

## JUSTICES CODE.

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### CHAPTER XXX.

#### JOINT RESOLUTION IN RELATION TO THE RE-PUBLICATION OF THE JUSTICES CODE OF 1865-66.

Joint resolution providing for re-publication of justices code.

WHEREAS, The volumes of laws passed by the session of the Legislature, held in 1865-66, have all been drawn from the office of the secretary of the Territory; and,

WHEREAS, There are a number of laws in such volume now in force, but practically of no effect in consequence of the loss and absence of the books containing them; and,

WHEREAS, There is a constant demand for the various volumes of laws of this Territory, from the new county officers and the legal fraternity; therefore,

*Be it Resolved*, The House concurring, that the secretary of this Territory be requested and authorized to publish in the volume of laws of this present session, the law known and designated as an act to establish the courts, and define the jurisdiction of justices of the peace, from the original law now in his office, passed at the said session of 1865-66.

Approved, January 13th, 1871.

## CHAPTER XXXI.

## AN ACT TO ESTABLISH THE COURTS AND DEFINE THE JURISDICTION OF JUSTICES OF THE PEACE.

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

## JURISDICTION OF JUSTICES OF THE PEACE.

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

SEC. 2. Justices of the peace within and co-extensive with their respective counties, shall have jurisdiction and authority: Power of justices.

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 try the right of the claimant to property taken in execution or on attachment;

10. Of an action arising on contract for the recovery of money only, if the sum claimed does not exceed one hundred dollars;

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

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

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

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

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

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

Not to have jurisdiction in certain cases.

SEC. 3. Justices of the peace shall not have cognizance of any action:

1. To recover damages for an assault, or assault and battery where the damages exceed one hundred dollars;

2. In actions for malicious prosecution;

3. In actions against justices of the peace or other officers for misconduct in office, except in cases provided in this act or by statute;

4. In action for slander, verbal or written;

5. In actions on contract for real estate;

6. In actions for false imprisonment;

7. In actions for libel, or criminal conversation, or seduction, or upon a promise to marry, except in cases provided by statute;

8. Nor in actions in which the title to real estate is sought to be recovered, or may properly be drawn in question, except actions for trespass on real estate which are provided for in this act or by statute.

SEC. 4. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in the county.

Justice where to keep his office.

SEC. 5. No justice of the peace shall hold his office in the same room with a practising attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice.

Justice not to hold his office with practising attorney.

SEC. 6. Every justice of the peace elected in any precinct in this Territory, after qualifying, is hereby authorized to hold his court for the trial of all actions of which jurisdiction is given him by this act, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made law, such court shall be vested with all the necessary powers which are possessed by courts of record in this Territory; and all laws of a general nature are to apply to such justices' court, so far as the same may be applicable, "and not inconsistent with the provisions of this act."

Authority and powers of justices.

COMMENCEMENT OF SUITS.—SERVICE AND RETURN OF PROCESS.

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

Justices to keep a docket and what to contain.

1. The title of all causes commenced before him;
2. The time when the process was issued against the defendant, and the particular nature thereof;
3. The time when the parties appeared before him either without, or upon the return of process;
4. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off was pleaded, a similar statement of the set-off, and the amount estimated;
5. Every adjournment, stating at whose request, and for what time;

6. The time when the trial was had, stating whether the same was by the jury or by the justice;

7. The verdict of the jury, and when rendered;

8. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, and the fees due to each person separately;

9. The fact of an appeal having been made and allowed, and when made and allowed;

10. Satisfaction of judgment when made;

11. And such other entries as may be material.

Actions commenced by summons when.

SEC. 8. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. 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.

When guardian necessary in suit, how appointed.

SEC. 9. When a guardian to the suit is necessary, he 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;

Style and contents of summons.

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.

SEC. 10. The style of the summons shall be: "The Territory of Dakota, . . . . . county;" it shall be dated the day it is issued, signed by the justice issuing the same, directed to the constable or sheriff of the proper county (except in case a person is 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 fails to appear.

SEC. 11. 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: Summons returnable when, and how delivered.

