

JUSTICES OF THE PEACE.

CHAPTER 49.

AN ACT DEFINING THE JURISDICTION AND PROCEDURE BEFORE JUSTICES OF THE PEACE, AND OF THE DUTIES OF CONSTABLES IN CIVIL COURTS.

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

ARTICLE I.—OF THE JURISDICTION OF JUSTICES OF THE PEACE.

Jurisdiction limited to county.

SECTION 1. The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the county wherein they may have been elected, and where they shall reside.

Powers of justices.

SECT. 2. Justices of the peace within and coextensive with their respective counties, shall have jurisdiction and authority: 1. To administer an oath or affirmation authorized or required by law to be administered. 2. To take the acknowledgment of deeds, mortgages, and other instruments of writing. 3. To solemnize marriages. 4. To issue subpoena for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions. 5. To try the action for forcible entry and detention, or detention only, of real property. 6. To proceed against security for costs and bail for the stay of execution on their dockets. 7. To issue attachments, and proceed against the goods and effects of debtors in certain cases. 8. To issue executions on judgments rendered by them. 9. To proceed against constables, failing to make return, making false return, or failing to pay over money collected on execution issued by such justice. 10. To try the right of the claimant to property taken in execution or on attachment.

Have jurisdiction in actions for trespass.

SECT. 3. Justices shall have jurisdiction in actions for trespass on real estate, where the damages demanded for such

trespass shall not exceed one hundred dollars, but a claim of title to such real estate set up by the defendant, shall take away or affect the jurisdiction hereby given.

SECT. 4. Justices shall not have cognizance of any action: Have cognizance of what actions.
 1. To recover damages for an assault, or assault and battery; or, 2. In any action for malicious prosecution; or, 3. In actions against justices of the peace or other officers for misconduct in office, except in cases provided for in this act; or, 4. In actions for slander, verbal or written; or, 5. In actions on contracts for real estate; or, 6. In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions for trespass on real estate which are provided for in this act.

ARTICLE II.—OF THE COMMENCEMENT OF SUITS, SERVICE, AND RETURN OF PROCESS, AND PROCEEDINGS IN ARREST AND ATTACHMENT.

SECT. 5. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. Actions commenced by summons, when. In the former the action is deemed commenced upon delivery of the writ to the constable to be served; and he shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case.

SECT. 6. When a guardian to the suit is necessary, he When guardian necessary in suit, how appointed. must be 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 or upwards; if under that age, upon the application of some friend. The consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice. 2. If the infant be defendant, the guardian must be appointed before the trial. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

SECT. 7. The style of the summons shall be: "The Territory of Dakota, — county;" it shall be dated the day it Style and contents of summons.

is issued, signed by the justice issuing the same, directed to the constable or sheriff of the proper county (except in case a person be deputed to serve it, in which case it shall be directed to such person), must contain the names of the defendant or defendants, if known; if unknown, give a description of him or them, and command the officer or person serving the same, to summon the defendant or defendants to appear before such justice, at his office, in — county, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him, and there shall be indorsed on the writ the amount for which the plaintiff will take judgment if the defendant fail to appear. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

If defendant fail to appear.

Summons returnable when, and how delivered.

SECT. 8. The summons must be returnable not more than twelve days from its date, and must be served at least three days before the time of appearance, as follows: 1. By delivering a copy of the summons with the indorsement thereon (certified by the constable or person serving the same to be a true copy), to the defendant, or leaving the same at his usual place of residence. 2. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

Summons, how served on corporation.

SECT. 9. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof.

Summons on agency of insurance company.

SECT. 10. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

On agency of foreign corporation.

SECT. 11. When the defendant is a foreign corporation, having a managing agent in this territory, the service may be upon such agent.

When defendant is a minor.

SECT. 12. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his

guardian or father; or if neither of these can be found, then upon his mother or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

APPEARANCE.

SECT. 13. The parties are entitled to one hour in which to appear, after the time mentioned in the summons for appearances, 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. In such case the justice may postpone the time of appearance until the close of such trial. Of appearance.

ATTACHMENT.

SECT. 14. The plaintiff shall have an order of attachment against the property of the defendant, in a civil action before a justice of the peace, for the recovery of money before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim; that [it] is just; the amount which the affiant believes the plaintiff ought to recover; and the existence of some one or more of the following particulars: 1. That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the territory; or, 2. Has absconded with intent to defraud his creditors; or, 3. Has left the county of his residence to avoid the service of a summons; or, 4. So conceals himself, that a summons cannot be served upon him; or, 5. Is about to remove his property, or a part thereof, out of the county, with the intent to defraud his creditors; or, 6. Is about to convert his property, or part thereof, into money, for the purpose of placing it beyond the reach of creditors; or, 7. Has property or rights in action which he conceals; or, 8. Has assigned, removed, or disposed of, or about to dispose of his property, or a part thereof, with intent to defraud his creditors; or, 9. Fraudulently contracted the debt, or incurred

Plaintiff to
have order of
attachment,
when.

the obligation, for which suit is about to be, or has been brought. When the defendant is a foreign corporation, or a non-resident of the territory, the attachment shall not be granted, unless the claim is for debt or demand arising upon contract, judgment, or decree.

Plaintiff to give undertaking, when.

SECT. 15. When the ground of attachment is, that the defendant is a foreign corporation, or a non-resident of the territory, the order of attachment may be issued without an undertaking, but in all other cases the order of attachment shall not be issued by the justice until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the justice, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect, that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Order of attachment take effect, how.

SECT. 16. The order of the attachment may be made to accompany the summons, or at any time afterwards, before judgment, it shall be addressed and delivered to any constable of the proper county, and shall require him to attach the goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the defendant in his county not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action not exceeding fifty dollars.

Return day of order of attachment.

SECT. 17. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

When there are several orders of attachment.

SECT. 18. When there are several orders of attachment against the same person, in the hands of the same officer, they shall be executed in the same order in which they are received by said officer: he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that by virtue of said order, he attaches said property at the suit of said plaintiff; and the officer, with two residents of the county, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all property attached which shall be signed by the officer and said residents and returned

with the order; when the property can be come at, he shall take the same into custody, and hold it subject to the order of the justice.

SECT. 19. The constable shall deliver the property attached to the person in whose possession it is found, upon the execution by such person, in the presence of the constable, an undertaking of the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound.

Constable may surrender property, when.

SECT. 20. Different attachments of the same property may be made, and one inventory and appraisal shall be sufficient. The lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property, as in the hands of the officer, and subject to the prior attachments. The justice who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached.

One appraisal sufficient for different attachments. Lien, in what order.

SECT. 21. If the order of the attachment is made to accompany the summons, a copy thereof, and the summons, shall be served upon the defendant in the usual manner for the service of a summons, if the same can be done within the county; and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued on the actions has not been, and cannot be served on the defendant in the county, in the manner prescribed by law, the justice of the peace shall continue the cause for a period not less than forty, nor more than sixty days. Whereupon the plaintiff shall proceed for three consecutive weeks, to publish, in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a notice stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice; and thereupon

If order accompany summons, how served.

If cannot be served in county, then by publication, how.

said action shall be proceeded with, the same as if summons had been duly served.

When property taken is live-stock or perishable.

SECT. 22. When the cause is continued as provided for in the preceding section, and it shall appear that any of the property taken under the attachment is live-stock, or is of a perishable nature, the justice may issue his order directing the officer having the custody thereof, to dispose of the same as upon execution; and the money realized therefrom shall be paid over to the justice and applied as other money realized from the sale of property attached is applied.

When makes oath in regard to property of defendant not to be come at, what notice to be served.

SECT. 23. When the plaintiff, his agent or attorney, shall make oath, in writing, that he has good reason to and does believe that any person or corporation, to be named, and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear before the justice at the return of the order of the attachment, and answer as provided in section twenty-five.

