JUSTICES' CODE.

AN ACT to Establish a Code of Proceedings in Courts of Justices of the Peace, and to Limit the Jurisdiction of the same.

CHAPTER I.

OF CIVIL PROCEEDINGS IN JUSTICES' COURTS.

ARTICLE I.—OF THE JURISDICTION OF JUSTICES' COURTS.

§ 1. PLACE OF OFFICE.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* Justices of the peace must keep their offices and hold their courts at some place selected by them, in their respective townships and counties, in and for which they may be elected, and these courts are always open for the transaction of business.

§ 2. CIVIL JURISDICTION CLASSIFIED AND LIMITED.] The civil jurisdiction of these courts, within their respective counties, extends:

1. To an action arising on contract, for the recovery of money only, where the sum claimed does not exceed one hundred dollars.

2. To an action for damages for injury to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property, where the title or boundary of such real property does not in any wise come in question, and where the damages claimed do not exceed one hundred dollars.

3. To an action for a fine, penalty, or forfeiture, not exceeding one hundred dollars, given by statute or the ordinance of an incorporated city or town.

4. To an action upon a bond or undertaking 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 each installment as it becomes due.

5. To an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars.

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

7. To actions for forcible entry and detainer, or detainer only of real property, where the title or boundary thereof in no wise comes in question.

§ 3. CRIMINAL JURISDICTION—TO TRY—TO EXAMINE.] These courts shall have criminal jurisdiction to try and determine all cases of misdemeanor, committed within their respective counties, not indictable, where the punishment is a fine not exceeding one hundred dollars, or imprisonment in the county jail for a period not exceeding thirty days, or both such fine and imprisonment. And as to all public offenses which are indictable, they have the power of committing magistrate.

ARTICLE II.—PLACE OF TRIAL.

§ 4. ACTIONS WHERE COMMENCED AND TRIED.] Actions in justices' courts must be commenced, and subject to the right to change the place of trial as hereinafter provided, must be tried in the county where the defendant resides, or in which he may be summoned.

§ 5. CAUSES FOR CHANGE OF PLACE.] The court may at any time before the trial, on motion, change the place of trial in the following cases:

1. Where it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party.

2. Where either party makes and files an affidavit, that he believes he cannot have a fair and impartial trial, before such justice, by reason of the interest, prejudice, or bias of the justice.

3. When from any cause the justice is disqualified from acting.

4. When the justice is sick or unable to act.

§ 6. BUT ONE CHANGE WHEN.] The place of trial cannot be changed on motion of the same party more than once.

§ 7. TO WHERE CHANGED.] When the court orders the place of trial to be changed, the action must be transferred for trial to a justice's court the parties may agree upon; and if they do not so agree, then to another justice's court in the same county.

§ 8. PROCEEDINGS UPON THE CHANGE.] After an order has been made, transferring the action for trial to another court, the following proceedings must be had:

1. The justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of all the costs that have accrued, and costs of transferring the same to the docket of the other justice, all the papers in the action, together with a certified transcript from his docket, of the proceedings therein.

2. Upon the receipt by him of such papers, the justice of the court to which the case is transferred must issue a notice, stating when and where the trial will take place, which notice must be served upon the parties at least one day before the time fixed for trial.

§ 9. NEW COURT'S JURISDICTION.] From the time the order changing the place of trial is made, the court to which the action is thereby transferred,

has the same jurisdiction over it as though it had been commenced in such court.

§ 10. TITLE OR BOUNDARY OF LANDS—DISTRICT COURT.] The parties to an action in a justice's court cannot introduce evidence upon any matter wherein the title to, or boundary of, real property in any wise comes in question; and if it appear from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title to, or boundary of, real property, in any wise, the justice must suspend all further proceedings in the action, and certify the pleadings, and if any of the pleadings are oral, a transcript of the same from his docket, to the clerk of the district court of the county or subdivision, on the payment by the plaintiff, of one dollar for such transcript, and all costs accrued before such justice; and from the time of filing such pleadings or transcript with the clerk, the district court has over the action the same jurisdiction as if it had been commenced therein.

ARTICLE III.—MANNER OF COMMENCING ACTIONS.

§ 11. HOW COMMENCED.] An action in a justice's court is commenced by the issuing the summons, or by the voluntary appearance and pleading of the parties.

§ 12. PARTIES IN PERSON OR BY ATTORNEY.] Parties in justices' courts, may appear and act in person or by attorney; and any person, except by whom the summons or jury process was served, may act as attorney.

§ 13. INFANT'S APPEARANCE—PLAINTIFF—DEFENDANT.] When an infant is a party, he must appear either by his general guardian, if he have one, or by a guardian appointed by the justice, as follows:

1. If the infant be plaintiff the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, upon the application of a relative or friend.

