

## JUSTICES' CODE.

## CHAPTER 34.

AN ACT DEFINING THE COURTS AND JURISDICTION  
OF JUSTICES OF THE PEACE.

*Be it enacted by the Legislative Assembly of the Territory of  
Dakota:*

Section 1. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater. Jurisdiction of  
Justices of the  
Peace.

Sec. 2. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in the county. Justice where  
to keep his  
office.

Sec. 3. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice. Justice not to  
hold his office  
with practicing  
attorney.

Sec. 4. Every justice of the peace elected in any precinct in this territory is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature are to apply to such justices' court, so far as the same may be applicable, "and not inconsistent with the provisions of this act." Powers and ju-  
risdiction of  
Justice of the  
peace.

Sec. 5. Every such justice shall have jurisdiction over and cognizance of the following actions and proceedings: Powers and ju-  
risdiction of  
Justice of the  
peace.

1. Of an action arising on contract for the recovery of

money only, if the sum claimed does not exceed one hundred dollars.

2. Of an action for damages for an injury to the person or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars.

3. Of an action for a penalty not exceeding one hundred dollars, given by the statutes.

4. Of an action upon a bond, conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for such installment as it becomes due.

5. Of an action upon a surety bond or undertaking taken by them, if the penalty do not exceed one hundred dollars.

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

7. In all civil actions to be brought against constable or the sureties to his official undertakings, or against both, for the failure of any constable to pay over any money by him collected, to the party thereto entitled, or for any neglect of duty by such constable in his official capacity, when the sum sought to be recovered by the plaintiff in such action, shall not exceed one hundred dollars.

Jurisdiction not to extend to civil actions in certain cases.

Sec. 6. The jurisdiction conferred by the last section does not extend, however, to a civil action :

1. In which the title to the real property shall come in question.

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

3. Nor of an action against an executor or administrator as such.

#### COMMENCEMENT OF SUITS—SERVICE AND RETURN OF PROCESS.

Justices to keep a docket and what to contain

Sec. 7. Every justice of the peace shall keep a docket in which he shall enter :

1. The title of all causes commenced before him.
2. The time when the process was issued, against the defendant, and the particular nature thereof.
3. The time when the parties appeared before him either without, or upon the return of process.
4. 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, and the amount estimated.
5. Every judgment, stating at whose request, and for what time.
6. The time when the trial was had, stating whether the same was by the jury or by the justice.
7. The verdict of the jury, and when rendered.
8. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, and the fees due to each person separately.
9. The fact of an appeal having been made and allowed, and when made and allowed.
10. Satisfaction of judgment when made.
11. And such other entries as may be material.

Sec. 8. Suits may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process; also when the name of the defendant is not known to the plaintiff, a suit may be commenced against him by a fictitious name, and it shall not be abated for that cause, but may be amended on such terms as the justice shall think reasonable.

Suits how commenced before Justice.

Sec. 9. Any justice of the peace in this territory, may in all actions hereafter instituted either before or after the process shall issue, at his direction, require of the plaintiff in such action to give security for the 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 case, and if the plaintiff refuse to give such security, the justice shall dismiss the suit.

Justice may require security for costs of plaintiff.

Sec. 10. All processes issued by justices of the peace shall run in the name of the United States, be dated on the day it issued, and shall be signed by the justice granting the same,

Process to be in the name of the United States.

and be directed to the sheriff or any constable of the proper county.

Summons the first process; what to contain.

Sec. 11. In all cases not otherwise especially provided for, the first process shall be by summons, commanding the officer to summon the defendant, to appear before such justice at the time and place to be 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 by such defendant, if such defendant shall be found, and if not found, by leaving a copy thereof at his or her last usual place of abode.

Officer serving process how to make return.

Sec. 12. Every constable or sheriff, serving any process authorized by this act, shall return thereon in writing the time and manner of service, and shall sign his name to ~~each~~ return.

When justice may issue warrant in civil action.

Sec. 13. A justice of the peace shall issue a warrant in every case where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is a nonresident of the county, or is about to remove from the county, with an intent not to return thereto.

Warrant what to contain.

Sec. 14. A warrant shall command the sheriff or constable to take the body of the defendant, and bring him forthwith before such justice, to answer the plaintiff in a civil action, and shall further require the sheriff or constable, after he shall have arrested the defendant, to notify the plaintiff of such arrest.

Warrant how served.

Sec. 15. A warrant shall be served by arresting the defendant, and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, or if it be made to appear to the justice, by the affidavit of the defendant, that said justice is a material witness for the defendant in the case, or is near of kin to the plaintiff in the suit, stating therein the degree, the officer shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause, and proceed therein as if the warrant had been issued by himself.



Sec. 16. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until the justice shall direct his release; but in no case shall the defendant be detained longer than twelve hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

Proceedings when persons brought before justice on warrant.

Sec. 17. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed, for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an indorsement on the process, to the following effect: "At the request and risk of the plaintiff, I authorized A. B. to execute and return this writ, 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 process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Justice may empower person to serve process in certain cases.

Sec. 18. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make false return, such officer, for every such offense, 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 founded upon this statute.

Officers failing to execute process, &c., how liable.

Sec. 19. Parties in justices' courts may prosecute or defend in person, or by attorney, and any person may act as attorney in justices' courts, except that the constable by whom the summons or jury process was served, cannot appear or act on the trial, in behalf of either party. The authority of a person to act as attorney for another, may be oral or written; but unless admitted by the adverse party, must be proved by the oath of the attorney or otherwise.

Parties may prosecute or defend in person or by attorney.

Sec. 20. No suit shall be instituted by an infant plaintiff until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein.

When infant plaintiff's next friend to be appointed.

Who may not  
appear in per-  
son or by attor-  
ney.

Sec. 21. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age.

Suit not to be  
prosecuted  
against infant  
defendant until  
guardian is ap-  
pointed.

Sec. 22. After the service and return of process against an infant defendant, the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defense of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian; and the consent of such guardian or next friend shall be filed with the justice, and the guardian of the defendant shall not be liable for any cost in the suit.

Parties entitled  
to one hour af-  
ter time men-  
tioned for ap-  
pearance.

Sec. 23. 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 of a special proceeding; in such case, he may postpone the time of appearance until the close of the trial.

## PLEADINGS AND TRIAL.

Pleadings when  
to take place.

Sec. 24. 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.

Pleading in jus-  
tices' courts  
enumerated and  
defined.

Sec. 25. The pleadings in justices' courts are:

1. The complaint by the plaintiff, stating the cause of action.
2. The answer by defendant, stating the grounds of defense.
3. When the answer sets up a counter claim by way of a set off, the reply by the plaintiff.

Pleadings may  
be oral or in  
writing.

Sec. 26. The pleadings may be oral, or they may be in writing; if oral, the substance of them must be entered by the justice in his docket; if in writing, they must be filed in his office, and a reference to them made in his docket; they are

not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

Sec. 27. The complaint must state in a plain and direct manner the facts constituting the cause of action. Complaint what to contain.

Sec. 28. The answer must 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 defense or a counter claim, by way of set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court. Answer how made and what to contain.

Sec. 29. When the answer contains a counter claim, the plaintiff may reply, denying any of the material allegations relating thereto. Reply of plaintiff when allowed.

Sec. 30. 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. Pleadings how construed in certain cases.