How served.

SECT. 24. The copy of the order and the notice shall be served upon the garnishee as follows: if he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other head of the same, or the secretary, cashier, or managing agent thereof.

Garnishee shall appear and answer.

SECT. 25. The garnishee shall appear before the justice, in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, and he shall disclose truly, the amount owing by him to the defendant, whether due or not; and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

Garnishee discharged from liability, how.

SECT. 26. A garnishee may pay the money owing to the defendant by him, to the constable having the order of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against

him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

SECT. 27. If the garnishee do not appear and answer, as required by section twenty-five, the justice may proceed against him by attachment, as for a contempt.

If garnishee does not appear.

SECT. 28. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court, or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties, to the effect that the amount shall be paid or the property forthcoming, as the court may direct.

If garnishee appear, and it is proved he has property of defendant.

SECT. 29. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff; or if he fail to comply with the order of the justice to deliver the property and pay the money owing into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, in his own name, as in other cases; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiff in attachment are satisfied, the defendant in the attachment may, on motion, be substituted as the plaintiff in the judgment.

If disclosure is unsatisfactory, garnishee how proceeded against.

Plaintiff pay costs, when.

SECT. 30. Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee

Final judgment against garnishee rendered, when. If judgment for defendant.

If judgment for plaintiff.

shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys, and credits of the defendant in possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

If judgment for defendant, attachment discharged.

SECT. 31. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached or its proceeds shall be returned to him.

If judgment for plaintiff, how satisfied.

SECT. 32. If judgment be rendered for the plaintiff, it shall be satisfied as follows: so much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, if any, whether held by legal or equitable right, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds, shall be returned to the defendant.

Justice may order constable to repossess himself of property not sold.

SECT. 33. The justice may order the constable to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without being sold or converted into money; and the constable shall under such order have the same power to take the property, as he would have under an order of attachment.

If any property attached claimed by other person.

SECT. 34. If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

Where several attachments, proceeds how applied.

SECT. 35. Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first order, served on the motion of any of the plaintiffs, may determine the amounts and priorities of

the several attachments, and the proceeds shall be applied accordingly.

SECT. 36. The officer shall return upon every order of attachment what he had done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return, with the order, all undertakings given under it.

Officer's return.

SECT. 37. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with a written notice, mentioned in section twenty-three; but when property is attached in the hands of a consignee or other person having a prior lien, his lien thereon shall not be affected by the attachment.

Order binding from time of service.

SECT. 38. If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, to be stated in his affidavit, to the effect, that the defendant shall perform the judgment of the justice, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action, for any property of the defendant in his hands.

Attachment discharged before judgment, how.

SECT. 39. If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and from the examination of the garnishee, that no property, moneys, rights, credits, or effects of the defendant have been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending, shall, at the request of the plaintiff, forthwith certify his proceedings to the district court, of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court in all respects as if the same had originated therein.

If it appear that no property can be attached by officer, and that defendant has interest in real estate in county.

ARTICLE III.—BILL OF PARTICULARS.

Bill of particulars to be filed by both parties. SECT. 40. In all cases before a justice, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand; and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim, as a set-off; and the evidence on the trial shall be confined to the items set forth in said bills.

State what. SECT. 41. The bill of particulars must state, in a plain and direct manner, the facts constituting the cause of action, or the claim to be set off.

Of amendments to bills. SECT. 42. The bill of particulars may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency, or omission in the items when, by such amendments, substantial justice will be promoted. If the amendment be made at the time of, or during the trial, and it be made to appear, to the satisfaction of the justice, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The justice may also, in his discretion, require, as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required, unless an adjournment is made necessary by the amendment.

ARTICLE IV.—CHANGE OF THE PLACE OF TRIAL.

Of change of place of trial. SECT. 43. If, on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the case: 1. That such justice is a material witness for either party; or, 2. If a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in the precinct, or place for which said justice may have been elected, on account of the bias or prejudice of the citizens thereof; the place of trial may be changed.

Where case shall be tried. SECT. 44. If the place of trial be changed on account of the justice being a material witness in the cause, such cause

may be transferred for trial before some other justice of the peace in the same precinct. If the place of trial be changed on account of the bias or prejudice of the citizens of such precinct or place, the case shall be taken to some justice in an adjoining precinct, in the same county.

SECT. 45. The justice granting such change, shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein, and have the same jurisdiction, powers, and duties, in all respects whatever, as if such suit had been originally instituted before him.

Justice transmit papers, &c., to the justice trying case.

SECT. 46. Before any such change shall be allowed, the costs, as specified in the next following section, shall be paid by the party applying for such change.

Costs to be paid before change made.

SECT. 47. When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when on the application of the defendant, he shall be taxed for the costs which have accrued for issuing subpoenas for witnesses, and service thereof, witnesses' fees, and costs of the justice for transferring the cause to the docket of the other justice.

Which party pay, what costs.

ARTICLE V.—ADJOURNMENTS.

SECT. 48. Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial, without the consent of either party, as follows: 1. Where a party is in attendance who is not a resident of the county, the adjournment not to exceed forty-eight hours. 2. In other cases not to exceed eight days, unless by consent of the parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

Justice may adjourn trial when, and for how long.

SECT. 49. The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days, as follows: the party asking the adjournment must, if required by his adversary, prove, by his own oath, or otherwise, that he cannot, for want

Trial adjourned on application of parties, when.

of material testimony which he expects to procure, safely proceed to trial.

Other adjournment, when made.

SECT. 50. An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof, by the oath of the party or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for the want of material evidence, describing it; that the delay has not been made necessary by any act or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

ARTICLE VI.—WITNESS.

Justices issue subpoenas for what.

SECT. 51. Any justice may issue subpoenas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

Subpoena, how served.

SECT. 52. A subpoena may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

When not served by officer no fees charged.

SECT. 53. When not served by a constable, or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it.

If witness attend, and is not examined, costs how paid.

SECT. 54. If any witness, having been subpoenaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness.

When witness may be compelled to appear.

SECT. 55. Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpoena to appear and give testimony before him, in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he refuses or neglects to attend as such witness in conformity to such subpoena, the justice shall

issue a warrant for the arrest of the delinquent for the purpose of compelling his attendance, and punishing his disobedience.

SECT. 56. When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the Territory of Dakota against the delinquent, and may be enforced against his person or property. Said money so collected shall be paid into the county treasury, for the support of common schools in said county.

When witness is arrested or refuses to testify. Penalty.

Fines for support of common schools.

SECT. 57. Every person subpoenaed as aforesaid, and neglecting to appear or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain by reason of such delinquency.

Person neglecting or refusing, responsible for damages.

DEPOSITION.

SECT. 58. Depositions may be taken to be read in a cause pending before a justice of the peace, in like manner and subject to the same restrictions and rules of law as in cases pending in the district court.

Depositions taken as before district court.

ARTICLE VII.—THE TRIAL AND ITS INCIDENTS.

SECT. 59. At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law and the right.

If no jury demanded, justice to try action.

SECT. 60. Where parties agree to enter, without process, before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment, and execution, in all respects in the same manner as if the summons had been issued, served, and returned.

Where parties agree to enter without process.

JURY.

Either party
may demand
jury of six men.

SECT. 61. In all civil actions, after the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number. When a jury is demanded, the trial of a cause must be adjourned until a time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days; the jury must be immediately selected as herein provided.

How jury shall
be selected.

SECT. 62. The justice shall write in a panel the names of twelve persons, citizens of the county, from which the defendant, his agent or attorney, shall strike one, and so alternately, until each shall have stricken three names, and the remaining six shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the same in behalf of such party.

Form of sum-
mons for jury.