2. If the infant be defendant, the guardian must be appointed at the time the summons is returned, or before the answer. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age; otherwise the justice must make the appointment.

§ 14. SUMMONS—REQUISITES OF.] The summons must be directed to the defendant and signed by the justice, and must contain:

1. The title of the court, name of the county or township in which the action is commenced, and the names of the parties thereto.

2. A sufficient statement of the cause of action, in general terms to apprise the defendant of the nature of the claim against him.

3. A direction that the defendant appear and answer before the justice at his office, at a time specified in the summons.

4. In an action arising on a contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum claimed by him, stating it.

5. In other actions, a notice that unless the defendant so appears and answers, the plaintiff will apply to the court for the relief demanded. If

the plaintiff has appeared by attorney, the name of the attorney must be indorsed on the summons.

§ 15. TIME FOR DEFENDANT'S APPEARANCE.] The time specified in the summons for the appearance of the defendant, shall in all cases be not less than three nor more than twelve days from its date.

§ 16. WHEN SERVED IN OTHER COUNTY—LIMITATION.] The summons cannot be served out of the county of the justice before whom the action is brought, except where the action is brought upon a joint contract or obligation of two or more persons who reside in different counties, and the summons has been served upon the defendant resident of the county, or found therein, in which case the summons may be served upon the other defendants out of the county. When the defendant resides in the county, or is summoned therein, the summons cannot be served within two days of the time fixed for the appearance of the defendant; when he resides out of the county, and the summons is served out of the county, the summons cannot be served within seven days of such time.

§ 17. WHO MAY SERVE SUMMONS—PUBLICATION—CLERK'S CERTIFICATE.] The summons may be served by a sheriff, constable, or any other person not a party to the action, and must be served and returned in same manner as summons in the district court, or in actions of attachment, it may be served by publication; and sections 103 and 104 of the code of civil procedure, so far as they relate to the publication of summons, are made applicable to justices' courts, the word "justice" being substituted for the word "judge" whenever the latter word occurs: *Provided*, That when a summons is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the clerk of the district court, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons.

§ 18. AN HOUR FOR APPEARANCE.] The parties are entitled to one hour in which to appear after the time fixed in the summons, but are not bound to remain longer than that time unless both parties have appeared, and the justice, being present, is engaged in the trial of another cause.

ARTICLE IV.—PLEADINGS.

§ 19. FORM—MANNER—VERIFICATION.] Pleadings in justice's courts:

1. 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.
2. May be oral or in writing.
3. Must not be verified, unless otherwise provided in this chapter.
4. If in writing, must be filed with the justice.
5. If oral, an entry of their substance must be made in the docket.

§ 20. ORDER OF PLEADINGS.] The pleadings are:

1. The complaint by the plaintiff.
2. The demurrer to the complaint.
3. The answer by the defendant.
4. The demurrer to the answer.
5. Reply to the answer.

§ 21. COMPLAINT—WHAT] The complaint in justices' courts is a concise statement of the facts constituting the plaintiff's cause of action.

§ 22. DEMURRER—WHEN.] The defendant may, at any time before answering, demur to the complaint.

§ 23. ANSWER—CONTENTS OF.] The answer may contain a denial of any or all of 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 counter-claim, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

§ 24. DEMURRER TO ANSWER.] When the answer contains new matter in avoidance, or constituting a defense or a counter-claim, the plaintiff may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

§ 25. PROCEEDINGS ON DEMURRER.] The proceedings on demurrer are as follows:

1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the court allows, amend his complaint.

2. If the demurrer to a complaint is overruled, the defendant may answer forthwith.

3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time not exceeding two days, as the court may allow.

4. If the demurrer to an answer is overruled, the plaintiff may, if the answer contain new matter, reply forthwith. If the answer does not contain new matter, the action must proceed as if no demurrer had been interposed.

§ 26. AMENDMENTS TO PLEADINGS—TERMS.] Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue, and it appears to the satisfaction of the court by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjournment will, by the amendment, be rendered necessary, require, as a condition to the allowance of such amendment made after issues joined, the payment of such costs to the adverse party, as he may be put to by reason of such adjournment. The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default, taken against him by his mistake, inadvertence, surprise, or excusable neglect, but the application for such relief must be made within ten days after the entry of the judgment, and upon an affidavit showing good cause therefor.

§ 27. PLEADING TO SAME.] When a pleading is amended, the adverse party may answer or demur to it within such time not exceeding two days, as the court may allow.

ARTICLE V.—ATTACHMENTS.

