler, 11 Minn. 72, (Gil. 42.)

The affidavit must appear on its face to have been taken before a proper officer. Knight v. Elliott, 22 Minn. 551.

It is not necessary that the affidavit for appeal be sworn to before the justice from whom the appeal is taken. Rahilly v. Lane, 15 Minn. 447, (Gil. 360.)

SUBD. 2. See Anderson v. County of Meeker, 46 Minn. 237, 238, 48 N. W. Rep. 1022.

SUBD. 3. The notice of appeal is jurisdictional, must be in writing, and signed by the

applicant, his agent or attorney, and cannot be waived. Larrabee v. Morrison, 15 Minn. 196, (Gil. 151.)

Filing with the justice the original notice of appeal, with proof of service thereof, within the time prescribed by statute, is a jurisdictional prerequisite to the allowance of the appeal that cannot be dispensed with nor supplied after the prescribed time. Marsile v. Milwaukee & St. Paul Ry. Co., 23 Minn. 4.

An indorsement, on a notice of appeal, "Personal service of the within is hereby admitted this twenty-third day of December, 1867," and signed by the attorneys for a party, is sufficient proof of service of such notice, and presumptive evidence that it was made on the day of its date. Rahilly v. Lane, 15 Minn. 447, (Gil. 360.)

An affidavit of service on the respondent "by delivering to and leaving with him, personally, a copy thereof, at his residence in said township, by delivering to and leaving with his father, J. T., a true copy thereof," held sufficient. Toner v. Advance Thresher Co., 45 Minn. 293, 47 N. W. Rep. 810.

Proof of service on the wife of the respondent, without showing that it was at his residence, is insufficient. Stolt v. Chicago, M. & St. P. Ry. Co., 49 Minn. 353, 51 N. W. Rep. 1103.

Failure to serve legal notice cannot be amended after the time for appeal. Id.

SUBD. 4. Payment of the costs and fee for making the return are essential conditions to the jurisdiction of a justice to allow an appeal. Trigg v. Larson, 10 Minn. 220, (Gil. 175.)

A certificate of a justice on allowance of appeal, "Costs paid and appeal allowed," is evidence that the two-dollar appeal fee was paid. Distinguishing Trigg v. Larson, 10 Minn. 220, (Gil. 175;) Rahilly v. Lane, 15 Minn. 447, (Gil. 360.)

§ 5069. Allowance of appeal—Stay of proceedings.

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. 1866, c. 65, § 105; G. S. 1878, c. 65, § 115.)

Cited, Dutcher v. Culver, 23 Minn. 419.

See Stolt v. Chicago, M. & St. P. Ry. Co., cited in note to § 5068.

§ 5070. Filing of return on appeal—Evidence to be returned, when.

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 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. 1866, c. 65, § 106, as amended 1872, c. 66, § 1; 1873, c. 66, § 1; G. S. 1878, c. 65, § 116.)

Where the transcript of the docket in the return states that a notice of appeal was served and filed, and the notice returned is void, the return shows want of jurisdiction. Larrabee v. Morrison, 15 Minn. 196, (Gil. 151.)

It was not the intention of the legislature to change the law relating to criminal actions, so that it should be the duty of the justice to keep a record of the evidence in such actions, and to return it, upon appeal, to the district court. State v. McGinnis, 30 Minn. 51, 14 N. W. Rep. 256.

Upon the trial in the district court of an appeal on questions of law alone, if the return does not show that it contains all the testimony, and no request for the return of the testimony appears to have been made, the sufficiency of the evidence to sustain the judgment will not be considered, but it will be presumed that sufficient competent evidence was given; distinguishing Payson v. Everett, 12 Minn. 216, (Gil. 137;) Hinds v. American Express Co., 24 Minn. 95.

See McFarland v. Butler, cited in note to § 5068. See, also, Lehmicke v. St. Paul, etc., R. Co., 19 Minn. 478, 479, (Gil. 413, 414;) Chesterson v. Munson, 27 Minn. 498, 501, 8 N. W. Rep. 593.