Sec. 31. When the cause of action or counter claim 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 any time of the 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 afterwards given in evidence. Written instrument how pleaded.

Sec. 32. Every complaint, answer or reply must be verified by the oath of the party pleading; or if he be not present, by the oath of his agent or attorney, to the effect that he believes it to be true; the verification must be oral or in writing, in conformity with the pleadings verified. To be exhibited to party.

Sec. 33. Every material allegation in a complaint, or relating to a counter claim in an answer, not denied by the pleading of the adverse party must, 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. Pleadings must be verified by oath of party.

Sec. 34. Either party may object to a pleading of his adversary. Statements in pleadings not denied, to be taken as true.

Defective pleadings how objected to.

versary, 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 defense, although it be taken as true. If the court deem the objection well founded, it must order the pleadings to be amended, and if the party refuse to amend, the defective pleading must be disregarded.

Variance between proof and pleadings to be disregarded.

Sec. 35. A variance between the proof on the trial and the allegations in the pleadings, must be disregarded as immaterial, unless the court be satisfied that the adverse party has been biased to his prejudice thereby.

Amendments of pleadings when allowed.

Sec. 36. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal to supply any deficiency or omission in the allegations or denial, necessary to support the action or defense, when, by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that an adjournment is necessary to the adverse party, in consequence of such an amendment, an adjournment may be granted. The court may also, in its discretion, require as a condition for an amendment, the payment of costs to the adverse party, to be fixed by the court, not more than three dollars; but such payment cannot be required, unless an adjournment is made necessary by the amendment; nor can an amendment be allowed after a witness is sworn on a trial, when an adjournment will be made necessary.

Costs allowed when adjournment is necessary.

Adjournment when and on what terms allowed.

Sec. 37. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if sufficient cause be shown upon oath, adjourn the case for any time not exceeding thirty days; and upon an adjournment, all costs for the travel, attendance of witnesses, serving of subpoenas, &c., shall be taxed in the same manner as if no actual trial had been had, upon the day originally fixed for the trial of the case.

When the title of lands come in question, justices how to proceed.

Sec. 38. If it appear, on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceeding 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 suit, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to find judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

Sec. 39. Every adjournment after the first, shall be for such Time of adjournment. reasonable time as will enable the party to procure such absent testimony or witness, as may be necessary and material, which the party applying for the adjournment shall not have been able to procure by the use of proper diligence; and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Sec. 40. If a cause commenced by a warrant be adjourned Adjournment of cause commenced by warrant. by the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody.

Sec. 41. But if such cause be adjourned upon the application When cause adjourned on application of defendant to continue in custody of the defendant, he shall continue during the time of the adjournment in the custody of the officer, unless he shall enter into recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if said judgment be given against him in the suit, and execution be issued against his person, he will render himself upon such execution before the return day thereof; or that he or his security will pay the judgment so recovered.

Sec. 42. If any such recognizance shall have been given When recognizance given upon prior adjournment. upon any prior adjournment, it shall not be necessary to enter into any recognizance upon a subsequent adjournment, unless such recognizance be required by the justice, or the bail of the defendant, in such prior recognizance.

Sec. 43. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover, unless he shows an execution, or a duly certified copy thereof upon the judgment, obtained in the suit in which such adjournment was had, duly issued within six days after the time, when the same could have been issued against the person of the defendant, and a return thereon that such defendant could not be found. In suit brought upon recognizance, what plaintiff must prove.

## SET-OFFS.

When counter  
claims of de-  
fendant may be  
set off.

Sec. 44. Counter claims which the defendant may have against the plaintiff, may be set off in the following cases, and under the following circumstances :

1. It must be a demand arising upon a judgment, or upon a contract, express or implied, whether such contract be written or unwritten, sealed, or without a seal, and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of condition only shall be set off.

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

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

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant.

5. It can only be allowed in actions founded upon demands which could themselves be the subject of set-off according to law.

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

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

8. If the action be 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 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 debt, if the demands be such as might have been set off against such plaintiff or assignee, while the contract belonged to him.

Claim against  
the assignor of  
note, when may  
be set off.

Sec. 45. If the action be 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

debt may be made of a demand existing against any person or persons, who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him.

Sec. 46. If the plaintiff be a trustee for any other, or if the suit be in the name of the plaintiff who has no real interest in the contract upon which the suit 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 debt, if the same might have been set off in an action brought by those beneficially interested.

Set-off when suit brought by trustee, when allowed.

Sec. 47. To entitle a defendant to a set-off of any counter claim he may have against the plaintiff, he must specifically and clearly allege the same in his answer, stating the particular items of such counter claim; but no set-off shall be allowed by a justice's court, unless the same shall be alleged in the defendant's answer as required in this section.

To entitle defendant to set-off, he must allege the same in answer.

Sec. 48. If the amount of the set-off duly established be equal to the plaintiff's debt or demand, judgment shall be entered that plaintiff take nothing by his action, if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Judgment where set-off is proved

Sec. 49. If there be found a balance due from the plaintiff in the action 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 suit shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

Judgment where there is a balance due defendant.

#### WITNESSES AND DEPOSITIONS.

Sec. 50. A subpoena may be served by any person by reading it to the witness, or by delivering a copy thereof to him.

Subpena how and by whom served

Sec. 51. Whenever it shall appear to the satisfaction of the justice by proof made before him, that any person duly subpoenaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued,

Attachment when to issue against witness.

or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided however*, That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

Such attachment how executed.

Sec. 52. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment, shall pay all costs of such attachment.

Witness not appearing how liable.

Sec. 53. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for damages which such party may have sustained by his non-appearance: *Provided*, that said witness had one day's attendance and his mileage tendered or paid him in advance.

Deposition of witness how taken.

Sec. 54. Either party in any civil suit depending 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 territory where the said witness may be.

How such deposition to be certified, &c.

Sec. 55. The deposition shall be taken, certified, and returned according to the law of the territory concerning depositions.

Depositions when to be read in evidence.

Sec. 56. The justice shall allow every deposition taken, certified, and returned according to the provisions of this act, 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:

1. Is dead or resides out of the county; or,
2. Is unable, or cannot easily attend before the justice, on account of sickness, age, or other bodily infirmity.
3. Has gone out of the county, without the consent or collusion of the party offering the deposition.



# ISSUING OF COMMISSIONS TO TAKE TESTIMONY BY JUSTICES OF THE PEACE.

Sec. 57. Whenever an issue of fact shall have been joined, in any action or suit, before a justice of the peace, and it shall appear on the application of either party, that any witness not residing within the county where such suit is pending, is material in the prosecution or defense of such action or suit, the said 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 interrogation settled by the said justice, and certified by his approbation, entered or endorsed thereon, or by the written agreement or assent of the parties annexed to such commission, to take and certify the depositions of such witness, and to return the same according to the directions given, with such commission, in which commission both parties may unite.

Commissioners to be appointed to take depositions.

Assent of parties thereto.

Sec. 58. Such commission may be granted at the instance of either party by such justice of the peace, at any time, upon proof that due notice of such application for such commission has been served on the adverse party at least two days before the time of making such application; and whenever the defendant shall neglect to appear or plead in such action or suit, and the plaintiff shall make application for a commission to take the deposition of a material witness for the prosecution of such action or suit, the justice may award a commission without notice to one or more competent persons, to examine such witness on oath upon interrogations proposed by the plaintiff to be settled by the justice, and certify the depositions, and return the same according to the directions given in such commission.