§ 28. WHEN WRIT TO ISSUE.] In the cases mentioned in section 197 of

the code of civil procedure, a writ to attach the personal property of the defendant must be issued by the justice at the time of, or after issuing the summons and before answer. On receiving an affidavit by, or on behalf of the plaintiff, stating the same facts as are required to be stated by the affidavit specified in section 199 of the code of civil procedure.

§ 29. UNDERTAKING BY PLAINTIFF.] Before issuing the writ, the justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties in a sum not less than fifty, nor more than three hundred dollars, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

§ 30. REQUISITES OF WRIT.] The writ may be directed to the sheriff or any constable of the county, and must require him to attach and safely keep all the personal property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case, to take such undertaking.

§ 31. SERVICE AND RETURN.] The writ may be served by the sheriff or any constable of the county in which it is issued, and returned in the same manner as warrants of attachments are served and returned in actions in the district court, and with the same force and effect.

ARTICLE VI.—CLAIM AND DELIVERY OF PERSONAL PROPERTY.

§ 32. WHEN DELIVERY CLAIMABLE.] In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him; and article II, of chapter XI, of the code of civil procedure, is applicable to such claim when made in justices' courts, the powers therein given and duties imposed on sheriffs being extended to constables, and the word "justice" substituted for "judge."

ARTICLE VII.—FORCIBLE ENTRY AND DETAINER.

§ 33. JUSTICE'S JURISDICTION.] Any justice of the peace within his proper county shall have power to inquire in the manner hereinafter specified of all cases of forcible entry and detainer or detainer only of real property.

§ 34. CASES WHERE ACTION LIES.] This action is maintainable:

1. Where a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property of another, and detains the same.

2. Where a party after entering peaceably upon real property, turns out by force, threats or menacing conduct, the party in possession; or,

3. Where he by force or by menaces and threats of violence, unlawfully

holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,

4. Where a lessee in person or by sub-tenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due; or,

5. Where a party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed.

6. Where a party continues in possession after a judgment in partition, or after a sale under an order or decree of a probate court.

§ 35. NOTICE TO QUIT REQUIRED.] In all cases arising under subdivisions 4, 5 and 6 of the preceding section, three days written notice to quit must be given to the lessee, sub-tenant or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned.

§ 36. LEGAL REPRESENTATIVES.] The legal representatives of a person who might have been plaintiff, if alive, may bring this action after his death.

§ 37. VERIFIED COMPLAINT—VENUE.] The complaint must be in writing, and verified by the plaintiff, his agent or attorney, and the proceedings may be had before any justice of the peace of the county where the premises are situated, and shall be governed by the same rules as other cases before justices of the peace, except as herein modified: *Provided*, That when the title to, or boundary of the real property, in any wise comes in question, the case shall be certified to the district court as in this chapter provided.

§ 38. RETURN DAY—ADJOURNMENT.] The time for appearance and pleading must not be less than two nor more than four days from the time the summons is served on the defendant, and no adjournment or continuances shall be made for more than five days, unless the defendant applying therefor shall give an undertaking to the plaintiff with good and sufficient surety, to be approved by the justice, conditioned for the payment of the rent that may accrue together with the costs, if judgment be rendered against the defendant.

§ 39. JUDGMENT FOR DELIVERY—COSTS.] If the finding of the court or the verdict of a jury be in favor of plaintiff, the judgment shall be for the delivery of the possession to the plaintiff and for costs.

§ 40. THIS ACTION SINGLE—LIMITATION.] An action under the provisions of this article, cannot be brought in connection with any other, nor can it be made the subject of set off; and no execution for possession can be served except in the day time.

§ 41. APPEAL.] An appeal may be taken in the usual way upon giving the undertaking prescribed in article 15 of this chapter, which shall suspend all further proceedings until the action is determined in the district court.

ARTICLE VIII.—JUDGMENT BY DEFAULT.

§ 42. PROCEEDINGS UPON DEFAULT.] When the defendant fails to appear and answer or demur, at the time specified in the summons, or within one hour thereafter, then upon proof of service of the summons, the following proceedings must be had:

1. If the action is based upon a contract and is for the recovery of money or damages only, the court must render judgment in favor of plaintiff for the sum specified in the summons.

2. In all other actions the court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum, not exceeding the amount stated in the summons, as appears by such evidence to be just.

§ 43. SAME—DEFAULT PRESUMED.] In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur:

1. If the complaint has been amended, and the defendant fails to answer it as amended, within the time allowed by the court.

2. If the demurrer to the complaint is overruled, and the defendant fails to answer at once.

3. If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the court.

ARTICLE IX.—TIME OF TRIAL AND POSTPONEMENTS.