As to the conclusiveness of the return. Plymat v. Brush, 46 Minn. 23, 48 N. W. Rep. 443.

§ 5071. Appeals, how tried in district court.

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. 1866, c. 65, § 107, as amended 1868, c. 93, § 2; G. S. 1878, c. 65, § 117.)

An appeal was taken prior to the passage of this section from the judgment of a justice, upon questions of both law and fact. After its passage, and before trial in the district court, application was made to amend the pleadings, so as to raise issues different from those tried in justice court. Held, that c. 93, Laws 1868, affected the trial only, and it was proper for the district court to allow any amendment that would have been proper if the action had been originally commenced in the district court. Bingham v. Stewart, 14 Minn. 214, (Gil. 153.)

Either party may urge an objection to the jurisdiction at any stage of the proceeding. Mattice v. Litcherding, 14 Minn. 142, (Gil. 110, 112.)

An appeal on questions of law and fact does not waive objections to the jurisdiction of the justice. Barber v. Kennedy, 18 Minn. 216, (Gil. 196.) Where the objection to the jurisdiction is that the justice transferring the cause to the one who tried it did not do so by an order entered in his docket specifying the justice to whom the transfer was made, and it is made here for the first time, the party must show the omission affirmatively by the record. What appears to be copies of entries in the docket, but not certified as a transcript of the docket, do not show it. Id.

An appeal upon questions of law alone, may, with the consent of the parties, be heard and determined by the court in any county within its judicial district. Appearing and arguing such appeal before the court in another county than the one wherein the appeal is pending, without objecting to the jurisdiction of the court to try the same in such other county, is a waiver of all objections of that character. Chesterson v. Munson, 27 Minn. 498, 8 N. W. Rep. 593.

Such appeal may be placed upon the calendar and brought on for argument at the next term of the district court after the return of the justice is made and filed, unless continued for cause, although 30 days may not have elapsed since the allowance of the appeal. Id.

The appeal being taken on questions of law only, no question of law can be tried or raised in the district court except those tried or raised in the court below, and to which an exception was taken to the order made thereon by the justice, except objections to the jurisdiction of the court, and that the complaint or answer does not state facts sufficient to constitute a cause of action or defense. Bennett v. Phelps, 12 Minn. 326, (Gil. 216, 220.)

Upon an appeal upon questions of law alone the judgment may be so modified as to correct errors of law appearing upon the return, by which the appellant is aggrieved, if the erroneous part of the judgment is distinct and separable from the rest of it. Watson v. Ward, 27 Minn. 29, 6 N. W. Rep. 407.

If a defendant appeals, and does not succeed in reducing the amount of the recovery before the justice one-half or more, the plaintiff is entitled to his costs and disbursements in the district court. Id.

See Kates v. Thomas, cited in note to § 5049, and Hinds v. American Express Co., cited in note to § 5070.

Upon an appeal on questions of law alone, the evidence being returned, the appellant may avail himself of the point that there was no evidence to justify the judgment. Palmer v St. Paul & D. R. Co., 38 Minn. 415, 38 N. W. Rep. 100.

Upon an appeal on questions of law alone, the court will not consider the evidence except so far as to determine whether the justice might find from it facts that would justify the judgment. Croonquist v. Flatner, 41 Minn. 291, 43 N. W. Rep. 9.

Upon an appeal on questions of law alone, a judgment of reversal operates as a dismissal; and if the action is replevin, and the plaintiff gets the property on the writ, the judgment should direct a return of the property or its value. Daley v. Mead, 40 Minn. 382, 42 N. W. Rep. 85.

See, also, Schroeder v. Harris, 43 Minn. 160, 45 N. W. Rep. 4.

Upon an appeal on questions of law alone, the court may, after a decision, reconsider and modify its first decision Meister v. Russell, 53 Minn. 54, 54 N. W. Rep. 935.