SECT. 63. The justice thereupon shall issue a summons for the jury, in which the following form shall be observed in substance as near as practicable:

THE TERRITORY OF DAKOTA, }
 — county. }

To —, constable of — county:

You are hereby commanded to summon — to appear before me at —, in said county, on the — day of —, A. D. —, at — o'clock in the — noon, to serve as jurors in a case pending before me, then and there to be tried. And this they shall in nowise omit. And have you then and there this writ with your doings thereon.

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

—, Justice of the Peace.

Constable
serve summons,
how.

SECT. 64. The constable shall serve such summons by a personal service thereof, and return the same indorsed with the names of the persons summoned, at the time appointed for the trial of the case. Jurors, for neglecting to attend when

Jurors neglect-
ing to attend.

properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded against in the same manner, as witnesses who fail to attend or refuse to testify.

SECT. 65. The constable shall be in attendance on the court at and during the progress of the trial; and if from challenge or other cause the panel shall not be full, he may fill the same in the same manner as is done by the sheriff in the district court.

If panel be not full, constable to fill same.

SECT. 66. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for the trial without further notice.

Jury to attend at time of trial.

SECT. 67. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath.

If competency of juror questioned.

SECT. 68. The justice shall administer an oath or affirmation to the jury, well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence.

Jury to take oath or affirmation.

SECT. 69. After the jury shall have been sworn they shall sit together and hear proofs and allegations of the parties; and after hearing the same, shall be kept together in some convenient place, under the charge of a constable, until they have agreed upon their verdict, or shall be discharged by the justice.

After jury is sworn, to be kept together until discharged.

SECT. 70. When the jury shall have agreed upon their verdict, they shall deliver it to the justice publicly, who shall enter it upon his docket.

Deliver verdict publicly. To be entered on docket.

SECT. 71. Whenever the justice shall be satisfied that a jury, sworn in any cause before him, cannot agree in the verdict after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may, if required by either party, proceed to strike another jury, as hereinbefore provided. The cause shall be continued to such time as the justice thinks reasonable, unless the parties or their attorneys agree on a longer or shorter time, or unless they may agree that the justice may render judgment on the evidence already before him.

When jury cannot agree.

SECT. 72. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the

If verdict improper, new trial may be granted.

verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have at least three days' notice.

Opposite party to have reasonable notice of motion.

SECT. 73. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

Proceeding same as in first trial.

When appeal may be made.

SECT. 74. If either the plaintiff or defendant, in their bill of particulars, claim more than ten dollars, the case may be appealed to the district court; but if neither party demand a greater sum than ten, and the case is tried by jury, there shall be no appeal.

Which party pays costs on appeal.

SECT. 75. If, on appeal by the plaintiff, he shall not recover a larger sum than twenty dollars, exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the district court (including a fee of five dollars to defendant's attorney); and in case the defendant shall demand a set-off greater than twenty dollars, and he appeal and do not recover twenty dollars, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney.

Fees of jury, when and how paid.

SECT. 76. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the cost bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Of exceptions before justice.

SECT. 77. In all cases which shall be tried by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill containing such exception, if truly

alleged, with the point decided, so that the same may be made part of the record in the cause.

ARBITRATIONS.

SECT. 78. At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitrament of [three] disinterested men, who shall be chosen by the parties; and if the arbitrators be present, they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue summons for them to attend at the time and place appointed for the trial, which shall be served by any constable or the parties, as they may agree. The fees of arbitrators shall be the same as that paid to jurors.

Cases, how submitted to arbitration.

SECT. 79. When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be valid when signed by any two of them, and return the same to the justice, who shall thereupon enter such award upon his docket, and thereupon render judgment, and issue execution as in other cases.

Arbitrators hear and determine, and their award.

SECT. 80. Every judgment rendered on such award, shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days after the rendition of the same, or to the district court, on appeal, that such award was obtained by fraud, corruption, or other undue means.

Their judgment final, unless it appear fraudulent.

SECT. 81. Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption, or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made.

How judgment set aside.

SECT. 82. But no appeal shall be allowed to the district court from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does

No appeal allowed, except when.

verily believe that such award was obtained by fraud, corruption, or other undue means.

When district court sets aside.

SECT. 83. And if, on appeal from the judgment of a justice rendered on any such award, the district court shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

When it sustains award.

SECT. 84. But if the court shall be of opinion that the award was not obtained by fraud, corruption, or other undue means, they shall render judgment thereon, for the costs of suit, and award execution as in other cases.

TRIAL OF THE RIGHT OF PROPERTY LEVIED ON OR ATTACHED.

When property attached is claimed by another party.

SECT. 85. When a constable shall levy on or attach property, claimed by any person or persons, other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days' notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property.

If justice satisfied of claimant's right, he shall restore property.

SECT. 86. If on the trial, the justice shall be satisfied from the proof, that the property or any part thereof, belongs to the claimant or claimants, such justice shall render judgment against the party in whose favor such execution or attachment issued for the costs, and issue execution therefor, and shall, moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof, as may have been found to belong to such claimant or claimants.

If not satisfied, claimants to pay costs of trial of right.

SECT. 87. But if the claimant or claimants fail to establish his or their right to such property or any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial,

and issue execution therefor; and the constable shall not be liable to the claimant or claimants for the property so taken.

ARTICLE VIII.—JUDGMENTS.

SECT. 88. Judgment, that the action be dismissed 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 upon adjournment, or within one hour thereafter.

Judgment of dismissal without prejudice in what cases.

SECT. 89. If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed and evidence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, and if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bills of particulars and proofs.

If plaintiff or defendant fail to appear.

SECT. 90. When judgment shall have been rendered against a defendant in his absence, the same may be set aside upon the following conditions: 1. That his motion be made within ten days after such judgment was entered. 2. That he pay or confess judgment for the costs awarded against him. 3. That he notify in writing the opposite party, his agent, or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial at least five days before time, if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before the trial.

When judgment against absent defendant set aside.

SECT. 91. Upon a verdict, the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must be entered immediately after the close of the trial, if the property of the defendant has been attached; in other cases it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

When judgment entered.

SECT. 92. When the amount due to either party exceeds

When amount due exceeds au-

thorized judgment.

the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld.

If defendant offer judgment for specified sum.

SECT. 93. If the defendant, any time before 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 accrued after the offer; but costs must be adjudged against him. But the offer and failure to accept it, cannot be given in evidence, to effect the recovery, otherwise than to costs as above provided.

SECT. 94. * . * * * * * * * * *

ARTICLE IX. — APPEALS.

Appeals, in what cases.

SECT. 95. In all cases not otherwise especially provided for by law, either party may appeal from the final judgment of any justice of the peace, to the district court of the county where the judgment was rendered.

Party appealing to give undertaking.

SECT. 96. The party appealing shall, within ten days from the rendition of judgment, enter into an undertaking to the adverse party with at least one good and sufficient surety to be approved by such justice, in a sum not less than fifty dollars in any case, nor less than double the amount of judgment and costs, conditioned: 1. That the appellant will prosecute his appeal to effect and without unnecessary delay. 2. That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs. Such undertaking need not be signed by the appellant.

Justice to deliver record and papers in the cases, to whom.

SECT. 97. And the said justice shall make out a certified transcript of his proceedings, include the undertaking taken for such appeal, and shall, on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which appeal may be taken, on or before the second day of the term thereof, next following such appeal; and such justice shall also deliver or transmit the bill or bill

of particulars, the depositions and all other original papers, if any used on the trial before him, to such clerk, on or before the second day of such term; and all other proceedings before the justice of the peace, in that case, shall cease and be stayed from the time of entering into such undertaking.

SECT. 98. The clerk on receiving such transcript and other papers as aforesaid, shall file the same and docket the appeal. Clerk to file same.