Commissioners may be granted on notice to adverse party.

Failure to appear on notice.

Sec. 59. The commission shall be executed and returned 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 case, with the like effect, as if such witness were personally examined at such trial.

Deposition to be evidence same as personal examination.

Sec. 60. When the commission is executed in this territory, the commissioner or commissioners, shall have the same power

Commissioners may issue subpoenas, &c.

to issue subpoenas, swear witnesses, and compel their attendance as justices of the peace have.

Adjournment of  
suit.

Sec. 61. Whenever such commission shall be issued by any justice of the peace, the action or suit shall not be adjourned for more than ninety days, unless by consent and agreement of the parties of such action or suit.

Fees for issuing  
commissions.

Sec. 62. The justice of the peace shall be entitled to fifty cents for every commission issued and approved by him, in addition to the fees now allowed by law.

### TRIAL BY JURY.

Party failing to  
appear, what  
proceedings to  
be had.

Sec. 63. If either party shall fail to appear within one hour after the time specified for the return of the process, or after the hour of adjournment, the justice shall dismiss the suit, or proceed to hear the proof of the party present, and render judgment thereon accordingly, as the case may require.

Either party  
may demand  
trial by jury.

Sec. 64. In every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit, or for the attorney of either of them, after issue be joined, before the court shall proceed to inquire into the merits of the cause, to demand of said court that the said action be tried by a jury of six persons, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand the justice shall direct the sheriff or any constable of the county, who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear (or affirm, as the case may be,) that you will perform the duties required of you, according to the best of your abilities, without partiality to either party;" and 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 cause, for such reasonable time as he may think proper, to enable the officer to summon the said jurors, and for them to appear, which time shall be specified in the venire facias; the person so sworn shall write down the names of eighteen persons, being inhabitants of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately six names, and in case of the absence

Oath of officer  
summoning jury

Jury how select-  
ed.

of either party, or of his refusal to strike out, the justice shall strike out of the said list six names, and shall thereupon issue a venire facias, requiring the officer to summon the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors for the trial of the cause named in said venire facias: *Provided*, That if any of said jurors shall not attend, at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jury so selected shall take the following oath or affirmation; "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant, and true verdict give according to law and the evidence given to you in court, so help you God;" and after having been sworn they shall sit together and hear the several proofs and allegations, of the parties, which shall be delivered in public in their presence. And to each witness on any trial, the justice shall administer the following oath (or affirmation,) to wit: "You do swear in the presence of Almighty God (or affirm,) that the evidence you shall give in this matter of difference between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God;" and after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they all agree upon a verdict, or be discharged by the justice; and for which purpose a proper officer shall be sworn or affirmed, to whom the said justice shall administer the following oath, to wit: "You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn in this inquest together, in some private convenient place, without drink, except water; you will not suffer any person to speak to them, nor speak to them yourself unless by order of the justice, except it be to ask them whether they have agreed on their verdict, or are discharged by the court, so help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice, in the same court, who is hereby required to give judg-

Oath of jurors.

Oath of witness.

Oath of officer  
having charge of  
jury.

ment thereupon, and to award execution in manner hereinafter directed.

If jury cannot agree, justice may discharge them.

Sec. 65. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out any reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment.

Penalty if juror does not appear.

Sec. 66. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

#### JUDGMENT, AND THE FILING TRANSCRIPTS THEREOF, AND THE STAY OF EXECUTIONS.

One judgment may be set off against another by justice.

Sec. 67. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed, 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 may be.

When justice to set off judgment rendered by another justice.

Sec. 68. If the judgment proposed as a set-off, was rendered before another justice, the party proposing such set-off must 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 such transcript was obtained for the purpose of being a set-off against the judgment to which it was 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 shall be returned with the proper justices' certificate therein, that it has not been allowed in set-off.

When judgment set off, justice make entry thereof.

Sec. 69. 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 which may be due after such set-off. If a justice shall allow 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 shall refuse such transcript as a

set-off, he shall so certify on the transcript, and return the same to the party who offered it.

### JUSTICES OF THE PEACE TO ENTER JUDGMENT UPON CONFESSION.

Sec. 70. That any justice of the peace in this territory Judgment by confession. may enter a judgment by confession, if the defendant or defendants in any case when the debts or damages shall not exceed one hundred dollars, with such stay of execution as may be agreed on by the parties interested in such judgment.

Sec. 71. No confession shall be taken, or judgment rendered To be in writi and verified. thereon, unless the following requisites be complied with:

1. The defendant must personally appear before the justice.
2. The confession shall be in writing, signed by the defendant, and verified by his oath, and filed with the justice.

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

Sec. 72. The statement and affidavit may be filed with the Duties of justice of peace. justice of the peace, who must endorse upon it the time of filing, and must enter upon his judgment-book a judgment for the amount confessed, with one dollar costs. The statement and affidavit, with the judgment endorsed thereupon, become the judgment roll.

Sec. 73. Every justice, on demand of any person in whose Transcripts. favor a judgment has been confessed, as hereinbefore provided, shall give a certified transcript of such judgment, and the clerk of the district court of the same county in which judgment was rendered, shall, upon the production of any such transcript, Filing in district court. file the same in his office, and forthwith enter such judgment in his docket of the district court judgment and degrees, and shall note the time of filing such transcript.

Sec. 74. Every such judgment from the time of filing the Lien on real estate. transcript thereof, shall have the same lien on the real estate of the defendant or defendants in the county, as may be allowed

by law to a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried with the execution in the same manner and with like effect as the judgment of such district courts, but no execution shall be in force thereon out of the district court, until an execution shall have been in force by a justice, and returned, that the defendant or defendants have no goods or chattels whereon to levy the same.

Execution.

Affidavit being made, justice to transfer suit to another justice.

Causes to be removed but once.

When justice to render judgment forthwith.

Execution how stayed.

Sec. 75. If, on the return of the process, or at any time before trial shall have commenced in any cause or proceeding, civil or criminal, either party, his agent or attorney, shall make 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 a trial thereof; or that from prejudice, bias, or other cause, he believes such justice will not decide impartially in the matter; or if it shall be proven that the justice is near of kin to the plaintiff, then, in such case, the said justice shall transfer said suit and all other papers appertaining to the same, to some other justice of the same or adjoining precinct, who may thereupon proceed to hear and determine the same in the same manner as it would have been lawful for the justice before whom the said cause or proceeding was commenced to have done: *Provided*, that no cause or proceeding shall be removed more than once.

Sec. 76. In cases where the plaintiff shall be non-suited, or withdraw his action, or where judgment shall have been confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and shall 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 cause shall have been submitted to him for his decision.

Sec. 77. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party; and for the following periods of time, to be calculated from the date of the judgment:

1. If the judgment be for any sum not exceeding ten dollars, exclusive of costs, one month.

2. If it be for any sum above ten dollars, and not exceeding thirty dollars, two months.

3. If it be for any sum above thirty dollars, and not exceeding fifty dollars, three months.

4. If it be for any sum above fifty dollars, and not exceeding seventy-five dollars, four months.

5. If it be for a sum above seventy-five dollars, exclusive of cost, six months; but if all the parties to the judgment agree upon any other time, the stay shall be for the time so agreed upon.