1. By delivering a copy of this 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.

SEC. 12. 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, how served corporation.

SEC. 13. 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. Summons on agency of insurance company.

SEC. 14. When the defendant is a foreign corporation, having a managing agent in this Territory, the service may be upon such agent. On agency of foreign corporation.

SEC. 15. 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 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 no 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. When defendant is a minor.

Justice may empower person to serve process in certain cases.

SEC. 16. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an indorsement on the process, to the following effect; "At the request and risk of the plaintiff, I authorized A. B. to execute and return this writ. E. F., justice of the peace;" and the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

#### APPEARANCE.

Of appearance.

SEC. 17. 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.

#### PLEADINGS.

Pleadings when to take place.

SEC. 18. The pleadings in justices' courts must take place at the time mentioned in the summons for the appearance of the parties, or at such time thereafter, not exceeding one week, as the justice may appoint, for the convenience of the parties, and by their consent.

Pleading in justices' courts enumerated and defined.

SEC. 19. The pleadings in justices' courts are:

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

Pleadings may be oral or in writing.

SEC. 20. The pleadings may be oral, or they may be in writing; if oral, the substance of them must be entered by the justice in his docket; if in writing, they must be filed in his office, and a reference to them made in his docket; they are not required to be in a particular form, but must be such as to enable a person of common understanding to know what is intended.

SEC. 21. The complaint must state in a plain and direct manner the facts constituting the cause of action. Complaint what to contain

SEC. 22. The answer must contain a denial of all the material facts stated in the complaint which the defendant believes to be untrue, and also a statement in a plain and direct manner of any other facts constituting a defense or a counter claim, by way of set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court. Answer how made and what contain.

SEC. 23. When the answer contains a counter claim, the plaintiff may reply, denying any of the material allegations relating thereto. Reply of plaintiff when allowed.

SEC. 24. A statement in an answer or reply that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, is equivalent to denial. Pleadings how construed in certain cases.

SEC. 25. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it is sufficient for the party to deliver the account or instrument to the court; and to state that there is due to him thereon from the adverse party, a specified sum which he claims to recover, or set off; the court may at any time of the pleading, require that such writing or account be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being afterwards given in evidence. Written instrument how pleaded.

SEC. 26. Every complaint, answer or reply must be verified by the oath of the party pleading; or if he be not present, by the oath of his agent or attorney, to the effect that he believes it to be true; the verification must be oral or in writing, in conformity with the pleadings verified. To be exhibited to party.

SEC. 27. Every material allegation in a complaint, or relating to a counter claim in an answer, not denied by the pleading of the adverse party must, on the trial, be taken to be true except that when a defendant who has not been served with a copy of the complaint with the summons fails to appear and answer, the plaintiff cannot recover without proving his case. Pleadings must be verified by oath of party.

SEC. 28. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no Statements in pleadings not denied, to be taken as true.

Defective pleadings how objected to.

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

Variance between proof and pleadings to be disregarded.

SEC. 29. A variance between the proof on the trial and the allegations in the pleadings, must be disregarded as immaterial, unless the court be satisfied that the adverse party has been biased to his prejudice thereby.

Amendments of pleadings when allowed.

SEC. 30. That pleadings may be amended at any time before the trial, or during the trial, or upon appeal to supply any deficiency or omission in the allegation or denial, necessary to support the action or defense, when, by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that an adjournment is necessary to the adverse party, in consequence of such an amendment, an adjournment may be granted. The court may also, in its discretion,

Costs allowed when adjournment is necessary.

require as a condition for an amendment, the payment of costs to the adverse party, to be fixed by the court, not more than three dollars; but such payment cannot be required unless an adjournment is made necessary by the amendment; nor can an amendment be allowed after a witness is sworn on a trial, when an adjournment will be made necessary.

Adjournment when and on what terms allowed.

SEC. 31. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if sufficient cause be shown upon oath, adjourn the case for any time not exceeding thirty days; and upon an adjournment all costs for the travel, attendance of witnesses, serving of subpoenas, &c., shall be noted upon the docket to abide the final decision of the case.