§ 44. WHEN TRIAL TO COMMENCE—ADJOURNMENTS.] Unless postponed as provided in this article, or unless transferred to another court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of defendant, and the trial must be continued, without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of.

§ 45. COURT MAY POSTPONE TRIAL—CEASES WHEN.] The court may, of its own motion, postpone the trial:

1. For not exceeding one day, if, at the time specified in the summons, or by an order of the court for the trial, the court is engaged in the trial of another action.

2. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment, or to plead, a postponement is rendered necessary.

3. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

§ 46. POSTPONEMENT BY CONSENT.] The court may, by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

§ 47. ON APPLICATION BY PARTY—REQUISITES.] The trial may be postponed upon the application of either party, for a period not exceeding sixty days:

1. The party making the application must prove, by his own oath or

otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so.

2. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such advetse party, who is in attendance, may be then taken by deposition before the justice, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness was produced; but the court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

§ 48. IF LONGER THAN TEN DAYS, UNDERTAKING.] No adjournment must, unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, in an amount fixed by the justice, with two sureties, to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

ARTICLE X.—TRIALS.

§ 49. ISSUES CLASSIFIED.] Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and is controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

§ 50. OF LAW.] An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

§ 51. OF FACT.] An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and,
2. Upon new matter in the answer, except an issue of law is joined thereon.

§ 52. LAW BY COURT.] An issue of law must be tried by the court.

§ 53. FACT BY JURY.] An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the court.

§ 54. JURY HOW WAIVED.] A jury may be waived:

1. By consent of parties, entered in the docket.
2. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact.
3. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

§ 55. FAILURE TO APPEAR.] If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

§ 56. JURY—WHEN DEMANDED—HOW SELECTED.] Where the value in controversy or sum demanded exceeds twenty dollars, either party may demand a jury; and upon such demand, the justice shall write down the names of eighteen persons, residents of the county, and having the qualifications of jurors in the district court, from which list of names each party, the plaintiff beginning, may strike out three names alternately; and in case of the absence of either party or of his refusal to strike out, the justice shall strike out of said list such names; and the justice shall at once issue his venire directed to the sheriff or any constable of the county, commanding him to summon the twelve persons whose names remain upon the list as jurymen.

§ 57. CHALLENGES AND TALESMEN.] Challenges shall be allowed in the same manner and for the same causes as in the district courts in civil actions; and in case the number shall be reduced below twelve by such challenges, or in case any jurors summoned shall fail to attend, the justice shall direct the sheriff or any constable to summon and return forthwith a sufficient number of talesmen, having the qualifications of jurors, to complete the panel. All challenges must be tried in a summary manner by the justice, who may examine the juror challenged, or other witnesses under oath.

§ 58. JURY LESS THAN TWELVE.] Parties may agree that the jury shall consist of a less number than twelve jurors; but an agreement to that effect must be in writing, signed by the parties and filed with the papers in the case, or made in open court, and a minute thereof entered by the justice in his docket.

§ 59. OATH.] The justice shall administer to the jurors the same oath as is prescribed for jurors in civil actions in the district court.

§ 60. PRODUCTION AND INSPECTION OF PAPERS.] When the cause of action or counter-claim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order; or, if such order is not obeyed, the account or instrument cannot be given in evidence.

§ 61. GENUINENESS ADMITTED IF NOT DENIED.] If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, the original or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

ARTICLE II.—JUDGMENTS OTHER THAN BY DEFAULT.

§ 62. BY CONFESSION.] Judgments upon confession may be entered up in any justice's court specified in the confession.

§ 63. OF DISMISSAL—NEW ACTION.] Judgment that the action be dis-

missed, without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter.

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court.

§ 64. JUDGMENT AT ONCE AFTER VERDICT.] When a trial by jury has been had, judgment must be entered by the justice at once, in conformity with the verdict.

§ 65. BY THE COURT.] When the trial is by the court judgment must be entered at the close of the trial.

§ 66. TO RECOVER PERSONAL PROPERTY.] In actions to recover the possession of personal property the judgment must be entered substantially in the form required by section 295 of the code of civil procedure.

§ 67. EXCESS REMITTED.] When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

§ 68. OFFER OF JUDGMENT—COSTS.] If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs; but costs must be adjudged against him, and if he recover, be deducted from his recovery. The offer and failure to accept it cannot be given in evidence, nor affect the recovery otherwise than as to costs.

§ 69. COSTS TO PREVAILING PARTY.] The justice must tax and include in the judgment the costs allowed by law to the prevailing party.

§ 70. TRANSCRIPT OF JUDGMENT.] The justice, on the demand of a party in whose favor judgment is rendered, must give him a certified transcript thereof on the payment to him of all costs accrued before him, and one dollar for such transcript.