Sec. 78. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering the judgment, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

Party staying execution must enter into recognizance.

Sec. 79. Such recognizance must be signed by the person entering the same, and may be in the following form:

Form of recognizance.

"I, \_\_\_\_\_, acknowledge myself indebted to \_\_\_\_\_, in the sum of \_\_\_\_\_, to be void upon this condition: whereas, \_\_\_\_\_ obtained a judgment before, \_\_\_\_\_, a justice of the peace of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, against \_\_\_\_\_. Now, if such judgment shall be paid at the expiration of \_\_\_\_\_ months from the time it was rendered, this recognizance shall be void."

Sec. 80. If at the expiration of such stay, the judgment be not paid, the execution shall issue against the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property, not exempt by law, belonging to him upon which to levy, he shall levy upon the property, not exempt by law, of the bail, and in his return shall state what amount of the money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

Execution may issue against principal and bail.

Sec. 81. After the return of such execution, the bail shall be entitled, on motion, to a judgment before a justice for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent. per annum; and such

Bail entitled to judgment principal on motion.

return of the officer, upon motion, shall be evidence of the facts therein stated. No motion shall be made after three months from the return of the execution.

Judgment stayed after execution the same as on appeal.

Sec. 82. If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner and with the like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed; and if the defendant has been committed, shall order him to be discharged from custody.

When transcript of judgment to be filed with clerk of district court.

Sec. 83. Every justice, on demand of any person in whose favor he shall have 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 said 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 decrees, and shall note therein the time of filing such transcript.

Transcript so filed, lien on real estate.

Sec. 84. No person, being a resident of this territory, shall in any case be imprisoned for debt by virtue of any provision of this act.

### EXECUTIONS, AND PROCEEDINGS THEREON.

Execution to be issued on demand.

Sec. 85. Upon every judgment rendered by a justice, execution shall be issued by such justice, in the manner hereinafter prescribed, at any time on demand.

Execution what to contain.

Sec. 86. 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 shall be granted, (his arms and accoutrements excepted, and also such other 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, to render to the party who recovered the same.

Duty of justice before issuing execution.

Sec. 87. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of his 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.



Sec. 88. If any execution be not satisfied, it may, at the request of the plaintiff, be removed from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall renew the execution in full force, in all respects for thirty days, and no longer. An entry of such renewal shall be made in the docket of the justice.

Execution when  
and how renewed.

Sec. 89. 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, put up at three public places in the township or precinct where the property is to be sold, of the time and place when and where the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Notice of sale  
how to be given  
and what to  
contain.

Sec. 90. 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.

Sale of goods  
and return of  
execution how  
made.

Sec. 91. No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution; but every such sale shall be absolutely void.

Officer not to  
buy goods sold  
by him.

Sec. 92. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, the officer shall, upon the demand of the plaintiff, summon in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceedings shall be had thereon before the justice to final judgment and execution, as in suits instituted by attachment in justices' court.

Garnishees may  
be summoned  
when no property  
found.

Sec. 93. The officer who shall hold an execution, shall receive all money tendered to him in payment thereof, and shall indorse the same on the execution, and give the person paying

Officer holding  
execution to  
give receipt for  
money paid on  
same.

the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

### REPLEVIN.

Affidavit to be made in case of replevin.

Sec. 94. When the object of the action is to recover the possession of personal property, the plaintiff or some other person, shall in all cases before any writ shall be issued, take and subscribe an affidavit, and file the same with the justice.

Such affidavit what to contain.

Sec. 95. Such affidavit must 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 in such process; it must also state the value of the property, according to the best knowledge and belief of the affiant.

Plaintiff to give bond to defendant.

Sec. 96. The plaintiff shall also execute a bond to the defendant with sureties, to be approved by the justice, in a penalty at least double the value of the property sought, conditioned that he will appear at the return day thereof and prosecute his action to judgment, and return the property to the defendant, if a return thereof be 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, and shall be for the use of any person injured by the proceeding.

Justice to issue writ.

Sec. 97. The justice shall thereupon issue a writ, directed to the sheriff or any constable of the county, commanding him to take the property therein described 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.

Officer forthwith to take possession of the property.

Sec. 98. In obedience to such writ, the officer must forthwith take possession of the property mentioned in the writ, if the same be 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 exhibit his authority if required.

Third party when made co-defendant.

Sec. 99. If a third person claim the property, he must be made a co-defendant.

When property not obtained plaintiff may re-

Sec. 100. 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 he has sustained in consequence of the illegal detention thereof. cover value thereof.

Sec. 101. If the plaintiff fail to establish his right to the property, the defendant shall recover such damages, as under the circumstances he shows himself entitled to; and in addition thereto may have judgment for the return of the property, or the value thereof, if the same has been taken out of his possession, or delivered to the plaintiff. Plaintiff failing to establish his right.

### PROCEEDINGS BY ATTACHMENT.

Sec. 102. Any creditor shall be entitled to proceed by attachment in a justices' court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this act. Creditor entitled to attachment in certain cases.

Sec. 103. Before any such writ of attachment shall be issued, the plaintiff, or some person in his behalf, shall make and file with the justice, an affidavit stating that the defendant therein 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, expressed or implied, or upon judgment or decree of some court, and containing a further statement that the deponent has good reason to believe either: Affidavit to be made before attachment issues

1. That the defendant is a non-resident corporation; or
2. That the defendant is not a resident of this territory, and has not resided therein for three months immediately preceding the time of making such affidavit;
3. That the defendant has absconded, or is about to abscond from this territory;
4. That the defendant has removed, or is about to remove any of his property out of this territory, with intent to defraud his creditors;
5. That the defendant resides in any other county, and more than one hundred miles from the residence of the justice;
6. That the defendant contracted the debt under fraudulent representations;
7. That the defendant so conceals himself that the process of summons cannot be served upon him; or,

8. 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 or delay his creditors.

In certain cases attachment returnable in three days.

Sec. 104. In the five first 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.

Form of writ of attachment.

Sec. 105. The writ of attachment shall be in the following form :

Territory of Dakota, } ss.  
county of

To the sheriff or any constable of said county :

In the name of the United States you are 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 costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached, may be subject to further proceedings thereon, as the law requires; and also to summon the said  
, if to be found, to be and appear at any office in said county, on the  
day of  
, A. D. 18  
, at  
o'clock in the  
noon, to answer to  
, in a civil action to his damage one hundred dollars or under.

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

J. P., Justice of the peace.

Attachment how executed.

Sec. 106. The officer shall execute a writ of attachment, by summoning the defendant as in case of a summons if to be found within the county, and by attaching the goods and chattels, moneys and credits, of the defendant, not exempt by law.

When defendant to obtain possession of property.

Sec. 107. When property of the defendant shall be actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving bond and security to the satisfaction of the officers executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming, when and where the justice shall direct, and shall abide the judgment of the justice.

Justice may order perishable property to be sold.

Sec. 108. When property shall be seized on attachment, which is likely to perish or depreciate in value before the

probable end of the suit, 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.

Sec. 109. 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 shall be reasonable and just.

Compensation of officer having charge of property.

Sec. 110. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debt.

When defendant summoned, cause continued and notice given.