SECT. 99. The plaintiff in the court below, shall be the plaintiff in the district court; and the parties shall proceed in all respects in the same manner, as though the action had been originally instituted in the said court. Parties same as in court below.

SECT. 100. If the appellant shall fail to deliver the transcript, and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the second day of the term of the said court next after such appeal, the appellee may, at the same term of said court, file a transcript of the proceedings of such justice, and the said cause shall, on motion of the said appellee, be docketed; and the court is authorized and required, on his application, either to enter up a judgment in his favor, similar to that entered by the justice of the peace, and for all the costs that have accrued in the court, and award execution thereon; or such court may, with the consent of such appellee, dismiss the appeal, at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken; and if the plaintiff in the action before the justice shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed according to the provisions of this act, shall fail to file petition, or otherwise neglect to prosecute the same, to final judgment, so that said plaintiff shall become non-suited, it shall be the duty of said court to render judgment against such appellant for the amount of the judgment rendered against him by the justice, together with interest accrued thereon and for costs of suit, and to award execution therefor, as in other cases. If appellant fail to deliver papers to clerk, when. Court may enter judgment similar to justice.

SECT. 101. If both parties fail to enter such appeal within the time limited as aforesaid, the justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or being entered, was dismissed as aforesaid, If both parties fail to enter appeal.

shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

If appellant fail to recover larger amount, to pay costs of appeal.

SECT. 102. If any person, appealing from a judgment rendered in his favor, shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs of such appeal.

When appeal dismissed, &c., surety liable.

SECT. 103. When any appeal shall be dismissed, or when judgment shall be entered in the district court against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs, and damages, recovered against the appellant.

When district court quash appeal, order to be lodged with justice.

SECT. 104. When an appeal, taken to the district court, shall there be quashed, by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken.

When undertaking may be changed or renewed.

SECT. 105. In proceeding on appeal when the surety in the undertaking shall be insufficient, or such undertaking may be insufficient, in form or amount, it shall be lawful for the court, on motion to order a change or renewal of such undertaking, and direct the same to be certified to the justice, from whose judgment the appeal was taken, or that it be recorded in said court.

Appeals not allowed, in what cases.

SECT. 106. Appeals in the following cases shall not be allowed: 1. On judgments rendered on confession. 2. In jury trials where neither party claim in their bill of particulars a sum exceeding twenty dollars. 3. In the action for the forcible entry and detention, or forcible detention of real property. 4. In trials of the right of property, under the statutes, either levied upon by execution or attached.

When term of justice expires between date of judgment and appeal.

SECT. 107. When the term of office of a justice shall expire between the dates of judgment and the time limited for appeal, such justice may take the undertaking for appeal at any time before he has delivered his docket to his successor, and give the appealing party a transcript. After the delivery of the docket, the undertaking shall be given to his successor, and it shall be his duty to give the transcript and do and perform all things required of his predecessor.

ARTICLE X.—OF THE ACTION FOR THE FORCIBLE ENTRY AND
DETENTION, OR FORCIBLE DETENTION ONLY OF PROPERTY.

SECT. 108. Any justice, within his proper county, shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such inquiry that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry are held unlawfully, then said justice shall cause the party complaining to have restitution thereof.

Justice may inquire into entry and detention.

SECT. 109. Proceedings under this article may be had in all cases against tenants holding over their terms; in sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of judgment or decree, by virtue of which such sale was made; in sale by executors, administrators, guardians, and on partition, where any of the parties to the petition were in possession at the commencement of the suit, after such sales, so made on execution or otherwise, shall have been examined by the proper court, and the same by such court adjudged legal; and in cases where the defendant is a settler or occupier of the lands or tenements, without color of title, and to which the complainant has the right of possession; this section not to be construed as limiting the provisions of the first section of this article.

Proceedings had in what cases.

SECT. 110. Judgments either before the justice or in the district court, under this article, shall not be a bar to any after action brought by either party.

Judgment not bar to, after action.

SECT. 111. It shall be the duty of the party desiring to commence an action under this article, to notify the adverse party to leave the premises, for the possession of which the action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he cannot be found.

Action, how commenced.

Summons not to issue until plaintiff files complaint, containing what.

SECT. 112. The summons shall not issue herein, until the plaintiff shall have filed his complaint in writing with the justice, which shall particularly describe the premises so entered upon or detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record.

Summons to state what, and when served.

SECT. 113. The summons shall be issued and directed; shall state the cause of the complaint, and the time and place of trial, [and] shall be served and returned as in other cases. Such service shall be three days before the day of trial appointed by the justice.

If defendant does not appear.

SECT. 114. If the defendant does not appear in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present.

No continuance longer than eight days, unless.

SECT. 115. No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient surety to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant.

Of trial and judgment.

SECT. 116. If the suit be not continued, place of trial changed, or neither party demand a jury, upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable.

If jury demanded.

SECT. 117. If a jury be demanded by either party, the proceedings, until the impanelling thereof, shall be in all respects as in other cases. The jury shall be sworn or affirmed to well and truly try and determine whether the complaint of (naming the plaintiff) about to be laid before them, is true according to the evidence. If the jury shall find the complaint

Their verdict.

true, they shall render a general verdict of guilty against the

defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find true.

SECT. 118. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts, authorizing the finding of such verdict, had been found to be true by himself. Justice enter verdict and render judgment.

SECT. 119. Exceptions to the opinion of the justice, in cases under this article, upon questions of law and evidence, may be taken by either party, whether tried by a jury or otherwise. Exceptions may be taken.

SECT. 120. When a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable: In case of judgment of restitution — form of writ.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

To any constable of — county:

Whereas, in a certain action for the forcible entry and detention (or the forcible detention, as the case may be), of the following described premises, to wit: —, lately tried before me, wherein — was plaintiff and — was defendant —, judgment was rendered on the — day of —, A. D. —, that the plaintiff have restitution of said premises, and also that he recover costs in the sum of —. You, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ make legal service and due return.

Witness my hand this — day of —, A. D. —.
 — —, Justice of the Peace.

SECT. 121. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs, and make return as upon other executions. If the officer shall receive a notice from the justice that the proceedings have been stayed by an allowance of a writ of error, he shall Of execution of writ, &c.

immediately delay all further proceedings upon the execution; and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ with his proceedings and costs taxed thereon.

ARTICLE XI.—OF THE REPLEVIN OF PROPERTY.

Petition in replevin sworn to, and state what.

SECT. 122. The petition in replevin must be sworn to, and it must state: 1. A particular description of the property claimed. 2. Its actual value, and where there are several articles, the actual value of each. 3. The facts constituting the plaintiff's right to the present possession thereof, and must define the extent of his interest in the property, whether it be full or qualified ownership. 4. That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him or against the property. But if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process. 5. The facts constituting the alleged cause of detention thereof according to his best belief. 6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof.

Affiant shall execute bond.

SECT. 123. He shall also execute a bond to the defendant, with sureties to be approved by the justice of the peace, in a penalty at least equal to twice the value of the property sought, conditioned that he will appear at the time of the trial of said cause, and prosecute his suit to judgment and return the property, if a return be awarded, and also pay all costs and damages that may be adjudged against him. This bond shall be filed with the justice of the peace, and is for use of any person injured by the proceeding, and a judgment for money rendered against the plaintiff shall also go against the sureties on the bond.

To be filed.

Justice issue writ, &c.

SECT. 124. The justice of the peace shall thereupon issue a writ of replevin directed to the sheriff or constable to take the property therein described and deliver the same to the plaintiff. The ordinary original notice must also be served [on] the defendant in the usual manner.

When property is removed to another county.

SECT. 125. When any of the property is removed to another county after the commencement of the action, counterparts

of the writ of replevin may issue on the demand of the plaintiff to such other county, and may be executed upon such goods found in such county, and further writs of replevin and the necessary counterparts thereof may issue as often as may be necessary.