ARTICLE XII.—EXECUTIONS.

§ 71. WITHIN FIVE YEARS.] Execution for the enforcement of a judgment of a justice's court may be issued by the justice who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment, except when it has been taken to the district court on error or appeal, or docketed therein.

§ 73. REQUISITES OF EXECUTION.] The execution must be directed to the sheriff or any constable within the county, and must be subscribed by the justice and bear the date of its delivery to the officer. It must intelligibly

refer to the judgment, stating the names of the parties thereto, in whose favor, against whom, the time when, the county where, and the name of the justice before whom the judgment was rendered; and it must be made returnable to the justice within thirty days after its date.

§ 73. ON MONEY JUDGMENT.] An execution issued upon a judgment for a sum of money, must state in the body thereof, the sum actually due upon the judgment, and it must substantially require the officer to satisfy the judgment, together with interest and costs, out of the personal property of the judgment debtor; and to bring the money before the justice by the return day of the execution, to be rendered by the justice to the party who recovered the judgment. If the judgment was rendered for a fine, penalty, or forfeiture of undertakings and bonds, or of recognizances taken or entered in a criminal case, the justice must indorse that fact on the execution.

§ 74. FOR POSSESSION OF PERSONALTY.] An execution issued upon a judgment for the delivery of the possession of personal property, shall substantially require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto; and may, at the same time, require the officer to satisfy any costs or damages recovered by the judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified therein, if a delivery cannot be had.

§ 75. SAME OF REAL PROPERTY.] An execution issued upon a judgment in an action of forcible entry and detainer or detainer only of real property, shall substantially require the officer to deliver the possession of the premises, particularly describing them, to the party entitled thereto, and may at the same time require the officer to satisfy the costs out of the personal property of the party against whom the judgment was rendered.

§ 76. RENEWAL OF EXECUTION.] An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

§ 77. SALE OF PERSONALTY—POSTED NOTICE ONLY.] The provisions of chapter XIII of the code of civil procedure, relating to the levy and sale or delivery of personal property so far as the same are applicable and not inconsistent with the provisions of this chapter, apply to and govern the levy, sale and delivery of personal property under an execution issued by a justice of the peace. And the constable, when the execution is directed to him, is vested for that purpose with all the powers of the sheriff: *Provided*, That notice shall not be published in a newspaper, but shall be given by posting for ten days in five public places within the county, one of which shall be at the office of the justice issuing the execution.

ARTICLE XIII.—CONTEMPTS IN JUSTICES' COURTS.

§ 78. ACTS WHICH CONSTITUTE, CLASSED.] A justice may punish as for contempt, persons guilty of the following acts, and no other:

1. Disorderly, contemptuous, or insolent behavior towards the justice while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him.

4. Disobedience to a subpœna duly served, or refusing to be sworn or to answer as a witness.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

§ 79. SUMMARY PUNISHMENT.] When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily; to that end an order must be made, reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

§ 80. WHEN NOT IN VIEW.] When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may, thereupon, discharge him, or may convict him of the offense.

§ 81. PENALTY LIMITED.] A justice may punish for contempts, by fine or imprisonment, or both; such fine not to exceed, in any case, one hundred dollars, and such imprisonment one day.

§ 82. DOCKET ENTRIES.] The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

ARTICLE XIV.—DOCKETS OF JUSTICES.

§ 83. JUSTICE TO KEEP DOCKET—ENTRIES AND THEIR ORDER.]. Every justice must keep a book, denominated a docket, in which he must enter:

1. The title of every action or proceeding.

2. The object of the action or proceeding; and if a sum of money be claimed, the amount thereof.

3. The date of the summons, and the time of its return; and if a writ of attachment be issued, a statement of the fact.

4. The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading.

5. Every adjournment, stating on whose application, and to what time.

6. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury and for the trial.

7. The names of the jurors who appear and are sworn, and the names of all witnesses sworn, and at whose request.

8. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.

9. The judgment of the court, specifying the costs included, and the time when rendered.

10. The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made; and a statement of any money paid to the justice, when and by whom.

11. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

§ 84. WHEN AND HOW ENTERED.] The several particulars in the last section specified, must be entered under the title of the action to which they relate, and unless otherwise in this chapter provided, at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice, or his successor in office, are prima facie evidence of the facts so stated.

§ 85. INDEX TO DOCKET.] A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

§ 86. RECORDS AND FILES TO SUCCESSOR.] Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors, or any other which may be in his custody to be kept as public records.

§ 87. WHEN VACANCY, TO OTHER JUSTICE.] If the office of a justice become vacant by his death, removal or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the township or county to be by him delivered to the successor of such justice.