Sec. 111. The notice may be in the following form:

Form of notice.

Territory of Dakota, } ss.  
county of

To

You are hereby notified that a writ of attachment has been issued against you, and your property attached, to satisfy the demand of \_\_\_\_\_, amounting to \_\_\_\_\_: Now, unless you shall appear before J. P., a justice of the peace in and for said county, at his office in said town, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, judgment will be rendered against you, and your property sold to pay the debt.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

Plaintiff.

Sec. 112. Such notice shall be set up, or published at least fifteen days before the expiration of the time at which the

Notice how posted or published.

party is required to appear, and the setting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

If defendant does not appear judgment to be entered against him.

Sec. 113. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant with security, to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof; the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case.

Execution not to issue until bond is given.

Pleadings same as in other cases.

Sec. 114. Like pleadings of the parties and like proceedings shall be had, as far as practicable, in suits commenced by attachment, and suits founded on contracts and commenced by summons.

Attachment how dissolved.

Sec. 115. Attachments may be dissolved, on motion made in behalf of the defendant, at any time before final judgment, if the defendant shall appear and plead to the action and give 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 be rendered against him in such suit, he will pay the amount thereof, with costs and interest thereon.

When attachment dissolved, property to be released.

Sec. 116. When any attachment shall be dissolved, the property and effects attached shall be released, and the garnishees shall be discharged, and the suit proceed as if it had been commenced by a summons only.

When third person may retain property.

Sec. 117. When property of the defendant, found in the hands or possession of any other person than the defendant shall be attached, such person may retain the possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so

attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

Sec. 118. When judgment shall be rendered in any attachment case, execution may issue thereupon, and the property attached may be sold in the same manner as in other cases, except as otherwise provided by this act.

Execution to issue and property to be sold as in other cases.

#### THE REMOVAL OF CAUSES, BY CERTIORARI AND PROCEEDINGS THEREON.

Sec. 119. If any person shall conceive himself injured by error in any process, proceeding, judgment, or order given by any justice of the peace, within this territory, it shall be lawful for such person, to remove such judgment to the district court, as hereinafter provided.

Cause when removed to district court by certiorari.

Sec. 120. The party applying for such certiorari, his agent or attorney, shall, within twenty days after the rendition of such judgment, present to a judge of a court of record, an affidavit, stating that in his belief there is reasonable cause for granting such certiorari for error in such judgment, (setting forth the ground of error alleged) and that the application is made in good faith, and not for the purpose of delay; and shall together with one or more sureties, to be approved by the judge, enter into a recognizance before a judge or some justice of the peace, to the adverse party, in double the amount of the judgment, and costs rendered before the justice.

Application for certiorari to whom and when made.

Sec. 121. Such recognizance must be signed by the persons entering into the same, and attested by the judge or justice, and shall be in the following form:

Form of recognizance.

We,                      and                      acknowledge ourselves to owe and be indebted unto                      , in the sum of                      dollars, to be levied of our several goods and chattels, lands and tenements, to the use of                      , or his assigns, if default be made in the condition following, to wit:

Whereas, the said                      , has applied for a certiorari from the judgment of                      , a justice of the peace of the county of                      , rendered                      day of                      , A. D. 18                      , in an action between                      , plaintiff, and                      defendant; now if the writ of certiorari be allowed, and the said

, shall prosecute the same with all due diligence to a judgment in the district court, or before the judge thereof, and abide the order the court or judge may make therein then this recognizance to be void, otherwise of force.

Taken and acknowledged before me,                      this                      day  
of                      , A. D. 18                      .

C. D.

E. F.

G. H.

Judge, or (Justice.)

Judge when to  
allow the cer-  
tiorari.

Sec. 122. If such judge shall be satisfied that any error affecting the merits of the controversy has been committed by the justice or jury in the proceeding, verdict or judgment, he shall allow a writ of certiorari, by indorsing on the affidavit his allowance thereof.

Affidavit and re-  
cognizance to be  
filed with clerk.

Sec. 123. The affidavit and recognizance, so given, shall be filed with the clerk of the district court for the county, who shall thereupon issue a writ of certiorari, commanding the justice, rendering such judgment, to make return as to all facts contained in such affidavit, and of all the testimony and proceedings in the case.

Certiorari when  
to be served.

Sec. 124. The certiorari so allowed shall be served within ten days after its allowance, upon the justice by whom the judgment was rendered.

After service  
proceedings  
stayd.

Sec. 125. Upon the service of a writ of certiorari upon the justice as aforesaid, all further proceedings at law in such case shall cease, and if the execution shall have issued on such judgment upon which the certiorari is allowed, the justice shall immediately recall the same.

Copy of affidavit  
to be served  
with writ.

Sec. 126. Upon the service of a writ of certiorari to reverse a judgment as aforesaid, it shall be the duty of the party serving the same, to deliver at the same time to the justice a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit, and of the testimony and proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the suit; and he shall also certify the time when the writ was served upon him.



Sec. 127. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

District court has power to compel justice to amend return

Sec. 128. When such certiorari and return shall be so filed with the clerk, the cause may be brought on to argument before the judge of said court at any time thereafter, according to the statutes relating thereto.

When cause brought on to argument.

Sec. 129. The judge of the district court shall proceed and give judgment in the cause as the right of the matter may appear, without regarding technical omissions, imperfections, or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part; and may make any such final order or judgment as he shall deem proper, in furtherance of justice, and may award costs to the successful party, not exceeding fifteen dollars exclusive of charges and disbursements.

Judge may affirm or reverse the judgment.

Costs may be awarded to the successful party.

Sec. 130. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount collected, with interest from the time of collection, and execution may issue thereon.

When restitution to be awarded.

Sec. 131. No justice of the peace shall be required to make return to any writ of certiorari, unless all the costs of the suit to which such return relates, as the same are entered on his docket, are paid, and also one dollar for the justice's return, at the time of the service of said writ upon him as aforesaid.

Costs to be paid justice before returns made.

Sec. 132. Any person aggrieved by any judgment rendered by any justice of the peace under this act, when the judgment shall exceed fifteen dollars, or in action of replevin, when the value of the property as sworn to in the affidavit for a writ of replevin shall exceed fifteen dollars, or when the amount claimed in the complaint shall exceed thirty dollars, may appeal by himself or agent to the district court of the county where the same was rendered: *Provided however*, That when the claim of either party, as proven in the cause at the trial shall exceed one hundred dollars, or the claims of both parties, as proven on the trial, shall exceed two hundred dollars, then either party may appeal from such judgment, although the recovery before the justice be less than fifteen dollars, in which case the fact of sum or sums having been proven on the trial,

Aggrieved party may appeal from justices' court in certain cases.

shall be set forth and certified by the justice in his return: *Provided*, This law shall not interfere with any action in case of forcible entry and detainer. *And provided further*, That no appeal shall be allowed in any case unless the following requisitions are complied with within ten days after judgment rendered, viz :

Affidavit and  
recognizance on  
appeal, when  
and how made.

1. 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.

2. A recognizance entered into by the party appealing, his agent or attorney, to the adverse party, in a sum sufficient to secure such judgment and cost of appeal, must be entered into with one or more sureties, to be approved by the justice.

Justice when to  
allow appeal.