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

SEC. 32. If it appear, on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceeding in the cause, and shall certify and return to the district court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall

proceed in the cause to find judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

SEC. 33. Every adjournment after the first, shall be for such reasonable time as will enable the party to procure such absent testimony or witness, as may be necessary and material which the party applying for the adjournment shall not have been able to procure by the use of proper diligence; and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice. Times of adjournment.

#### SET-OFFS.

SEC. 34. Counter claims which the defendant may have against the plaintiff, may be set off in the following cases, and under the following circumstances: When counter claims of defendant may be set off.

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

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

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

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

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

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

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

8. If the action be founded upon a contract, other than a negotiable promissory note, or bill of exchange, which has been assigned by the plaintiff, a demand against such plaintiff, or any assignee of such contract at the time of assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demands be such as might have been set off against such plaintiff or assignee, while the contract belonged to him.

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

SEC. 35. If the action be upon a negotiable promissory note, or bill of exchange which has been assigned to the plaintiff, after it becomes due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons, who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him.

Set off when suit brought by trustee, when allowed.

SEC. 36. If the plaintiff be a trustee for any other, or if the suit be in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for those whose benefit the action is brought may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

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

SEC. 37. To entitle a defendant to a set-off of any counter-claim he may have against the plaintiff, he must specifically and clearly allege the same in his answer, stating the particular items of such counter claim; but no set off shall be allowed by a justice's court, unless the same shall be alleged in the defendant's answer as required in this section.

Judgment where set off is provided.

SEC. 38. If the amount of the set-off duly established be equal to the plaintiff's debt or demand, judgment shall be entered that plaintiff take nothing by his action, if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Judgment where there is a balance due defendant.

SEC. 39. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff where the contract which is the subject of the suit shall have been assigned before the

commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

BILL OF PARTICULARS.

SEC. 40. In all suits before a justice of the peace, on an account, 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. Bill of particulars to be filed by both parties.

SEC. 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. State what.

SEC. 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. Of amendments to bills.

WITNESSES AND DEPOSITIONS.

SEC. 43. Any justice of the peace 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. Justice may issue subpoenas to compel attendance of witnesses.

SEC. 44. A subpoena may be served by a sheriff, coroner, 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. How subpoena shall be served.

SEC. 45. When not served by an officer or some person deputed for that purpose by a justice of the peace, no fees shall be charged in the suit for serving it. No fees to be charged in certain cases.

Who to pay fees of witness in certain cases

SEC. 46. If any witness, having been subpœnaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness.

Justice shall have power to issue attachment for witness who fails to appear.

SEC. 47. Whenever it shall appear to the satisfaction of the justice by proof made before him, that any person duly subpœnaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided, however,* That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

How attachment shall be executed, and who to pay fees for same.

SEC. 48. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment, shall pay all costs of such attachment.

Justice may impose fines in certain cases.

SEC. 49. 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.

Party liable for damages.

SEC. 50. Every person subpœnaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for damages which such party may have sustained by his non-appearance: *Provided,* That said witness had one day's attendance and his mileage tendered or paid in advance.

SEC. 51. Either party in any civil suit pending before a justice, may, upon notice, cause the deposition of any witness therein, to be taken by any judge or justice of the peace, of any county in this Territory where the said witness may be. Depositions may be taken.

SEC. 52. The deposition shall be taken, certified and returned according to the law of the Territory concerning depositions. Same.

SEC. 53. The justice shall allow every deposition taken, certified, and returned according to the provisions of this act to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court could have been received; but no such deposition shall be read on the trial unless it appears to the justice that the witness whose deposition is offered: Conditions under which depositions are to be read in evidence.

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

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

SEC. 54. Whenever an issue of fact shall have been joined, in any action or suit before a justice of the peace, and it shall appear on the application of either party that any witness, not residing within the county where such suit is pending, is material in the prosecution or defense of such action or suit, the said justice may award a commission to one or more competent persons, authorizing them or any of them to examine such witness on oath upon the interrogation settled by the said justice, and certified by his approbation entered or endorsed thereon, or by the written agreement or assent of the parties annexed to such commission, to take and certify the depositions of such witness, and to return the same, according to the directions given, with such commission, in which commission both parties may unite. Deposition may be taken of witness not residing in county.