§ 88. POWERS OF JUSTICE RECEIVING—CHANGED COUNTY LINES.] Any justice with whom the docket of his predecessor, or of any other justice, is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory may come, is, for the purposes of this section, considered the successor of such former justice.

ARTICLE XV.—APPEALS.

§ 89. WITHIN THIRTY DAYS—NOTICE—LAW OR FACT.] Any party dissatisfied with a judgment rendered in a civil action in a justice's court, may appeal therefrom to the district court of the county or subdivision, at any time within thirty days after the rendition of the judgment. The appeal is taken by filing a notice of appeal with the justice, and serving a copy on

the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

§ 90. LAW—STATEMENT OF CASE.] When a party appeals to the district court on questions of law alone, he must, within ten days from the rendition of judgment, prepare a statement of the case, and file the same with the justice. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the justice, and if no amendments be filed, the original statement stands as adopted. The statement thus adopted, or as settled by the justice with a copy of the docket of the justice, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the district court.

§ 91. FACT, OR BOTH—TRIAL ANEW.] When a party appeals to the district court on question of fact, or on questions of both law and fact, no statement need be made, but the action must be tried anew in the district court.

§ 92. REQUISITES OF APPEAL—COSTS—TRANSCRIPT.] Upon receiving the notice of appeal, and on payment of one dollar for the return of the justice, and all costs accrued before said justice, and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the justice must within five days transmit to the clerk of the district court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and the undertaking filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court.

§ 93. UNDERTAKING FOR STAY—DEPOSIT.] An appeal from a justice's court is not effectual for any purpose, unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal; or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money; or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and must be conditioned; when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs; if the appeal be withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the action

in the district court. When the action is for the recovery of specific personal property the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recorded against him in said action in the district court, and will obey any order made by the court therein. A deposit of the amount of the judgment, including all costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the justice, is equivalent to the filing of the undertaking; and in such cases the justice must transmit the money to the clerk of the district court, to be by him paid out on the order of the court. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the justice before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

§ 94. DELIVERY OF POSSESSION—DETAINER—REQUISITES OF UNDERTAKING.] In judgments for the delivery of possession in actions of forcible entry and detainer or detainer only, the execution of the same can not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, or the appeal be dismissed, he will pay all rents for the use and occupation of the property, and all damages from the time of the appeal until the delivery of the possession thereof.

§ 95. ORDER TO STAY EXECUTION] If an execution be issued, on the filing of the undertaking staying proceedings, the justice must, by order, direct the officer to stay all proceedings on the same. Such officer must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

§ 96. POWERS OF DISTRICT COURT ON APPEAL.] Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, affirm or modify the judgment, or any or all the proceedings subsequent to and dependent upon such judgment, and may, if necessary or proper, order a new trial. When the action is tried anew, upon appeal, the trial must be conducted in all respects as trials in the district court. The provisions of the code of civil procedure as to changing the place of trial, and all the provisions as to trials in the district court, are applicable to trials on appeal in that court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed. Judgments rendered in the district court on appeal, have the same force and effect, and may be enforced in the district court in the same

manner, as judgments in actions commenced therein, except that when a new trial is granted the case must be remanded and the new trial shall be had in the justice's court.

ARTICLE XVI.—GENERAL PROVISIONS.

§ 97. PROCESS THROUGHOUT COUNTY.] Justices of the peace may issue in any action or proceedings in the courts held by them, any original mesne or final process to any part of the county.

§ 98. WITHOUT BLANK TO BE FILLED.] The summons, execution and every other paper made or issued by a justice, except a subpœna, must be issued without a blank left to be filled by another, otherwise it is void.

§ 99. JUSTICE TO RECEIVE MONEYS.] Justices of the peace must receive from the sheriff or constables of their county, all moneys collected on any process or order issued from their courts respectively, and all moneys paid to them in their official capacity, and must pay the same over to the parties entitled or authorized to receive them, without delay.

§ 100. OTHER JUSTICE MAY HOLD COURT.] In case of the sickness or other disability, or necessary absence of a justice, on a return of a summons, or at the time appointed for a trial, another justice of the same township or county, may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable, may resume jurisdiction.

§ 101. COSTS PREPAID OR SECURED.] Justices shall in all cases require of plaintiff's a deposit of money or an undertaking as security for costs of court before issuing a summons.

§ 102. COSTS TO PREVAILING PARTY.] The prevailing party in civil actions in justices' courts is entitled to costs.

§ 103. CODE OF CIVIL PROCEDURE HOW APPLICABLE.] Justice's courts being courts of peculjar and limited jurisdiction, only those provisions of the code of civil procedure which are in their nature applicable to the organization, powers, and course of proceedings in justice's courts or which have been made applicable by special provisions in this chapter, are applicable to justice's courts and the proceedings therein.