Sec. 133. Upon an appeal being made, according to the foregoing provisions, the justice shall allow the same, 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; and if in the mean time execution shall have been issued, the justice shall give to the applicant a certificate that such appeal has been allowed.

Officer when to  
release body or  
property of de-  
fendant.

Sec. 134. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution.

Justice to file  
transcript of  
entries.

Sec. 135. On or before the first day of the term of the district court next after the appeal shall have been allowed, the justice shall file in the office of the clerk of said court, 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 suit, and filed with the justice; and upon the filing of his return the district court shall become possessed of the cause, 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.

Proceedings on  
filing justice's  
return.

The issue before  
the justice to be  
the issue above.

Sec. 136. The issue before the justice shall be tried before the court above without other or further new declaration or pleading, except in such cases as shall be otherwise directed by the court.

The person ap-  
pealing shall  
cause an entry  
to be made with  
clerk.

Sec. 137. The person or persons appealing shall cause an entry of the appeal to be made by the clerk of the court on or

before the second day of the term, unless otherwise ordered by the court, and the plaintiff in the court below shall be the plaintiff in the court above: *Provided*, That if the appellant shall fail or neglect 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 twelve per centum damages, and the costs of both courts.

Sec. 138. Upon an appeal being made and allowed, the district court may by rule and attachment compel a return by the justice, of the proceedings in the suit, and of the papers required to be by him returned.

When district court may compel return by rule.

Sec. 139. If a justice fail 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 rule and attachment compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

When district court may compel justice to allow appeal.

Sec. 140. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may by rule and attachment compel him to amend the same.

Court to compel justice to amend return.

Sec. 141. No appeal allowed by a justice shall be dismissed on account of there being no recognizance, or that the recognizance given is defective, if the appellant will before the motion to dismiss is determined enter before the district court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

When appeal shall not be dismissed

Sec. 142. All appeals allowed, ten 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.

Appeals when to be determined.

Sec. 143. In all cases of appeal from a justices' court, if the judgment of the justice be affirmed, or if on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the recognizance for the appeal.

When judgment rendered against appellant to be against his sureties.

Sec. 144. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer

Execution may be collected from surety.

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.

Security when  
entitled to judg-  
ment against  
principal.

Sec. 145. After the return of an execution satisfied in whole or in part out of the security, such security shall be entitled to a judgment on motion against the principal for the amount so paid by him, together with interest at twelve per cent. per annum from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

No appeal shall  
be allowed until  
costs are paid.

Sec. 146. No appeal shall be allowed by any justice of the peace, until the appellant, in addition to the requirements of section one hundred and twenty-three of this act, shall pay all costs which may have accrued in the justices' court, and one dollar for the return of the justice.

#### PROCEEDINGS FOR CONTEMPTS BEFORE JUSTICES OF THE PEACE.

In what cases  
justices may pun-  
ish for con-  
tempt.

Sec. 147. In the following cases and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or to impair the respect due to his authority;
2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;
3. Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him.

Punishment for  
contempt may be  
by fine and im-  
prisonment.

Sec. 148. Punishment for contempt may be by fine not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days, unless otherwise provided, at the discretion of the justice.

Persons entitled  
to be heard be-  
fore being pun-  
ished for con-  
tempt.

Sec. 149. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defense; and for that purpose the

justice may issue his warrant to bring the offender before him.

Sec. 150. If the offender be 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.

When offender may be summarily arraigned.

Sec. 151. The warrant for contempt may be in the following form :

Form of warrant for contempt.

Territory of Dakota, } ss.  
county of }

To the sheriff or any constable of said county.

In the name of the United States, 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.

Sec. 152. 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 offense, and the judgment rendered thereon, and shall file the same in the office of the clerk of the district court, and shall enter the same in his docket as in civil cases.

Justice to make a record of conviction and file same.

Sec. 153. The warrant of commitment for any constable, shall set forth the particular circumstances of the offense, or it shall be void.

Warrant of commitment what to set forth.

Sec. 154. The record of conviction may be in the following form :

Form of record of conviction.

Territory of Dakota, } ss.  
county of }

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 the 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 be discharged from imprisonment according to law.

Dated this                    day of                    , A. D. 18   .

J. P., Justice of the peace.

When witness  
refuses to be  
sworn, may be  
committed.

Sec. 155. When any witness attending before a justice of the peace, in any cause, shall refuse 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.

Order of com-  
mitment want  
to contain.

Sec. 156. Such order shall specify the cause for which the same is issued; and if it be refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he submit to be sworn, or to answer, as the case may be.

Justice to ad-  
journ the cause,  
&c.

Sec. 157. 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.

Witness failing  
to appear, pun-  
ty of contempt.

Sec. 158. If any person duly subpoenaed, and obliged to attend as a witness, shall fail to do so, he shall be considered guilty of a contempt, and shall be fined all the costs for his apprehension, unless he shall show 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.

#### GENERAL PROVISIONS CONCERNING JUSTICES OF THE PEACE.

Process issued  
must be signed  
by justice.

Sec. 159. All process issued by any justice of the peace, shall be signed by him, and may be under seal, or without a seal.

Sec. 160. Every summons or process, issued by a justice of the peace, shall be entirely filled up, and shall have no blank either in date, or otherwise, at the time of its delivery to an officer to be executed; every such process which shall be issued and delivered to an officer to be executed, contrary to the foregoing provisions, shall be void.

Process shall be filled up by justice.

Sec. 161. When, from any cause, a vacancy shall occur in the office of justice of the peace, in any of the organized counties of this territory, the clerk of the board of county commissioners, upon being notified that any such vacancy exists, may issue a notice to the electors of the precinct where such vacancy exists, stating in such notice, that a vacancy has occurred in the said office, and that an election will be held in the said precinct, to fill said vacancy; which notice shall be given in the same manner, and under the same regulations that other notices of elections are required by law to be given.

Vacancy in office of justice how filled.

Sec. 162. Whenever one or more justices of the peace shall be elected in any precinct of this territory, to supply a vacancy or vacancies at the time existing, such justice or justices may take the oath and file their official bond, and forthwith enter upon the duties of their office.

Persons elected to fill vacancy, to qualify forthwith.

Sec. 163. Whenever, by reason of a dismissal, nonsuit, or for any other cause, a judgment shall be rendered against either party, for costs only, by a justice of the peace, execution may issue to enforce such judgment, in the same manner and with the same effect as in every other case.

Execution may issue for costs only.

Sec. 164. All persons elected justice of the peace in this territory, shall enter upon the duties of their respective offices on the first day of January next succeeding their election, unless otherwise provided for in this act.

Justices to enter upon duties of office on first of January.

Sec. 165. No justice of the peace, being a member of the council or house of representatives, shall be obliged to take cognizance of any action, or to entertain any proceedings under the provisions of this act; but he may act therein or not, at his discretion.

If justice elected to legislature need not act as justice.

Sec. 166. In case any justice of the peace shall die, or his office shall in anywise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice may demand

When office of justice vacant, books and papers how disposed of.

and receive such books and papers from the person having the same in his possession.

If books withheld here show the same may be recovered.

Sec. 167. If any books or papers required to be delivered to the nearest justice by the preceding section, be withheld, or if any justice shall refuse to deliver over to his successor any books or papers, in either case person entitled to receive the said books or papers, may make complaint to the district judge of the United States district court of the proper county, and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or papers are withheld, he may grant an order directing the person so refusing, to show cause before him on a day to be mentioned in said order, why he should not be compelled to deliver the same.