SECT. 126. The sheriff or constable must forthwith execute the writ by taking possession of the property therein mentioned, if it is found in the possession of the defendant, or of his agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly after the writ was placed in the sheriff's or constable's hands, for which purpose he may break open any dwelling-house or other inclosure, having first demanded entrance and exhibited his authority, if required.

Writ, how executed.

May break open dwelling.

SECT. 127. When it appears by the affidavit that the property claimed has been disposed of or concealed, so that the writ cannot be executed, the justice of the peace may compel the attendance of the defendant and examine him on oath as to the situation of the property, and punish a wilful obstruction or hinderance of the writ, and a disobedience of the order of the court in this respect, as in case of contempt.

When property is disposed of or concealed.

SECT. 128. The sheriff or constable must return the writ on or before the return day of the notice, and shall state fully what he has done thereunder. If he has taken any property, he shall describe particularly the same.

Of the return.

SECT. 129. The officer having taken the property, or any part thereof, shall forthwith deliver the same to the plaintiff, on the payment of his costs.

Deliver property to plaintiff.

SECT. 130. If a third person claim the property, or any part thereof, the plaintiff may amend and bring him in as a co-defendant, or the defendant may obtain his substitution by the proper mode, or the claimant may himself intervene by the process of intervenor.

If third person claim property.

SECT. 131. The judgment shall determine which party is entitled to the possession of the property, and shall designate his right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party having no right in such property, and shall also award such

Judgment determine right to property, &c.

damages to either party as he may be entitled to, for illegal detention of such property.

Party entitled thereto, may have execution for what.

SECT. 132. The party entitled thereto, may have execution for the money found due him, or may, in his discretion, have execution for the delivery of the property, and if the property or any article thereof cannot be obtained on execution, he may have execution for the value of such article.

When it appears that property has been concealed or removed by other party.

SECT. 133. When it appears by the return of the officer, or by the affidavit of the plaintiff, that any specific property which has been adjudged to belong to one party, has been concealed or removed by the other, the justice of the peace may require him to attend and be examined on oath, respecting such matter, and may enforce his order in this respect as in cases of contempt.

ARTICLE XII.—EXECUTION.—RETURN.—STAY OF EXECUTION.—NOTICE OF SALE.—DELIVERY.—UNDERTAKING.

When and by whom execution may issue.

SECT. 134. Execution for the enforcement of a judgment before a justice of the peace (except where it has been taken to the district court on error or appeal, or docketed therein, or during the time it may be stayed, as provided by this act), may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years of entry of the judgment, or the date of the last execution issued thereon.

Justice issue execution without demand, except when.

SECT. 135. It shall be the duty of the justice if the case be not appealed, taken up on error, docketed in the district court, or bail has not been given for the stay of execution at the expiration of ten days from the entry of the judgment, to issue execution without a demand, and proceed to collect the judgment, unless otherwise directed by the judgment creditor.

Person may have stay of execution, how.

SECT. 136. Any person against whom judgment may be rendered under the provisions of this act, except as hereinafter excepted, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice shall approve, conditioned for the

payment of the amount of such judgment, interest, and costs, and costs that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety.

SECT. 137. The stay of execution hereby authorized shall be graduated as follows, namely: 1. On any judgment for five dollars and under, the stay shall be for sixty days, and on all sums over fifty and under one hundred dollars, the stay shall be for six months. 2. On any judgment exceeding five and under fifty dollars, the stay shall be for ninety days. 3. Where judgment is obtained against a surety, and he takes a stay thereon, and he obtains judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long, that the stay will expire one month before that allowed to the surety on the judgment against him. For how long.

SECT. 138. No stay of execution on judgments rendered in the following cases shall be allowed. 1. On judgments rendered against justices of the peace for refusing to pay over money by them collected or received in their official capacity. 2. On any judgment rendered against a constable for failing to make return, making a false return, or refusing to pay over money collected in his official capacity. 3. On judgments against bail for the stay of execution. 4. Where judgment is rendered in favor of bail, who have been compelled by judgment to pay over money on account of their principal. 5. On judgments obtained by constables or undertakings executed to them for the delivery of property. No stay of execution, in what cases.

SECT. 139. If the execution issued before the undertaking for stay, or that required in case of appeal be given, and such undertaking be given afterward, and within the time allowed, the justice shall recall the execution. When execution recalled.

SECT. 140. Where any person who has become bail for stay of execution, shall remove before the expiration of such stay, into any other county or state, the justice shall, on demand, issue execution against the goods and chattels of the defendant, or other party against whom the original judgment was rendered, to be proceeded with as in other cases. When any surety for the stay of execution shall become apprehensive that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to When bail shall remove to other parts. When surety may be obliged to pay judgment.

pay the judgment, it shall be lawful for such surety to make and file affidavit of that fact before the justice on whose docket the judgment is entered; whereupon such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases: *Provided*, Such bail shall not thereby be discharged from liability, but may be proceeded against after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid.

Proviso.

If judgment debtor enter into further undertaking.

SECT. 141. If the judgment debtor shall, within ten days after levying such execution, enter into a further undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay costs of the execution issued against him as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety shall first be proceeded against, until it shall appear by the return of the constable, that he or she has no goods whereon to levy, before proceedings shall be instituted on the undertaking first given.

When judgment obtained against bail.

SECT. 142. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this act, the original judgment shall remain good and valid in law, for the use of such bail; who, at any time thereafter, may sue out execution on such judgment, against the goods and chattels of the defendant, for the use of such bail, which shall be so indorsed by the justice; and such bail shall also be entitled to a transcript of such judgment, for his own use; which shall have the same force and effect as transcripts in other cases.

When surety deemed insufficient.

SECT. 143. At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he be absent, that the same be left at his residence, requiring him to give additional surety, on or by the third day after the giving of such notice, such facts shall be entered on the docket, and he shall immediately issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the

execution shall be recalled, and stayed until the expiration of the original stay.

SECT. 144. The execution must be directed to a constable ^{Of the execu-} of the county, and subscribed by the justice by whom the ^{tion.} judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when it was rendered, the amount of the judgment, and, if less than the whole is due, the true amount due thereon. It must require the constable substantially as follows: 1. It must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto. 2. If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal subject to execution within the jurisdiction, shall be exhausted, before any property of the bail shall be taken in execution. 3. It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

SECT. 145. Upon an execution on a judgment against ^{Upon an execu-} joint debtors, upon one or more of whom the summons was ^{tion against} not served, the execution shall contain a direction to col- ^{joint debtors.} lect the amount of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name.

SECT. 146. *** SECT. 147. *** SECT. 148. *** SECT. 149. ***

SECT. 150. A constable is liable to the party in whose ^{When consta-} favor an execution issued to him for the amount thereof, in ^{ble is liable.} the following case: when he suffers thirty days to elapse without making a true return thereof to the justice, and paying to him, or to the party entitled, the money collected thereon by him.

SECT. 151. When an execution shall be returned unsatis- ^{When execu-} fied for the want of goods and chattels, the justice shall, un- ^{tion is returned} ^{unsatisfied.}

less otherwise directed by the party for whom the execution issued, commence an action on the undertaking for the stay of execution, and, so soon as judgment is obtained thereon, shall issue execution, and if such execution be returned unsatisfied in whole or in part, for want of goods and chattels, of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment, for the amount remaining due.

When defendant die before judgment is satisfied.

SECT. 152. Where bail is given for the stay of execution, and the defendant against whom the judgment was rendered shall die before the same is satisfied, the creditor may proceed against the surety in the undertaking in like manner as if execution had been issued against the defendant, and return not satisfied for want of goods and chattels whereon to levy.

SALE ON EXECUTION.

Notice and sale on execution.