On such an appeal the court may modify the judgment, where the erroneous part is severable from the remainder. Id.

Upon an appeal on questions of law alone, the judgment cannot be reversed because the justice has not returned all the evidence. Cour v. Cowdery, 53 Minn. 51, 54 N. W. Rep. 935.

An appeal on questions of law and facts brings up the case for trial de novo on the merits, regardless of the errors at the trial or in the judgment below. Welter v. Nokken, 38 Minn. 376, 37 N. W. Rep. 947.

In such case the court may allow an amendment increasing the amount of the plain-

tiff's claim beyond that within the jurisdiction of the justice. McOmber v. Balow, 40 Minn. 388, 42 N. W. Rep. 83.

Upon appeal to the municipal court of St. Paul, new pleadings are unnecessary unless directed by the court. Barth v. Horejs, 45 Minn. 184, 47 N. W. Rep. 717.

§ 5072. Appellant to enter appeal for trial—Effect of his omission.

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. 1866, c. 65, § 108, as amended 1871, c. 73, § 1; G. S. 1878, c. 65, § 118.)

Cited, Minnesota Valley R. Co. v. Doran, 17 Minn. 191, (Gil. 165.)

An appeal on questions of law alone may be brought on for hearing before the court at any time. Rollins v. Nolting, 53 Minn. 232, 54 N. W. Rep. 1118.

§ 5073. District court may compel return.

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. 1866, c. 65, § 109; G. S. 1878, c. 65, § 119.)

§ 5074. May compel justice to allow appeal.

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. 1866, c. 65, § 110; G. S. 1878, c. 65, § 120.)

§ 5075. May compel him to amend return.

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. 1866, c. 65, § 111; G. S. 1878, c. 65, § 121.)

The fact that the justice did not attach the papers in the case to his transcript, nor identify them, nor return them all, is no ground to dismiss the appeal. Rahilly v. Lane, 15 Minn. 447, (Gil. 361.)

As to the remedy where either party claims that evidence is omitted. Plymat v. Brush, 46 Minn. 23, 48 N. W. Rep. 443.

§ 5076. Appeal not to be dismissed for want of bond.

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. 1866, c. 65, § 112; G. S. 1878, c. 65, § 122.)

§ 5077. Appeal to be tried, 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. 1866, c. 65, § 113; G. S. 1878, c. 65, § 123.)

See Chesterson v. Munson, cited in note to § 5071; Rollins v. Nolting, cited in note to § 5072.

§ 5078. Affirmance for failure to prosecute—Judgment against sureties.

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. 1866, c. 65, § 114; G. S. 1878, c. 65, § 124.)

The provision authorizing judgment upon affirmance to be entered against the surety in the recognizance is valid. Davidson v. Farrell, 8 Minn. 258, (Gil. 225.)

Where appellee is entitled to judgment as of course, he should apply to the court, but the entry of judgment by the clerk, in such a case, as upon failure to answer, is a mere irregularity, which, if not prejudicial, will be disregarded. Libby v. Mikelborg, 28 Minn. 38, 8 N. W. Rep. 903.

See Stapp v. The Clyde, 44 Minn. 510, 512, 47 N. W. Rep. 160.

§ 5079. Execution against sureties, when.

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. 1866, c. 65, § 115; G. S. 1878, c. 65, § 125.)

§ 5080. Rights of surety—Paying execution.

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. 1866, c. 65, § 116; G. S. 1878, c. 65, § 126.)

§ 5081. Return when justice has gone out of 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. 1866, c. 65, § 118; G. S. 1878, c. 65, § 127.)

TITLE 12.

PROCEEDINGS FOR CONTEMPT BEFORE JUSTICES OF THE PEACE.

§ 5082. Justice may punish for contempt, when.

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. 1866, c. 65, § 119; G. S. 1878, c. 65, § 128.)

§ 5083. Contempt, how punished.

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

(G. S. 1866, c. 65, § 120; G. S. 1878, c. 65, § 129.)