Justice to inquire into the records of the case, and may return the person with the books and papers.

Sec. 168. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances; and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had, shall by warrant commit the person so withholding, to the jail of the proper county, there to remain until he shall deliver the books and papers, or be otherwise discharged according to law.

Justice failing to pay over money, guilty of misdemeanor.

Sec. 169. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall have neglected or refused, within a reasonable time after demand, to pay over the same, such neglect or refusal shall be deemed a misdemeanor, and on conviction thereof, such justice shall forfeit his office.

When justice may be taken to appeal after his office expires.

Sec. 170. Whenever a certiorari, or appeal shall be duly brought and served upon a justice after he shall have gone out of office, upon a judgment rendered by him whilst in office, such person shall make return to each certiorari or appeal, in like manner and with like effect as if such certiorari or appeal had been served whilst he was in office.

Justice's courts to be public.

Sec. 171. The courts of justices of the peace shall be public, and every person may freely attend the same.

Justice shall not have law partner appear before him.

Sec. 172. No justice of the peace shall have a law partner appear as attorney in any case before such justice.



## FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

**Sec. 173.** The following, or equivalent forms, shall be used <sup>Forms in civil</sup> by justices of the peace, in proceedings, to be had under this <sup>actions.</sup> act, to wit:

*Form of warrant.*

Form of war-  
rant

Territory of Dakota, }  
county of } 88.

To the sheriff or any constable of said county:

In the name of the United States you are hereby commanded to take the body of \_\_\_\_\_, if he be found within your county, and bring \_\_\_\_\_, forthwith before the undersigned, one of the justices of the peace, in and for said county, at \_\_\_\_\_, to answer to \_\_\_\_\_, in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff; 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.*

Form of sign-  
ment.

Territory of Dakota, } ss.  
county of }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby com-  
manded 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 execution.*

**Form of execution.**

Territory of Dakota, }  
county of } 88.

To the sheriff or any constable of said county:

Whereas, judgment against \_\_\_\_\_, for the sum of \_\_\_\_\_, lawful money of the United States, and for \_\_\_\_\_, cost of suit, was recovered the \_\_\_\_\_

day of \_\_\_\_\_ before me at the suit of \_\_\_\_\_  
 ; these are therefore in the name of the United States  
 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 cost. 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 replevin.*  
 12.

*Form of a writ of replevin.*

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss

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, in the name of the United States, 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.*  
 12.

*Form of subpoena.*

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss.

In the name of the United States, 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 a venire for a jury.*

Form of venire  
for jury.

Territory of Dakota, } ss.  
county of }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby com-  
manded 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.

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

Sec. 174. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows : Jurisdiction of Justices in criminal cases.

1. To cause to be kept all laws made for the preservation of the peace.
2. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail, or bail them, as the case may require.
3. 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.
4. To cause to come before them, persons who are charged with committing any criminal offense, and commit them to jail, or bail them, as the case may require.

**Sec. 175. Justices of the peace shall have power to hold a court subject to the provisions hereinafter contained, to hear,** **Justices may hold court to try offenses.**

try, and determine the charges for offenses arising within their respective counties, where jurisdiction is conferred upon by any law of this territory.

Complaint being made to justice, warrant to issue.

Sec. 176. Upon complaint made to any justice of the peace by any constable or other person, that any such offense has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant: and if it shall appear that such offense 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.

When justice to enter suit in his docket.

Sec. 177. The justice shall enter a suit in his docket, in which the United States shall be plaintiff, and the accused defendant, and he shall keep all such other entries as are required in civil causes.

On return of warrant justice how to proceed.

Sec. 178. On the return of the warrant with the accused, the said justice shall proceed to hear, try, and determine the cause within one day, unless continued for cause.

Accused may give bail.

Sec. 179. 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 so to do, may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

Warrant to be read to accused and he required to plead.

Sec. 180. 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 court shall enter in their minutes; if the accused refuse to plead, the court shall enter the fact with a plea of not guilty, in behalf of such accused, in its minutes.

When court to try issue.

Sec. 181. If the plea of the accused be not guilty, and no jury be demanded by him, the said court shall proceed to try such issue, and to determine the same according to the evi-

dence which may be produced against, and in behalf of such accused.

Sec. 182. If the accused shall plead guilty to such charge, the court shall thereupon convict him of the offense charged, and render judgment thereon.

Proceedings when defendant pleads guilty.

Sec. 183. After the joining of issue and before the court shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive 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 eighteen inhabitants of the county, qualified to serve as jurors in the courts of record of this territory, from which list the complainant and accused may each strike out six names.

Justice to direct officer to make list of jury, unless waived by defendant.

Sec. 184. In case the complainant or the accused shall neglect to strike out such names, the court 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 struck out, the court shall issue a venire, directed to the sheriff or any constable of the county, requiring him to summon the six persons whose names shall remain upon such list, to appear before such court, at the time and place to be named herein, to make a jury for the trial of such offense.

When justice to direct person to strike out jurors

Sec. 185. The officer to whom such venire shall be 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 court, within the time therein specified.

Duty of officer to whom is directed venire.

Sec. 186. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the court 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 may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

Justice may direct officer to summon bystanders in case of deficiency.

Sec. 187. If the officer to whom the venire shall have been delivered, shall fail to return the same, as thereby required, or if the jury shall fail to agree, and shall be discharged by the court, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had as herein

When and in what cases new jury may be summoned.

prescribed, in respect to the first jury, unless the accused shall consent to be tried by the court; in which case the court shall proceed to the trial of the issue, as if no jury had been demanded.

Either party  
may challenge  
jury as in civil  
actions.

Sec. 188. In all trials for criminal offenses before a justice of the peace, either party may challenge any juror for cause, as in civil cases.

Form of oath to  
be administered  
to jury.

Sec. 189. To each juror, such justice shall administer the following oath or affirmation: "You do solemnly swear, (or you do solemnly and sincerely declare and affirm, as the case may be,) that you will well and truly try this cause between the United States, and \_\_\_\_\_, the accused, and a true verdict give according to law, and the evidence given you in court, unless discharged by the court."

After jury  
sworn how to  
proceed.

Sec. 190. After the jury shall have been sworn, they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public, and in the presence of the accused; and after hearing such proofs and allegations, the jury shall be kept together in some convenient place, until they agree on a verdict or are discharged by the court; 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.

Jury to deliver  
verdict publicly.

Sec. 191. When the jurors have agreed on their verdict, they shall deliver the same to the court publicly, who shall enter it in his docket.

When accused  
found guilty,  
court to render  
judgment.

Sec. 192. Whenever the accused shall be tried under the preceding provisions of this act, and found guilty either by the court or by a jury, or shall be convicted of the charge made against him on a plea of guilty, the court shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such punishment shall in no case exceed the limit fixed by law for the offense charged.

When accused  
to be discharged  
court may give  
judgment for  
costs against  
complainant.

Sec. 193. Whenever the accused, tried under the preceding provisions of this act, either by the 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, in the proceedings had upon such complaint; and unless he give satisfactory security by bond to this territory, with one or more sureties, to pay the same in thirty days after the said trial, execution shall issue therefor.