SECT. 153. All property taken in execution under the provisions of this act, shall be advertised for sale, at four of the most public places within the precinct where such property was seized, at least ten days previous to the time appointed for such sale, which sale shall be held between the hours of ten o'clock, A. M., and four o'clock, P. M., at the house or on the premises where such property was taken, or at one of the most public places within the precinct.

If justice or constable purchase. Penalty.

SECT. 154. It shall not be lawful for any justice of the peace who issued the execution, nor for the constable holding the execution, to purchase, either directly or indirectly, any property sold on such execution. And any justice or constable who shall offend against the provisions of this section, shall forfeit and pay, for every such offence, any sum not exceeding one hundred dollars nor less than five dollars, to be recovered by civil action in the name of the Territory of Dakota, before any court having jurisdiction thereof, for the use of common schools of the county where such offence was committed; and shall moreover be liable to the action of the party injured thereby.

If live-stock taken, constable to be paid for keeping same.

SECT. 155. When any cattle or other live-stock shall be taken in execution, it shall be the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment, whereon such execution issued,

to allow the constable for keeping the same, a reasonable compensation, to be taxed and collected as other costs in the suit.

SECT. 156. When a constable shall levy on and sell any goods and chattels, he shall make out and annex to his return to the execution, in virtue of which such sale was made, a true inventory of all such property, and of each article thereof, and the price at which the same was sold.

Constable to make out inventory, &c.

SECT. 157. Where a constable shall have levied on any goods and chattels, which remain unsold for want of bidders, or other just cause, it shall be his duty to return with the execution, a schedule of all such goods and chattels. And the justice shall, unless otherwise directed by the party for whom such execution issued, or his agent immediately thereafter, issue an order, thereby commanding any constable to whom the same may be directed or delivered, to expose such property for sale; which sale, and the proceedings thereon, shall be the same as if such property had been sold on the original execution.

When goods remain unsold.

SECT. 158. Any constable having levied on goods and chattels, of which he permits the party against whom the execution issued to retain the possession, is hereby authorized to take such security for his own indemnity as he may require, that such property shall be delivered at the time and place appointed for the sale thereof.

If constable permits party to retain possession.

SECT. 159. In all cases where any lands may have been let, reserving rent in kind, and when the crops or emblements growing or grown thereon, shall be levied on or attached, by virtue of any execution, attachment, or other process, against the landlord or tenant, the interest of such landlord or tenant, against whom said process did issue, shall not be affected thereby.

When crops, &c., are attached.

SECT. 160. In cases where the constable shall make it appear to the satisfaction of the justice that he has been deprived of an opportunity of levying an execution within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and shall make return to the justice who issued the same to that effect, such justice is hereby authorized and required to issue further process of execution, for the amount of balance

When constable returns his inability to levy in time prescribed.

remaining unsatisfied; which shall be served and returned in all respects as other executions are under this act.

ARTICLE XIII.—OF CONSTABLES AND THEIR DUTIES.

Constables—
may execute
process in
county.

SECT. 161. All constables shall be ministerial officers in justices' courts, in their respective counties, in civil and criminal cases, and civil and criminal process may be executed by them throughout the county.

Duties
of constables.

SECT. 162. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions, and other process to him directed and delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable.

Call what aid.

SECT. 163. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. It shall be the duty of every constable to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the district court, appealed, or stayed, upon which he has an execution, on notice, to return the execution, stating thereon such fact.

Make return,
when.

SECT. 164. It shall be the duty of every constable, on the receipt of any writ or other process (subpœnas excepted), to note thereon the time of receiving the same; he shall also state in his return on the same, the time and manner of executing it.

Return "not
found" only
after.

SECT. 165. No constable shall make a return on any process of "not found," as to any defendant, unless he shall have been once at least to his usual place of residence of the defendant, if such defendant have any in the county.

Conservator of
the peace.

SECT. 166. It shall be the duty of every constable to apprehend, on view or warrant, and bring to justice all felons and disturbers and violators of the criminal laws of this territory, to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally to keep the peace in his proper county.

Authority ex-
tends, where.

SECT. 167. In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend

throughout the whole county in which he may be appointed ; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted by law to a sheriff, under like process issued from courts of record.

SECT. 168. When it shall become the duty of the constable to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the commitment, or other process, whereby he holds such person in custody, and return the original to the justice who issued the same ; which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail, until discharged by due course of law.

When person is committed to jail.

SECT. 169. Constables shall pay over to the party entitled thereto, all money received by them in their official capacity, if demand be made by such party, his agent, or attorney, at any time before he returns the writ upon which he has received it ; if not paid over by that time, he shall pay the same to the justice when he returns the writ.

Shall pay over money, to whom.

SECT. 170. Constables shall be liable to twenty per cent. penalty upon the amount of damages for which judgment may be entered against them, for failing to make return, making false return, or failing to pay over money by them collected or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided.

Penalty for making improper return.

ARTICLE XIV.—GENERAL PROVISIONS.

SECT. 171. The provisions of the act entitled “ An act to establish a code of civil procedure,” approved May —, 1862, which are in their nature applicable to the jurisdiction and proceedings before justices, and in respect to which no special provision is made by statute, are applicable to the proceedings before justices of the peace.

Provisions of civil code applicable.

SECT. 172. Every justice must keep a book, denominated a docket, in which must be entered by him : 1. The title of every action, in which the writ is served, or where the parties voluntarily appear. 2. The date of the writ, the time of its return, and if an order to arrest the defendant

Justices to keep docket, and enter what in same.

or attach property was made, such fact must be stated, together with the affidavit upon which such order was made. 3. The filing of the bill of particulars of either party, and nature thereof, and when not of too great length, the same shall be entered at length on the docket. 4. Which of the parties, if either of them appear at the trial. 5. Every adjournment, stating on whose application, whether on oath or consent, and to what time. 6. When trial by jury is demanded, the demand must be stated, and by whom made, the names of the jurors selected, and the time appointed for the trial. 7. The name of the jurors who appear and of those sworn, the names of all witnesses sworn, and at whose request. 8. The exceptions to the ruling of the justice, on questions of law, taken by either party. 9. The verdict of the jury, and when received; if the jury disagree and are discharged, that fact must be stated. 10. The judgment of the justice, specifying the items of costs included, and the time when rendered. 11. The issuing of execution and orders to sell, when issued and to whom, the renewals thereof, if any, when made, the return and when made, and a statement of any money paid to the justice and by whom. 12. The giving of a transcript, to be filed in the clerk's office, and when given. 13. If appeal be taken, the undertaking and the time of entering into the same, and by which party taken. 14. The undertaking for stay of execution, and the time of giving the same. 15. The satisfaction of the judgment, and the time of satisfying the same.

Particulars,
when and where
entered.

SECT. 173. The several particulars in the last section specified, must be entered under the title of the action to which they relate, and at the time when they occurred (except that bills of exceptions, in regard to the rulings on questions of law or evidence, need not be entered until after the judgment, unless required by the justice or one of the parties); such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be evidence to prove the facts stated therein.

Entries evi-
dence.

Alphabetical
index to be kept.

SECT. 174. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with reference to the page of the entry; the names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family names;

he shall number the cases progressively upon his docket, and shall correspondingly number the papers in each case; he shall keep the entire papers in each action together, and in packages of a proper and convenient size, and in the order in which the cases are numbered on his docket.

SECT. 175. It is the duty of every justice upon the expiration of his term of office, to deposit with his successor his official docket, as well his own, as those [of] his predecessor which may be in his custody, together with all files and papers, laws and statutes, pertaining to his office, there to be kept as public records and property. Deliver books and papers to successor. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request. ¶ If there be no successor, &c.

SECT. 176. A justice receiving by succession or on deposit, any such docket, papers, and laws, shall, if requested, give a receipt thereof to the person from whom he receives the same. Justice receiving to give receipt.