§ 5084. Trial to be had before punishment.

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. 1866, c. 65, § 121; G. S. 1878, c. 65, § 130.)

§ 5085. Proceedings summary, when.

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. 1866, c. 65, § 122; G. S. 1878, c. 65, § 131.)

§ 5086. Record on conviction—To be 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. 1866, c. 65, § 123; G. S. 1878, c. 65, § 132.)

§ 5087. Warrant of commitment, what to set forth.

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

(G. S. 1866, c. 65, § 124; G. S. 1878, c. 65, § 133.)

§ 5088. Commitment of disobedient witness.

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. 1866, c. 65, § 125; G. S. 1878, c. 65, § 134.)

§ 5089. Order of commitment, what to contain.

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. 1866, c. 65, § 126; G. S. 1878, c. 65, § 135.)

§ 5090. 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. 1866, c. 65, § 127; G. S. 1878, c. 65, § 136.)

§ 5091. Punishment of 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. 1866, c. 65, § 128; G. S. 1878, c. 65, § 137.)

TITLE 13.

FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

§ 5092. Schedule of forms to be used.

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:

Form of Summons.

State of Minnesota, } ss.
County of ——. }

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.

Form of Summons in Case of Publication.

State of Minnesota, } ss.
County of ——. }

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.

Form of Execution.

State of Minnesota, } ss.
County of ——. }

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.

Form of Writ of Attachment.

State of Minnesota, } ss.
County of ——. }

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 whosesoever 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 proceeding thereon, as the law requires; and also to summon the said ——, if to be found, to be and appear at 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, this —— day of ——, A. D. 18—.

J. P., justice of the peace.

Form of Writ of Replevin.

State of Minnesota, } ss.
County of ——. }

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.

Form of Subpoena.

State of Minnesota, } ss.
County of ——. }

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.

Form of Venire for a Jury.

State of Minnesota, } ss.
County of ——. }

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.

Form of Warrant for Contempt.

State of Minnesota, } ss.
County of ——. }

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 contempt 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.

Form of Record of Conviction for Contempt.

State of Minnesota, } ss.
County of ——. }

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. 1866, c. 65, § 129; G. S. 1878, c. 65, § 138.)

A writ of attachment is sufficient to give jurisdiction if it be in the form prescribed, requiring the defendant to be summoned to appear at the office of the justice in a specified county, the town not being named. Beseman v. Weber, 53 Minn. 174, 54 N. W. Rep. 1053.

TITLE 14.

JURISDICTION OF JUSTICES IN CRIMINAL CASES, AND THE PROCEEDINGS THEREIN.

§ 5093. Jurisdiction in criminal cases.

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. 1866, c. 65, § 130; G. S. 1878, c. 65, § 139.)

§ 5094. Jurisdiction to try and determine criminal cases.

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. 1866, c. 65, § 131; G. S. 1878, c. 65, § 140.)

Cited, State v. Schmail, 25 Minn. 370; State v. Galvin, 27 Minn. 16, 6 N. W. Rep. 380.

The justice is not deprived of power to determine a case under the laws regulating the sale of intoxicating liquors, by the fact that a person convicted is by statute unable to procure a liquor license for 12 months thereafter. State v. Larson, 40 Minn. 63, 41 N. W. Rep. 263; State v. Olson, (Minn.) 59 N. W. Rep. 1038.

See State v. West, 42 Minn. 147, 43 N. W. Rep. 845; State v. Anderson, 47 Minn. 270, 50 N. W. Rep. 226.

Justices in Minneapolis have no criminal jurisdiction. State v. Hays, 38 Minn. 475, 38 N. W. Rep. 365.

§ 5095. Proceedings on complaint made—Warrant—Its contents.

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. 1866, c. 65, § 132; G. S. 1878, c. 65, § 141.)

A complaint may be made under this section, by any person, for obstructing a high way. § 1863 is not exclusive. State v. Galvin, 27 Minn. 16, 6 N. W. Rep. 380.