CHAPTER II.

OF CRIMINAL PROCEEDINGS IN JUSTICES' COURTS.

§ 104. COMMITTING MAGISTRATES—LAW APPLYING.] Chapters III, IV, V, VI and VII of the code of criminal procedure, relate to the jurisdiction and duties of justices of the peace as committing magistrates; and direct the mode of proceeding when an information, verified by oath, is laid before them of the commission of a public offense triable on indictment.

§ 105. TO KEEP PEACE.] Chapter III of title II of the same code relates to their jurisdiction and duties in cases of security to keep the peace.

§ 106. SWORN COMPLAINT.] All proceedings and actions before a justice's court, for a public offense of which such court has jurisdiction, to try and determine the same, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person and property, as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

§ 107. WARRANT—FORM.] If the justice of the peace is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

County of.....The Territory of Dakota.

To any Sheriff or Constable of said County:

Complaint upon oath having been this day made before me.....by C. D, that the offense of [designating it generally], has been committed, and accusing E, F. thereof. You are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith, at [naming the place].

Witness my hand at.....this.....day of.....A. D. ....

A. B.

§ 108. IN OTHER COUNTY HOW SERVED.] The warrant may be served in any other county in the manner prescribed by sections 101 and 102 of the code of criminal procedure.

§ 109. CRIMINAL DOCKET.] A docket must be kept by the justice of the peace, in which must be entered each action, and the proceedings of the court therein.

§ 110. PLEA ORAL—EXAMINATION.] The defendant may make the same plea as upon an indictment. His plea must be oral, and entered in the minutes. If the defendant plead guilty the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury.

§ 111. WHEN CASE TO BE TRIED.] Upon a plea other than a plea of guilty, if the defendant does not demand a trial by jury, or an adjournment or change of venue is not granted, the court must proceed to try the case.

§ 112. CHANGE OF VENUE.] In criminal proceedings in a justice's court, a change of the place of trial may be had at any time before the trial commences, when it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same county.

§ 113. PROCEEDINGS UPON.] When a change of the place of trial is ordered the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes

of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

§ 114. POSTPONEMENT OF TRIAL.] Before the commencement of the trial either party may, upon good cause shown, have a reasonable postponement thereof.

§ 115. DEFENDANT'S PRESENCE.] The defendant must be personally present before the trial can proceed.

§ 116. TRIAL JURY.] Before the court hears any testimony upon the trial the defendant may demand a trial by jury. The formation of the jury is provided for in chapter I, article X, of this code.

§ 117. CHALLENGES.] The same challenges may be taken by either party to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the court.

§ 118. OATH TO JURY.] The court must administer to the jury the following oath:

You do swear that you will well and truly try this issue between the territory of Dakota and A. B., the defendant, and a true verdict render according to the evidence. So help you God.

Any juror who is conscientiously scrupulous of taking an oath, shall be allowed to make affirmation, substituting for the words "So help you God," at the end of the oath, the words "This you do affirm, under the pains and penalties of perjury."

§ 119. JURY'S DUTY.] After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

§ 120. COURT DECIDES LAW—NO CHARGE.] The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

§ 121. JURY'S CONSULTATION—OFFICER.] After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect:

You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court.

§ 122. VERDICT.] The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter or cause it to be entered in the docket.

§ 123. AS TO PART OF DEFENDANTS.] When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case, as to the rest, may be tried by another jury.

§ 124. WHEN DISCHARGED.] The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

§ 125. TRIAL AGAIN.] If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on until a verdict is rendered.

§ 126. JUDGMENT UPON GUILT.] When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be.

§ 127. FINE AND IMPRISONMENT.] A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, in the proportion of one day's imprisonment for every two dollars of the fine.

§ 128. ACQUITTAL AND DISCHARGE—PROSECUTOR TO PAY COSTS.] When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

§ 129. JUDGMENT ENTERED IMMEDIATELY.] At the close of the trial, judgment must be immediately rendered by the justice, and entered in his docket.

§ 130. IMMEDIATE DISCHARGE.] If judgment of acquittal is given, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

§ 131. MITTIMUS.] When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, or other officer, which is a sufficient warrant for its execution.

§ 132. CUSTODY UNTIL FINE PAID.] When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

§ 133. FINES PAID OVER TO TREASURER—EXPENSES.] Upon payment of the fine to the justice, the officer must discharge the defendant, if he is not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county treasurer, for the use of the public schools of the county. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this section.