SECT. 177. The justice with whom the docket of another may be deposited, either during a vacancy, or as a successor, is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered, and unsatisfied and not docketed in the district court, in the same manner [and] with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeals, or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had, or instituted before him. Powers of justices with whom docket may be left in certain cases.

SECT. 178. In case of sickness or other disability or other necessary absence of a justice, at the time appointed for trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the powers for the time being of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice, before whom the writ was returnable. In case of disability of justice, another justice may act. If the case be adjourned, the justice

before whom the summons was returnable, must resume jurisdiction.

Summons void,
when.

SECT. 179. The summons, execution, and every other paper made or issued by a justice must be filled without a blank to be filled by another; otherwise it is void.

Justice may
deputize person
to serve process.

SECT. 180. A justice, at the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve any process of said justice authorized by law. Such deputation must be in writing on the process.

Authority of
person deputed.

SECT. 181. The person so deputed has the authority of a constable, in relation to the service, execution, and return of such process, and is subject to the same obligation, but there can be no fee of his services taxed in the bill of costs.

Punishment
for contempt, in
what cases.

SECT. 182. A justice may punish, as for contempt, persons guilty of the following acts, and no others: 1. Disorderly, contemptuous, or insolent behavior towards the justice, tending to interrupt the due course of the trial, or other judicial proceedings before him. 2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial, or other judicial proceeding. 3. Wilful resistance in the presence of the justice, to the execution of a lawful order, or process made or issued by him.

Warrant of
arrest, &c.

SECT. 183. A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested, and brought before the justice, when an opportunity to be heard in his defence or excuse must be given. The justice may thereupon discharge him, or may convict him for the offence and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days, the money collected on such fine shall be for the support of common schools in said county.

Conviction
entered in
docket.

SECT. 184. The conviction, specifying particularly the offence and judgment thereon, must be entered in his docket.

Warrant of
commitment
then issued.

A warrant of commitment to the jail of the county, until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable to whom it may be given, and by the jailer of the county.

SECT. 185. When a person intending to bring an action before a justice of the peace, is a non-resident of the county in which he intends to commence such action, the justice may, previous to his issuing process, require such person to give security for the costs of such suit; which may be done by depositing a sum of money, deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking, with security approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action. If any plaintiff or plaintiffs, after commencing an action before a justice in the county in which he or they reside, afterwards remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money, equal to the costs that have accrued and that probably will accrue, or require in place thereof, that such party give sufficient security for all costs that have accrued, or which may accrue in the action, and in default to do either, shall enter a non-suit against the plaintiff or plaintiffs.

When person bringing action is non-resident.

If they remove after commencement.

SECT. 186. That in all actions instituted before a justice of the peace, founded upon any bond, sealed bill, promissory note, or other instrument of writing, for the payment of a sum of money certain, of which the whole amount of money promised therein is due, it shall be the duty of the plaintiff, his agent or attorney, to file a copy of said bond, sealed bill, promissory note, or other written evidence of indebtedness upon which said suit is brought, with such justice of the peace, and upon the trial of the case the original of said bond, sealed bill, promissory note, or other written evidence of indebtedness shall be filed with such justice of the peace; and if, upon the trial judgment shall be entered thereon, in favor of the plaintiff, such bond, sealed bill, promissory note, or instrument of writing, shall be retained by the justice so rendering judgment, who shall indorse the sum for which he shall have entered judgment (provided the same shall in nowise exceed one hundred dollars) and shall subscribe his name thereto. And upon payment, or tender of the amount of such payment, together with the cost accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon such bond, sealed bill,

In actions bond, sealed bill, promissory note, &c.

Proviso.

promissory note, or other instrument of writing for the recovery of any other sum or sums, the payment of which is secured by the same bond, sealed bill, promissory note, or other written evidence of indebtedness: *Provided*, That when an appeal shall be taken from the judgment of such justice, it shall be his duty to transmit any bond, sealed bill, promissory note, or other written evidence produced before him on trial to the clerk of the district court, to which such cause shall have been appealed, on or before the second day of the term of the court next after taking such appeal: *Provided, also*, That nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace, any joint and several obligations for the purpose of prosecuting any party to said obligations, other than the party against whom judgment may have been rendered.

If justice purchase judgment on his docket. Penalty.

SECT. 187. It shall not be lawful for any justice of the peace to purchase any judgment, upon any docket in his possession; and for so doing, and for every such offence, such justice shall forfeit and pay a sum not more than fifty dollars, nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offence was committed. Said money so collected and paid in shall be for the support of common schools in said county.

No imprisonment for debt.

SECT. 188. Nothing in this act contained shall be so construed as to authorize the arrest or imprisonment of any citizen of this territory for debt; and nothing in this act shall apply to property, real or personal, goods or chattels, rights or credits, interests or estates, exempt by law from levy, seizure, or sale under execution.

Nothing in act applies to exempted property.

Take effect, when.

SECT. 190. This act to take effect and be in force from and after its passage.

Approved May 13, 1862.

W. JAYNE, *Governor*.

CHAPTER 50.

AN ACT DEFINING THE JURISDICTION OF JUSTICES OF THE PEACE IN CRIMINAL CASES, AND OF THE PROCEEDINGS THEREIN.

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

SECTION 1. That justices of the peace in their respective counties have jurisdiction of, and must hear, try, and determine all public offences less than felony, in which the punishment prescribed by law does not exceed a fine of one hundred dollars or imprisonment thirty days, on information under oath, without indictment or the intervention of a grand jury, saving to the defendant the right of appeal to the district court. Have jurisdiction of what criminal cases.

SECT. 2. Criminal actions for the commission of a public offence must be commenced before a justice of the peace by an information, subscribed and sworn to, and filed with the justice. How commenced.

SECT. 3. Such information must contain: 1. The name of the county and of the justice where the information is filed. 2. The names of the parties, if the defendants be known, and if not, then such name as may be given by the complainant. 3. A statement of the acts constituting the offence, in ordinary and concise language, and the time and place of the commission of the offence as near as may be. Information contain, what.

SECT. 4. The information may be substantially in the following form: Form of information.

<p>— county, THE TERRITORY OF DAKOTA, v. A B, defendant.</p>	}	<p>Before Justice (here insert the name of the justice).</p>
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The defendant is accused of the crime (here name the offence). For that the defendant on the — day of —, A. D. 18—, at the (here name the city, village, or township) in the county aforesaid (here state the act or omission constituting the offence, as in an indictment).

File same. **SECT. 5.** The justice must file such information, and mark thereon the time of filing the same.

May then issue warrant for arrest. **SECT. 6.** Immediately upon the filing of such information, the justice may, in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary information, and may be served in like manner.

How served. **SECT. 7.** The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bringing him, without unnecessary delay, before the justice who issued the same.

Proceedings when defendant is brought before justice. **SECT. 8.** When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name, and be required to plead. If he object that he is wrongfully named in the information, he must give his right name; and if he refuse to do so, or does not object to the name used in the information, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection.

Pleas of defendant. **SECT. 9.** The defendant may plead the same pleas as upon an indictment; his pleas may be either oral or written, and must be entered on the docket of the justice.

Justice must try, except when. **SECT. 10.** Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the justice must proceed to try the issue unless a change of venue be applied for by the defendant.

If change of venue applied for. **SECT. 11.** If a change of venue be applied for, an affidavit must be filed stating that the justice is prejudiced against the defendant, or is of near relation to the prosecutor upon the charge, or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affidavit verily believes.

When allowed, justice must transmit papers, &c. **SECT. 12.** If such affidavit be filed, the change of venue must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to the next nearest justice in the county, against whom no such objection has been made, who shall proceed to try the case, unless a jury trial be demanded. No more than one change of venue in the same case shall be allowed.