See Davis v. County of Le Sueur, 37 Minn. 491, 492, 35 N. W. Rep. 364.

§ 5096. Title of action—Entries in docket.

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. 1866, c. 65, § 133; G. S. 1878, c. 65, § 142.)

That a justice of a city, in the entries on his record, and in the papers subsequent to the warrant, entitles a criminal proceeding in the name of the city instead of in the name of the state, they fully disclosing the character of the proceeding, is a mere irregularity which will be disregarded. Faribault v. Wilson, 34 Minn. 254, 25 N. W. Rep. 449; following State v. Graffmuller, 26 Minn. 6, 46 N. W. Rep. 445.

A justice is not required to keep a record of all the evidence, nor, upon appeal upon questions of law, is he required to return all the evidence given upon the trial. A certification and return of the justice of such evidence as being all of the evidence given upon the trial, being unauthorized, constitutes no part of the official return of the justice, or of the record of the cause in the appellate court. Hence the appellate court cannot consider the matter so certified for the purpose of determining whether the judgment is sustained by sufficient evidence. State v. McGinnis, 30 Minn. 48, 14 N. W. Rep. 256.

Entries made in his docket by a justice of the peace in a criminal case are competent evidence. Cole v. Curtis, 16 Minn. 182, (Gil. 161.) A justice's docket may be identified by the justice or any other competent proof. Id.

§ 5097. Time of trial.

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. 1866, c. 65, § 134; G. S. 1878, c. 65, § 143.)

§ 5098. Accused may give bail—May be committed for want of 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. 1866, c. 65, § 135; G. S. 1878, c. 65, § 144.)

§ 5099. Arraignment—Plea—Entry of plea of not guilty.

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 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. 1866, c. 65, § 136; G. S. 1878, c. 65, § 145.)

§ 5100. Proceedings on plea of not guilty—Waiver of jury—Trial.

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. 1866, c. 65, § 137; G. S. 1878, c. 65, § 146.)

See State v. Woodling, cited in note to Const. art. 1, § 6.

§ 5101. Proceedings on 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. 1866, c. 65, § 138; G. S. 1878, c. 65, § 147.)

§ 5102. Jury list to be made.

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. 1866, c. 65, § 139; see 1867, c. 81, § 1, and 1870, c. 78, § 1; G. S. 1878, c. 65, § 148.)

§ 5103. Juror, how selected—Venire to issue.

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 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. 1866, c. 65, § 140, as amended 1870, c. 78, § 1; G. S. 1878, c. 65, § 149.)

A defendant in a criminal prosecution before a justice has a right, if he demand it, to be tried before a jury of 12. This is so, notwithstanding he may, on conviction, obtain such a trial in the district court, by appeal, upon entering into recognizance, with surety, as required by statute. Trial by a constitutional jury is not secured to him if, to obtain it, he is required to do what he may not be able to do. State v. Everett, 14 Minn. 439, (Gil. 330.)

§ 5104. Summoning of jurors.

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. 1866, c. 65, § 141; G. S. 1878, c. 65, § 150.)

§ 5105. Deficiency of jurors, how supplied.

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 bystanders or others who are competent, and against whom no cause of challenge appears, to act as jurors in the action.

(G. S. 1866, c. 65, § 142; G. S. 1878, c. 65, § 151.)

§ 5106. New jury to be summoned, when.

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. 1866, c. 65, § 143; G. S. 1878, c. 65, § 152.)

§ 5107. Challenge of jurors.

In all trials for criminal offences before a justice, either party may challenge any juror for cause.

(G. S. 1866, c. 65, § 144; G. S. 1878, c. 65, § 153.)

§ 5108. Trial, how conducted—Jury, how to be kept.

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. 1866, c. 65, § 145; G. S. 1878, c. 65, § 154.)

This right of presence is that of the accused, and may be waived by him, at least when the counsel of the accused is present for him. State v. Reckards, 21 Minn. 47.