SEC. 55. Such commission may be granted at the instance of either party, by such justice of the peace, at any time, upon proof that due notice of such application for such commission has been served on the adverse party at least two days before How such depositions may be taken.

the time of making such application; and whenever the defendant shall neglect to appear or plead in such action or suit, the justice may award a commission without notice to one or more competent persons, to examine such witness on oath upon interrogations proposed by the plaintiff to be settled by the justice, and certify the depositions, and return the same according to the directions given in such commission.

Deposition to be evidence as near as possible at examination.

SEC. 56. The commission shall be executed and returned as is prescribed by statute when a commission issues out of a court of record, and the deposition and testimony taken in pursuance thereof, shall be received on the trial, as testimony in the case, with the like effect, as if such witness were personally examined at such trial.

Commissioners may issue subpoenas, &c.

SEC. 57. When the commission is executed in this Territory, the commissioner or commissioners, shall have the same power to issue subpoenas, swear witnesses, and compel their attendance as justices of the peace have.

When action not adjourned.

SEC. 58. Whenever such commission shall be issued by any justice of the peace, the action or suit shall not be adjourned for more than ninety days, unless by consent and agreement of the parties of such action or suit.

Fee of Justice

SEC. 59. The justice of the peace shall be entitled to one dollar for every commission issued and approved by him, in addition to the fees now allowed by law.

#### TRIAL WITHOUT A JURY.

If no jury demanded, justice to try action.

SEC. 60. 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.

Where parties agree to enter without process.

SEC. 61. 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.

#### TRIAL BY JURY.

Parties failing to appear within one hour, what done.

SEC. 62. If either party shall fail to appear within one hour after the time specified for the return of the process, or after

the hour of adjournment, the justice shall dismiss the suit, or proceed to hear the proof of the party present, and render judgment thereon accordingly, as the case may require.

SEC. 63. In every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit, or for the attorney of either of them, after issue be joined, before the court shall proceed to inquire into the merits of the cause, to demand of said court that the said action be tried by a jury of six persons, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand the justice shall direct the sheriff or any constable of the county, who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear (or affirm, as the case may be,) that you will perform the duties required of you, according to the best of your abilities, without partiality to either party;" and if in the opinion of the justice the jurors above required cannot appear forthwith, for the trial of the cause, the justice shall adjourn the cause, for such reasonable time as he may think proper, to enable the officer to summon the said jurors, and for them to appear, which time shall be specified in the venire; the person so sworn shall write down the name of twelve persons, being inhabitants of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately three names, and in case of the absence of either party, or of his refusal to strike out, the justice shall strike out of the said list three names, and shall thereupon issue a venire requiring the officer to summon the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors for the trial of the cause named in said venire: *Provided*, That if any of said jurors shall not attend, at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jury so selected shall take the following oath or affirmation: "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between . . . . . ,

Either party may demand a jury.

Fees of jury.

Sheriff or constable to summon jury.

If no officer present, what to be done.

Cause to be adjourned, when.

Jury, how drawn.

Oath of Jurors.

plaintiff, and . . . . ., defendant, and true verdict give according to law and the evidence given to you in court; so help you God;" and after having been sworn they shall sit together and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence. And to each witness on any trial the justice shall administer the following oath (or affirmation,) to-wit: "You do swear in the presence of Almighty God (or affirm,) that the evidence you shall give in this matter of difference between . . . . ., plaintiff, and . . . . ., defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God;" and after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they all agree upon a verdict, or be discharged by the justice; and for which purpose a proper officer shall be sworn or affirmed, to whom the said justice shall administer the following oath, to-wit: "You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn in this inquest together, in some private convenient place, without drink, except water; you will not suffer any person to speak to them, nor speak to them yourself unless by order of the justice, except it be to ask them whether they have agreed on their verdict, or are discharged by the court, so help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice, in the same court, who is hereby required to give judgment thereupon, and to award execution in manner hereinafter directed.