SECT. 13. Before the justice has heard any testimony upon the trial, the defendant may demand a jury, which in all cases shall be allowed. Defendant may demand jury.

SECT. 14. If a trial by jury be demanded, the justice shall direct any peace officer of the county, to make a list in writing of the names of twelve inhabitants of the county, having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names. If jury is demanded, how made up.

SECT. 15. In case the prosecutor or the defendant neglect or refuse to strike out such names, the justice shall direct some disinterested person to strike out the names for either or both of the parties so neglecting or refusing; and upon such names being struck out, the justice must issue a venire directed to any peace officer of the county, requiring him to summon the six persons whose names remain upon the list, to appear before such justice at the time and place named therein, to make a jury for the trial of the cause. Same.

SECT. 16. The officer to whom such venire is delivered must forthwith summons such jurors, and return the venire to the justice, within the time therein specified, naming the persons summoned and the manner of service. Officer summon jurors and make return.

SECT. 17. The names of the persons returned as jurors shall be called by the justice, and if upon any such call any of the persons so named do not appear, or are challenged, or set aside for any cause, such further number must be summoned as will make a jury of six, after all legal challenges have been allowed. When incomplete.

SECT. 18. This same challenge may be taken by either party to any individual juror as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed. Challenge, when allowed.

SECT. 19. If the officer by whom the venire is received, do not return it as required, he may be punished by the justice as for a contempt, and the justice shall issue a new venire for the summoning of the same jurors, upon which the same proceeding shall be had as upon the one first issued. If officer do not return venire. Penalty.

SECT. 20. When six jurors appear and are accepted, they shall constitute the jury. Six jurors constitute jury.

SECT. 21. The justice must thereupon administer to them the following oath or affirmation: "You and each of you Take what oath.

do swear) or you do solemnly affirm, as the case may be), that you will well and truly try the issue, between the territory of Dakota and the defendant, and a true verdict give according to the evidence."

Must sit together.

SECT. 22. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, after which they may either decide in open court or retire for consideration.

If deliberation necessary in forming verdict, to retire with sworn officer.

SECT. 23. If they do not immediately agree upon a verdict, they must retire with the sheriff of the county, or some constable, if either such are in attendance upon the court, or in their absence, with some person appointed by the justice who shall be sworn to the following effect: "You do swear that you will keep the jury together, in some private place, without food or drink, unless otherwise ordered by the court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed."

Must deliver verdict publicly, &c.

SECT. 24. When the jury have agreed on their verdict, they must deliver it publicly, to the justice, who shall enter it on his docket.

When discharged.

SECT. 25. The jury must be kept together after the case is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the justice sooner discharge them.

New trial, when.

SECT. 26. If the jury be discharged as provided in the last section, the justice may proceed again to the trial in the same manner as upon the first trial, and so on till a verdict is rendered.

In case of plea of guilty or conviction.

SECT. 27. When the defendant pleads guilty, or is convicted, either by the justice or by a jury, the justice shall render judgment thereon of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment.

Judgment of fine may direct imprisonment.

SECT. 28. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied.

When defendant is acquitted.

SECT. 29. When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged.

If prosecution malicious.

SECT. 30. When the defendant is acquitted the justice

shall, if he is satisfied that the prosecution was malicious or without probable cause, tax the cost against the prosecuting witness, and render judgment therefor.

SECT. 31. Whenever a conviction is had upon a plea of guilty or upon trial, the justice must make and sign with his name of office a certificate of such conviction, in which it shall be sufficient briefly to state the offence charged and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

When plea of guilty, duty of justice.

SECT. 32. Within twenty days after such conviction, the justice must cause such certificate to be filed in the office of the judge of probate of the county where the conviction was had.

Same.

SECT. 33. The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of the warrant under the hand of the justice, specifying the particulars of such judgment.

Judgment executed.

SECT. 34. If a fine be imposed and paid before commitment, it shall be received by the justice, and by him paid over to the county treasurer, within thirty days after the receipt thereof, for the use of the schools in the county, as provided by law.

Disposal of fines to use of schools.

SECT. 35. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must, in like manner, within thirty days after the receipt thereof, pay it into the county treasury for the use of the schools in the county, as provided by law.

If defendant committed before paying fine.

SECT. 36. If the fine or any part thereof is paid to the justice or sheriff, he must execute duplicate receipts therefor, one of which he must file without delay with the register of deeds or recorder of deeds in and for the county.

If fine paid to justice or sheriff, duplicate receipts executed.

SECT. 37. Either party may appeal from the judgment to the district court of the county in which the trial was had — the territory in the same manner as the defendant.

Either party may appeal.

SECT. 38. The justice, rendering a judgment against the defendant, must inform him of his right to an appeal therefrom, and make an entry on his docket of the giving such information, and the defendant may thereupon take an appeal 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.

Defendant notified of right to appeal.

Appeal, how taken.

Execution not stayed unless bail be given.

SECT. 39. The justice must, thereupon, enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed, unless bail in that amount be put in by an undertaking substantially in the following form :

THE TERRITORY OF DAKOTA, }
 — county, } ss.

Form of undertaking.

A B having been convicted before C D, a justice of the peace of said county, of the crime of (here designate it generally, as in the information), by a judgment rendered on the — day of —, A. D. 18—, and having appealed from said judgment to the district court of said county :

We, A B and E F (or I, E, F), or (we, E F and H G), hereby undertake that the said A B will appear in the district court of said county at the next term thereof, and abide the judgment of said court, and not depart without leave of the same, or that we will pay to the Territory of Dakota the sum of — dollars (the amount of bail fixed).

A— B—,
 E— F—.

Acknowledged before and accepted by me, at —, in the county of —, this — day of —, A. D. 18—.

C— D—, Justice of the Peace.

Qualifications of bail.

SECT. 40. The bail must possess the qualifications required in cases of appeal from the district to the supreme court of the territory.

Bail taken by whom.

SECT. 41. 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.

Material witnesses give undertaking for appearance.

SECT. 42. When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at a term at which it is returnable, and shall as soon as practicable, and at least ten days before the first day of such term of the district court of the county, file in the office of the clerk thereof, a certified copy of the entries

on his docket, together with all the undertakings and papers in the case.

SECT. 43. The cause, when thus appealed, shall stand for trial anew in the district court, in the same manner that it should have been tried before the justice, and as nearly as practicable, as an issue of fact upon an indictment, without regard to technical errors, or defects, which have not prejudiced the substantial rights of either party, and the court has full power over the case, the justice of the peace, his docket entries, and his return, to administer the justice of the case, according to the law, and shall give judgment accordingly.

When appealed,
stands how.

SECT. 44. No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed.

No appeal dis-
missed.

SECT. 45. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court.

Proceedings on
judgment in
appeal.

SECT. 46. Either party may appeal from the judgment of the district court, to the supreme court, in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects, as nearly as applicable.

May appeal to
supreme court.

SECT. 47. The same proceedings shall be had to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken from a judgment prosecuted by indictment.

Proceedings in
judgment of su-
preme court.

SECT. 48. This act to take effect from and after its passage.

Take effect,
when.

Approved May 13, 1862.

W. JAYNE, *Governor*.

CHAPTER 51.

AN ACT TO PROVIDE FOR TRIALS IN CERTAIN CASES BEFORE JUSTICES OF THE PEACE.

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

When title to lands is disputed, case goes to district court.

SECTION 1. 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 proceedings in the cause, and shall certify and return to the district court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the 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 final 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.

Take effect, when.

SECT. 2. This act to take effect from and after its passage.

Approved May 12, 1862.

W. JAYNE, *Governor.*

JURIES.**CHAPTER 52.**

AN ACT RESPECTING JURORS.

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

Qualifications of jurors.

SECTION 1. All free white males residing in any of the counties of this territory, having the qualifications of electors,