§ 5109. 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. 1866, c. 65, § 146; G. S. 1878, c. 65, § 155.)

The statement in the justice's return that "the verdict was first made public by reading to the defendant," does not tend to show that the verdict was not publicly declared to the justice. City of St. Paul v. Smith, 25 Minn. 372.

§ 5110. Conviction, judgment, and punishment.

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. 1866, c. 65, § 147; G. S. 1878, c. 65, § 156.)

§ 5111. Acquittal—Judgment for costs.

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

(G. S. 1866, c. 65, § 148; G. S. 1878, c. 65, § 157; as amended 1881, Ex. S. c. 32, § 1.)

The entry in the docket of the justice that the complaint was malicious, and without probable cause, is not admissible in evidence in a suit for the malicious prosecution of such action. Casey v. Sevatson, 30 Minn. 516, 16 N. W. Rep. 407.

See Dean v. Board of Com'rs of Renville County, 50 Minn. 232, 52 N. W. Rep. 650.

§ 5112. Appeal in criminal cases—Requisites thereof.

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. 1866, c. 65, § 149, as amended 1871, c. 72, § 1; G. S. 1878, c. 65, § 158.)

A provision in a city charter that no appeal shall be allowed from the judgment of the city justice in cases of assault, where the judgment or fine imposed, exclusive of costs, is less than $25, prevails over the general statute, allowing appeals in all cases of convictions before justices of the peace. Tierney v. Dodge, 9 Minn. 166, (Gil. 153.) Such a provision does not conflict with § 2, art. 6, of the constitution, giving the supreme court appellate jurisdiction in all cases, for it does not attempt to take away review by *certiorari*. Id.

Where, on appeal in a criminal case, it appears from the docket entry that the proper recognizance has been given, notice of appeal served, proof thereof made, and the appeal allowed, the presumption in favor of the verity of the docket entry, as well as of the performance of duty by the justice, throws upon the party seeking to contradict such entry the burden of affirmatively showing its falsity. State v. Christensen, 21 Minn. 500.

Certiorari will not issue, after the time to appeal has expired, unless some good reason be shown why an appeal was not taken. State v. Milner, 16 Minn. 55, (Gil. 43.)

§ 5113. Allowance of appeal—Proceedings by justice—Trial.

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. 1866, c. 65, § 150, as amended 1871, c. 72, § 2; G. S. 1878, c. 65, § 159; 1883, c. 61, § 1.)

An appeal properly perfected, in a criminal case, upon questions of law alone, operates to supersede the judgment of the justice; and the district court may enter such judgment, on an affirmance, as the law of the case requires, and may affirm the judgment below as to that part which is regular, and disaffirm it as to such part as is erroneous. State v. Bliss, 21 Minn. 459.

Cited, State v. McGinnis, 30 Minn. 48, 50, 14 N. W. Rep. 256; State v. Tiner, 13 Minn. 520, (Gil. 488, 490.)

§ 5114. Costs on appeal, if the defendant is convicted, etc.

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. 1866, c. 65, § 151; G. S. 1878, c. 65, § 160.)

§ 5115. Proceedings when defendant fails to prosecute appeal.

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. 1866, c. 65, § 152; G. S. 1878, c. 65, § 161.)

§ 5116. Judgment against defendant and sureties in district court.

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. 1866, c. 65, § 153; G. S. 1878, c. 65, § 162.)

That these provisions do not apply to appeals from convictions before the recorder of the borough of St. Peter, see Borough of St. Peter v. Bauer, 19 Minn. 327, (Gil. 282.)

In a criminal proceeding, removed by *certiorari* from justice court to the district court, it is entirely proper for the district court to affirm the judgment of the justice, and also to enter judgment against the defendant and his sureties upon the recognizance for the writ for the amount of the fine and costs of both courts. Baker v. United States, 1 Minn. 207, (Gil. 181.)

Cited, State v. Bliss, 21 Minn. 458, 461.

§ 5117. Juror or witness in contempt, how proceeded against.