Oath of witness.

Oath of officer having charge of jury.

When jury cannot agree.

SEC. 64. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out any reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment.

Persons summoned as jurors and failing to appear to be fined.

SEC. 65. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

If panel be not full, constable to fill same.

SEC. 66. 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.

SEC. 67. 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.

SEC. 68. 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.

SEC. 69. 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.

SEC. 70. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the 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 day's notice. If verdict improper, new trial may be granted.

SEC. 71. 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. Opposite party to have notice of new trial.

SEC. 72. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive one dollar 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. Fees of jury.

SEC. 73. 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. When exception alleged, duty of justice.

## ENTERING JUDGMENT.

Judgment of dismissal without prejudice in what cases.

SEC. 74. 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.

If plaintiff or defendant fail to appear.

SEC. 75. 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 bill of particulars and proofs.

When judgment against absent defendant set aside.

SEC. 76. 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 must be entered.

SEC. 77. 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.

SEC. 78. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be 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.

When either party may remit excess.

SEC. 79. 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 does 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.

When defendant offers to allow judgment to be taken against him. Effect of such offer.

#### JUDGMENT SET OFF AGAINST JUDGMENT.

SEC. 80. If there be mutual justices judgments between the same parties, upon which the time for appealing has elapsed, on which there is no existing execution, one judgment on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed may be.

One judgment may be set-off against another judgment.

SEC. 81. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice, a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and such transcript was obtained for the purpose of being a set-off against the judgment to which it was offered as a set-off. The justice granting such transcript shall make entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper justice's certificate therein, that it has not been allowed in set-off.

When judgment proposed as set-off was rendered before another justice.

SEC. 82. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and ex-

Justice allowing set-off shall make an entry.

When transcript to be filed.

ecution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript and return the same to the party who offered it.

#### ENTERING JUDGMENT BY CONFESSION.

Judgment by confession.

SEC. 83. That any justice of the peace in this Territory may enter a judgment by confession, if the defendant or defendants in any case, when the debts or damages shall not exceed one hundred dollars, with such stay of execution as may be agreed on by the parties interested in such judgment.

When judgment by confession may be taken.

SEC. 84. No confession shall be taken or judgment rendered thereon unless the following requisites be complied with:

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

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

Statement and affidavit.

SEC. 85. The statement and affidavit must be filed with the justice of the peace, who must endorse upon it the time of filing, and must enter upon his judgment book a judgment for the amount confessed, with one dollar costs. The statement and affidavit, with the judgment endorsed thereupon, become the judgment roll.

Justice to give certified transcript.

SEC. 86. Every justice, on demand of any person in whose favor a judgment has been confessed, as hereinbefore provided, shall give a certified transcript of such judgment, and the clerk of the district court of the same county in which judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in his docket of the district court judgment and decrees, and shall note the time of filing such transcript.

SEC. 87. Every such judgment from the time of filing the transcript thereof, shall have the same lien on the real estate of the defendant or defendants in the county, as may be allowed by law to a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried with the execution in the same manner and with like effect as the judgment of such district courts, but no execution shall be in force thereon, out of the district court, until an execution shall have been in force by a justice and returned, that the defendant or defendants have no goods or chattels whereon to levy the same.

Judgment to be lien on real estate.

SEC. 88. In case where the plaintiff shall be non-suited, or withdraw his action, or where judgment shall be confessed, and in all cases where a verdict shall be rendered, the justice shall forthwith render judgment, and shall enter the same in his docket. In all other cases he shall render judgment and enter the same in his docket on or before the fourth day thereafter, both days inclusive.

When judgment to be rendered by justice.

#### APPEALS.

SEC. 89. 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.

Appeal.

SEC. 90. 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.

When either party may take appeal.

SEC. 91. 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:

Party appealing to give security.

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.

How appeal  
to be taken.

SEC. 92. And the said justice shall make out a certified transcript of his proceedings, including 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 bills 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.

Clerk to file  
same.