§ 134. BAIL BEFORE CONVICTION.] The defendant at any time after his arrest, and before conviction, may be admitted to bail, by giving an undertaking with sufficient surety in an amount to be fixed by the justice, for his appearance before the justice to answer the complaint.

§ 135. SUBPOENAS—CONTEMPTS.] In all criminal proceedings, the justice may issue subpœnas for witnesses, and punish for contempts as provided for in article XIII of the justices' code.

ARTICLE II.—APPEALS IN CRIMINAL PROCEEDINGS.

§ 136. RIGHT TO APPEAL—ORAL NOTICE—ISSUES ON APPEAL.] The justice immediately on rendering judgment against the defendant, must inform

him of his right to appeal therefrom, and the defendant may thereupon take an appeal to the district court of the county or subdivision in which the trial was had, by giving notice orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice; and upon such appeal, the action may be tried anew in the district court upon questions of law and fact, or fact alone; or the appeal may be determined therein upon questions of law alone, and the judgment may be set aside, affirmed or modified, or a new trial granted as provided in section 96 of the justices' code.

§ 137. APPEAL AS IN CIVIL ACTIONS.] Instead of such appeal, the defendant may at any time within thirty days after judgment, appeal to such district court in the same manner as provided in sections 89, 90 and 91, and such appeal may be determined therein as provided for in section 96 of the justices' code.

§ 138. BAIL ON APPEAL.] Upon an appeal the justice must enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment shall not be stayed unless he enter into an undertaking in the amount fixed with sufficient surety to be approved by the justice to appear and answer at the next term of the district court, and not depart without leave of the same.

§ 139. TAKEN BY ANY MAGISTRATE.] The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court or the clerk thereof.

§ 140. WITNESSES MAY BE BOUND TO APPEAR.] When an appeal is taken, the justice must, if application be made by the district attorney, cause all material witnesses on behalf of the prosecution to enter into an undertaking in like manner as in a case where a defendant is held to answer on a preliminary examination for an indictable offense.

§ 141. PROCEEDINGS ON APPEAL—RECORD AND PAPERS TRANSMITTED.] Upon an appeal being taken, the justice must, within five days, transmit to the clerk of the district court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal, if any, and the undertaking of bail; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal, if any, and the undertakings filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and, if the return be defective, to make further return, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court, either party may have the benefit of all legal objections made in the justice's court.

§ 142. NO APPEAL DISMISSED—NEW TRIAL.] No appeal from the judgment of a justice of the peace in criminal proceedings shall be dismissed. All proceedings necessary to carry the judgment upon appeal into effect shall be had in the district court: *Provided, however*, That when a new trial is

granted, the case must be remanded, and the new trial had in the justice's court.

Approved, February 13, 1877.

CHAPTER III.

JUSTICE'S QUARTERLY REPORT TO COUNTY BOARD.

AN ACT requiring Justices of the Peace to make a Quarterly Report to the County Commissioners of their respective Counties. [Chapter LX. Laws 1874-5.]

§ 1. MAKE SWORN REPORTS.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* It shall be the duty of all justices of the peace to make a full report, under oath, of all their proceedings in actions or matters in which the county or territory is a party, or interested therein, to the county commissioners of each of their respective counties, on the first Monday of January, April, July and October of each year.

§ 2. CONTENTS OF REPORT.] Such report shall contain the names of the parties to the action or proceeding, a statement of all orders made by said justice, whether the defendant be bound over or otherwise, the judgment, whether of dismissal or imprisonment, or for a fine and costs, or either; if for imprisonment, the extent thereof and costs; if for a fine, the amount thereof and costs, the amount of fine and costs paid, if any, and the disposition thereof; an itemized account of the fees of said justices, and of all officers and witnesses, and the names of each.

§ 3. MUST PAY OVER ALL MONEYS.] Said justices shall pay into the treasury of their respective counties all fines and moneys collected by them in behalf of the county or territory, at the time of making their reports, as provided in this act: but if, at any time, such moneys in their hands amount to two hundred dollars, they shall pay the same into the treasury forthwith.

§ 4. PENALTY.] Any justice of the peace violating any of the provisions of this act shall be liable to a fine of not less than ten nor more than one hundred dollars, to be recovered in a civil action by the county, which action may be brought originally in a justice's court or the district court.

§ 5. VIOLATION A CRIME.] And if any justice of the peace shall neglect or refuse to make such report, or neglect or refuse to pay over the aforesaid moneys collected by them, or shall refuse to allow the county commissioners, or any of them, to examine their records in regard to such matters, they shall be deemed guilty of willful and corrupt misconduct in office.

§ 6. EFFECT.] This act shall take effect from and after its passage and approval.

Approved, January 15, 1875.