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. 1866, c. 65, § 154; G. S. 1878, c. 65, § 163.)

§ 5118. Justice to make 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. 1866, c. 65, § 155; G. S. 1878, c. 65, § 164.)

§ 5119. Certificate 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. 1866, c. 65, § 156; G. S. 1878, c. 65, § 165.)

§ 5120. Assaults, etc., how prosecuted.

No assault, battery or affray is indictable; but all such offences shall be prosecuted and determined in a 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. 1866, c. 65, § 157; G. S. 1878, c. 65, § 166.)

But when the assault is coupled with the intent to commit a felony, it becomes itself a felony, and, being punishable with a severity corresponding to the gravity of such an offense, the accused is entitled to a deliberate investigation by a grand jury, and a trial by his peers before the district court. Boyd v. State, 4 Minn. 321, (Gil. 240.)

§ 5121. Prevention and punishment of breach of peace—Proceedings by justice of his own motion.

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 assist-

ance 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. 1866, c. 65, § 158; G. S. 1878, c. 65, § 167.)

§ 5122. Proceedings on breach of 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. 1866, c. 65, § 159; G. S. 1878, c. 65, § 168.)

§ 5123. Proceedings when trial shows want of final 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. 1866, c. 65, § 160; G. S. 1878, c. 65, § 169.)

That is to say, he shall proceed to examine and discharge or bind over as provided in c. 106. Smith v. Anderson, 33 Minn. 25, 21 N. W. Rep. 841.

§ 5124. Justice to summon necessary 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. 1866, c. 65, § 161; G. S. 1878, c. 65, § 170.)

§ 5125. Judgment on conviction—Commitment—Execution.

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. 1866, c. 65, § 162; G. S. 1878, c. 65, § 171.)

Under this section a justice has power to render judgment for costs as well as a fine, and the district court has, under § 5116, the same power on appeal. State v Schmail, 25 Minn. 370.

When, upon conviction before a justice, one is adjudged to pay a fine or be imprisoned in the county jail for 30 days, or until the fine is paid, a commitment may be issued by the justice at any time while the judgment stands unexecuted, except during the pendency of an appeal. In re Shaw, 31 Minn. 44, 16 N. W. Rep. 461.

§ 5126. Attendance of witnesses when trial is 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. 1866, c. 65, § 163; G. S. 1878, c. 65, § 172.)

§ 5127. Security required of complainant.

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

(G. S. 1866, c. 65, § 164; G. S. 1878, c. 65, § 173.)

§ 5128. Fines, how collected and paid over.

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. 1866, c. 65, § 165; G. S. 1878, c. 65, § 174.)

§ 5129. Same—When 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. 1866, c. 65, § 166; G. S. 1878, c. 65, § 175.)

TITLE 15.

FORMS OF WRITS, ETC., IN CRIMINAL PROCEEDINGS.

§ 5130. Schedule of forms to be used.

The following forms may be used under the last title:

Form of Warrant.

State of Minnesota, } ss.
County of ——. }

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.

Form of Certificate of Conviction.

State of Minnesota, } ss.
County of —— }

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, &c., 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.

Form of Execution.

State of Minnesota, } ss.
County of ——. }

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, &c., 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 (&c., as in execution against the goods in civil cases.)

Form of Order to bring up Prisoner.

State of Minnesota, } ss.
County of ———. }

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.

Form of Commitment upon Sentence.

State of Minnesota, } ss.
County of ———. }

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, &c., 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.

Form of Commitment, after Arrest and before Trial.

State of Minnesota, } ss.
County of ———. }

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 warrant,) 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.

Form of Commitment where Justice, on the Trial, shall find that he has not Jurisdiction of the Case.

State of Minnesota, } ss.
County of ———. }

The State of Minnesota,

To the sheriff or any constable of said county:

Whereas, ——— of, &c., 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.

(G. S. 1866, c. 65, § 167; G. S. 1878, c. 65, § 176.)