SEC. 93. The clerk on receiving such transcript and other papers as aforesaid, shall file the same and docket the appeal.

Parties same  
as in court be-  
low.

SEC. 94. 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.

If appellant  
fail to deliver  
papers to clerk,  
court may enter  
judgment.

SEC. 95. 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 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.

SEC. 96. 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, shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

Court to issue execution, when.

SEC. 97. 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, (including a fee of five dollars to defendant's attorney); and in case the defendant shall demand a greater set-off, before the justice, than shall be allowed him in case he takes an appeal to the district court, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney.

Persons appealing in certain cases shall pay costs, interest and attorney's fees.

SEC. 98. 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 surety liable on undertaking.

SEC. 99. 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 appeal shall be quashed.

SEC. 100. 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.

When undertaking insufficient in form or amount.

SEC. 101. Appeals in the following cases shall not be allowed:

Appeals not allowed in certain cases.

1. On judgments rendered on execution;

2. In jury trials where neither party claim in their bill of particulars a sum exceeding ten 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.

What to be done when term of office of justice expires between dates of judgment and time limited for appeal.

SEC. 102. 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.

No appeal allowed unless certain notice is given within ten days.

SEC. 103. No appeal shall be allowed in any case unless the following requirement be complied with, in addition to those before mentioned, viz: Within ten days after judgment is rendered, an affidavit shall be filed with the justice before whom the cause was tried, stating that the appeal is made in good faith and not for the purpose of delay.

Form of undertaking.

SEC. 194. The recognizance or undertaking required by section 90 of this act, may be in the following form:

We ..... and ..... acknowledge ourselves to owe and be indebted unto ..... in the sum of ..... dollars, to be levied of our several goods and chattels, lands and tenements, to the use of ..... or his assigns, if default be made in the condition following, to-wit: Whereas the said ..... has applied for an appeal from the judgment of .... a justice of the peace of the county of ....., Territory of Dakota, rendered ..... day of ....., A. D. 18., in an action between ....., plaintiff, and ..... defendant; now if the said appellant shall prosecute his appeal to effect and without unnecessary delay, and if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs, and if he shall abide the order the district court may make therein, then this recognizance to be void, otherwise of force.

This ..... day of ..... A. D. 18...

C. D. [SEAL.]

E. F. [SEAL.]

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

G. H. Justice of the peace.

SEC. 105. Upon an appeal being made, according to the foregoing provisions, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal; and if in the mean time execution shall have been issued, the justice shall give the applicant a certificate that such appeal has been allowed.

All proceedings suspended when an appeal is taken.

SEC. 106. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution.

Officer to release property taken on execution.

SEC. 107. If a justice fail to allow an appeal in a case, when the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may by rule and attachment compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

When justice fail to allow an appeal.

SEC. 108. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may by rule and attachment compel him to amend the same.

When return of justice erroneous or defective.

SEC. 109. No appeal allowed by a justice shall be dismissed on account of there being no recognizance, or that the recognizance given is defective, if the appellant will before the motion to dismiss is determined enter before the district court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

Appeal not to be dismissed in certain cases.

SEC. 110. All appeals allowed, ten days before the first day of the term of district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

Appeals when determined.

SEC. 111. In all cases of appeal from a justices' court, if the judgment of the justice be affirmed, or if on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the recognizance for the appeal.

If judgment of justice affirmed, judgment to be rendered against party and surety.

SEC. 112. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of said principal to sat-

When execution to be enforced against surety.

isfy the same, such execution shall be enforced against the sureties, and the officer shall specify on his return, by whom the money was paid, and the time thereof.

When surety to have judgment against principal.

SEC. 113. After the return of an execution satisfied in whole or in part out of the security, such security, shall be entitled to a judgment on motion against the principal for the amount so paid by him, together with interest at twelve per cent. per annum from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

No appeal allowed until appellant pay costs.

SEC. 114. No appeal shall be allowed by any justice of the peace, until the appellant, in addition to the requirements of section ninety and one hundred and two of this act, shall pay all costs which may have accrued in the justices' court, and one dollar for the return of the justice.