Sec. 194. The person charged with and convicted by any such justice of the peace of any such offense, may appeal from the judgment of such justice of the peace to the district court:

Person convicted may appeal to district court

*Provided*, such person shall, within twenty-four hours, enter into

Proviso.

a recognizance, with one or more sufficient sureties, conditioned to appear before said court and abide the judgment of the court therein; and the justice from whose judgment an appeal is taken, shall make a special return of the proceedings with the recognizance or recognizances, to be filed in said district court, on or before the first day of the term of the district court next to be holden for said county; and the complainant and witnesses may also be required to enter recognizances, with or without sureties, in the discretion of the court, to appear at said district court at the time last aforesaid, and to abide the order of the court therein.

Sec. 195. If the complainant shall refuse or neglect to pay such costs, or to give such security, the court may forthwith enter judgment against him for the amount of such costs, and forthwith issue execution thereon in the same manner and with the like effect, as in the case of an execution issued by a justice of the peace, on a judgment in an action for a trespass or other wrong, and such moneys, when collected, shall be paid over to such court.

Justice when to render judgment against complainant for costs.

Sec. 196. The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant under the hand of the justice who held the court, to be directed to such officers, and specifying the particulars of such judgment.

Judgment of court by whom executed.

Sec. 197. In case any person summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this act, as a juror or witness, shall fail to appear, or if any witness appearing shall refuse to be sworn or to testify, he shall be liable to the same penalties, and may be pro-

Juror and witnesses liable for contempt, as in civil actions.

ceeded against in the same manner as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Justice to make  
certificate of  
conviction.

Sec. 198. Whenever any conviction shall be had before a court held by a justice of the peace, the justice by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient, briefly to state the offense charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Justice to cause  
such certificate  
to be filed in  
twenty days.

Sec. 199. Within twenty days after such conviction, the said magistrate shall cause such certificate to be filed in the office of the clerk of the district court in which the conviction shall have been had.

Such certificate  
to be evidence  
in courts.

Sec. 200. Every certificate of conviction made and filed under the foregoing provisions or a duly certified copy thereof, shall be evidence in all courts and places, of the facts therein contained.

#### MISCELLANEOUS PROVISIONS IN CRIMINAL CASES.

What offenses  
to be tried be-  
fore justice of  
the peace.

Sec. 201. No assault, battery or affray shall be indictable, but all such offenses 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, according to the nature of the offense.

When justice to  
issue warrant  
on his own  
knowledge.

Sec. 202. If any justice of the peace shall have any knowledge that any of the offenses 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 offense 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 shall be necessary; but the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders and all such as obstruct or prevent the justice, or any of his assistants in the performance of their duty; and any person who shall, when summoned to



aid in arresting and securing an offender, refuse to give such assistance, shall pay five dollars to the use of the county.

Sec. 203. 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.

Breach of recognizance to be certified to district court.

Sec. 204. If, in the progress of any trial before a justice of the peace, under the provisions of this act, it shall appear to the justice that he has not final jurisdiction in the case before him, and the accused ought to be put upon his trial for an offense 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.

Justice how to proceed when he has not final jurisdiction.

Sec. 205. In all cases arising under this act, it shall be the duty of the justice of the peace acting, to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

Justice to summon the injured party.

Sec. 206. In all cases of conviction under the provisions of this act, 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.

In case of conviction, justice to enter judgment for fine and costs.

Sec. 207. If the judgment of the justice shall be affirmed or upon any trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties.

When judgment affirmed, judgment shall be rendered for fine and costs.

Sec. 208. When a trial under the provisions of this act shall be continued by the justice it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said 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, which verbal notice shall be as valid as a summons.

When cause continued witnesses present may be verbally notified to appear.

Sec. 209. The justice may require of the complainant to give security for costs, as in civil cases security may be required of the plaintiff, and if he refuse, the justice may dismiss the complaint.

Justice may require security for costs, as in civil actions.

All fines collected by justice to be paid to county treasurer.

Sec. 210. All fines imposed by any such court, if paid before the accused is committed, shall be received by the magistrate who constituted the court, before which the accused was convicted, and by such magistrate paid over to the county treasurer, within thirty days after the receipt thereof, to be distributed according to law.

If party committed, fines to be paid to sheriff.

Sec. 211. If the accused be 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, for the purposes aforesaid.

Penalty for refusing to pay over money collected for fines.

Sec. 212. If any person who shall have received any such fine or any part thereof, shall neglect to pay over the same pursuant to the foregoing provisions, it shall be the duty of the district attorney immediately to commence suit therefor, and to prosecute the same diligently to effect.

#### FORMS OF WRITS, &c., IN CRIMINAL PROCEEDINGS.

Form of warrant.

Sec. 213. The following forms may be used under this act :

##### *Form of warrant.*

Territory of Dakota, } ss.  
county of }

To the sheriff or any 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 \_\_\_\_\_, and prayed that the said \_\_\_\_\_ might be arrested and dealt with according to law; now therefore in the name of the United States, 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.*

Form of certificate of conviction.

Territory of Dakota, } ss.  
county of }

At a justices' 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 offense hereinafter stated,  
 the said \_\_\_\_\_ of, &c., was convicted of having on the  
 \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, at \_\_\_\_\_, in said  
 county (here state the offense 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 im-  
 prisonment be allowed, add) and be imprisoned in the common  
 jail of the county \_\_\_\_\_ 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.*

Form of execu-  
 tion.

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss.

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 offense hereinafter stated,  
 the said \_\_\_\_\_ of, &c., was convicted of having, on the  
 \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, in said county,  
 (here state the offense as 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, in the name of the United States, to command you to  
 levy distress on the goods and chattels, (&c., as in execution  
 against the goods or body in civil cases.)

*Form of order to bring up prisoner.*

Form of order  
 to bring up pris-  
 oner.

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss.

To the keeper of 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, in the name of  
 the United States, do 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.*

Form of com-  
mitment upon  
sentence.

Territory of Dakota, }  
county of       } ss.

To any constable and the keeper of any common jail of said  
county :

Whereas, a justice's court held at my office in said county,  
for the trial of       , for the offense hereinafter stated, the  
said       , of &c., was convicted of having, on the  
day of       , A. D. 18   , in the said county; (here  
state the offense, 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 com-  
manded in the name of the United States, 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.*

Form of com-  
mitment after  
arrest and be-  
fore trial.

Territory of Dakota, }  
county of       } ss.

To the sheriff or any constable, and to the keeper of the com-  
mon 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 offense, as in the  
warrant), and the said       not having given bail to ap-  
pear and answer for the said offense, therefore you the said  
constable, are commanded in the name of the United States,  
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.*

Form of commitment where justice on the trial shall find that he has not jurisdiction of the case.

Territory of Dakota, }  
                                  } ss.  
                                  county of

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 offense of                      , (here state the offense 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 offense of                      , (here state the new offense found on the trial,) committed at the time and place aforesaid, of which offense the said justice has not final jurisdiction; and whereas, after examination had in due form of law, touching the said charge and offense last aforesaid, the said justice did adjudge that the said offense 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 offense, 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.

Sec. 214. All acts and parts of acts conflicting with this act, are hereby repealed. Repeal of conflicting acts.

Sec. 215. This act shall take effect and be in force from and after its passage. Take effect when

APPROVED January 7, 1863.