If judgment of justice reversed court to award restitution of amount.

SEC. 115. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount collected, with interest from the time of collection, and execution may issue thereon.

As to property exempt from execution.

SEC. 116. No officer having an execution shall be allowed to levy the same upon any property of the judgment creditor which by law is exempt from execution for debt; except in cases specified in this act.

#### EXECUTIONS.

Execution may issue any time within five years, except when, &c.

SEC. 117. 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.

What execution shall command officer.

SEC. 118. The execution shall command the officer to levy the debt or damages, together with the interest thereon and the costs, upon the goods and chattels of the person against

whom the execution shall be granted, (his arms and accoutrements excepted, and also such other articles as are exempt by law, from execution,) and to pay the money within thirty days from date, to the justice who issued the execution, to render to the party who recovered the same.

SEC. 120. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of his execution, the amount of the debt or damages and costs separately, and the officer receiving such execution, shall indorse thereon the time of the reception of the same.

Amount of debt and costs to be indorsed on execution.

SEC. 121. If any execution be not satisfied, it may, at the request of the plaintiff, be *removed* [renewed] from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall renew the execution in full force, in all respects for thirty days, and no longer. Any entry of such renewed shall be made in the docket of the justice.

Renewal of execution.

SEC. 122. If there be no property found, or if the good and chattels levied on are not sufficient to satisfy such execution, the officer shall upon the demand of the plaintiff, summon in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceeding shall be had thereon before the justice to final judgment and execution, as suits instituted by attachment in justice's court.

Garnishees.

SEC. 123. The officer who shall hold an execution, shall receive all money tendered to him in payment thereof, and shall indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

Officer shall receive all money tendered him, and indorse same on execution, giving receipt.

SEC. 124. 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

Original judgment shall remain good in favor of person entered as bail.

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.

Execution,  
what to state.

SEC. 125. The execution must be directed to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or 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 of out 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;

Must direct  
officer to make  
return within  
thirty days.

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.

As to joint  
debtors.

SEC. 126. Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served the execution shall contain a direction to collect 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.

Constables  
liable to party  
in whose favor  
execution is  
issued in cer-  
tain cases.

SEC. 127. A constable is liable to the party in whose favor an execution issued to him for the amount thereof, in 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.

SEC. 128. When an execution shall be returned unsatisfied for the want of goods and chattels, the justice shall, unless 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 an execution returned unsatisfied, justice to commence action on undertaking &c.

STAY OF EXECUTION.

SEC. 129. 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, conditional 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.

Person against whom judgment is rendered, may have stay by entering into undertaking.

SEC. 130. The stay of execution hereby authorized shall be granted as follows, namely:

When and for what time stay shall be granted

1. On any judgment for five dollars and under, the stay shall be for thirty days;

Stay as to surety.

2. On any judgment exceeding five and under fifty dollars, the stay shall be for sixty days;

3. On any judgment for fifty dollars and over, and under one hundred dollars, the stay shall be for ninety days; and

4. 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.

SEC. 131. No stay of execution on judgments rendered in the following cases shall be allowed:

No stay to be allowed in certain cases.

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.

Execution re-  
called, when.

SEC. 132. 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 surety  
removes into  
another county  
or state.

SEC. 133. 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 pay the judgment, it shall be lawful for such surety to make and file affidavit of the 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.

When may  
file affidavit.

Not to be dis-  
charged from  
liability.

When judg-  
ment debtor en-  
ters into fur-  
ther undertak-  
ing, &c.

SEC. 134. 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.

SEC. 135. 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 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; if the surety be not given, 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. If at the expiration of such stay, the judgment be not paid, the execution shall issue against the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property, not exempt by law, belonging to him upon which to levy, he shall levy upon the property, not exempt by law, of the bail, and in his return shall state what amount of the money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

When undertaking is insufficient.

#### CHANGE OF PLACE OF TRIAL.

SEC. 136. If, on the return of the process, or at any time before trial shall have commenced in any cause or proceeding, civil or criminal, either party, his agent or attorney, shall make affidavit that the justice before whom the same is pending is a material witness for said defendant, without whose testimony he cannot safely proceed to a trial thereof; or that from prejudice, bias, or other cause, he believes such justice will not decide impartially in the matter; or if it shall be proven that the justice is near of kin to the plaintiff, then, in such case, the said justice shall transfer said suit and all other papers appertaining to the same, to some other justice of the same or adjoining precinct, who may thereupon proceed to hear and determine the same in the same manner as it would have been lawful for the justice before whom the said cause or

When party may have change of venue.

**Proviso.** proceeding was commenced to have done: *Provided*, That no cause or proceeding shall be removed more than once.

**Costs paid by party asking for change.** SEC. 137. 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.

**What costs to be taxed and to whom.** SEC. 138. 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.

#### SALE OF PROPERTY UNDER EXECUTION.

**Officer to give notice of sale.** SEC. 139. The officer after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice, by at least three advertisements, put up at three public places in the township or precinct where the property is to be sold, of the time and place when and where the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

**Officer to sell to highest bidder.** SEC. 140. At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall, in all cases, return the execution, and have the money before the justice at the time of making such return.

**No officer shall purchase.** SEC. 141. No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution; but every such sale shall be absolutely void.

#### REPLEVIN OF PROPERTY.

**Petition to be filed.** SEC. 142. When the object of the action is to recover the possession of personal property, the plaintiff or some other person shall, in all cases, before any writ shall be issued, file with the justice before whom the action is brought, a petition as provided in the following section.

SEC. 143. The petition in replevin must be sworn to, and it must state: Must be sworn to and 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.

SEC. 144. The plaintiff or his agent shall also execute a bond to the defendant, with sureties, to be approved by the justice, in a penalty at least double the value (as stated in the petition), of the property sought, conditioned that the plaintiff will appear at the return day thereof and prosecute his action to judgment, and return the property to the defendant, if a return thereof be ordered by the court, and also pay all costs and damages that may be adjudged against him; the bond shall be filed with the justice, and shall be for the use of any person injured by the proceeding. Plaintiff to execute bond, Amount of bond. Conditions.

SEC. 145. The justice shall thereupon issue a writ, directed to the sheriff or any constable of the county, commanding him to take the property therein described and deliver the same to the plaintiff, and summon the defendant to appear and answer the same on the return day mentioned in the writ. Justice to issue writ, and what to state.

SEC. 146. In obedience to such writ, the officer must forthwith take possession of the property mentioned in the writ, if the same be in the possession of the defendant or his agent, for which purpose he may break open any dwelling house or other inclosure, having first demanded entrance, and exhibit his authority if required. Officer to take possession of property.

When third person claims property.

SEC. 147. 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 property cannot be obtained.

SEC. 148. If the property sought be not obtained, the plaintiff, if he establishes his right thereto, shall recover the value of that right; whether obtained or not, he shall recover the damages he has sustained in consequence of the illegal detention thereof.

When defendant shall recover damages.

SEC. 149. If the plaintiff fail to establish [his right to the property, the defendant shall recover such damages, as under the circumstances he shows himself entitled to; and in addition thereto may have judgment for the return of the property, or the value thereof, if the same has been taken out of his possession, or delivered to the plaintiff.

When property removed to another county, how to proceed.

SEC. 150. 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.

When writ cannot be executed, justice may compel attendance of defendant.

SEC. 151. When it appears by 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 willful obstruction or hinderance of the writ, and disobedience of the order of the court in this respect, as in case of contempt.

When officer to return writ and what to state therein.

SEC. 152. 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.

Property to be delivered to plaintiff on payment of costs.

SEC. 153. The officer having taken the property, or any part thereof, shall forthwith deliver the same to the plaintiff, on the payment of his costs.

What judgment shall determine.

SEC. 154. 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 damages to either party as he may be entitled to, for illegal detention of such property.

SEC. 155. 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.

What party entitled to possession of property may have.

SEC. 156. 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.

When property is concealed or removed.

#### PROCEEDINGS BY ATTACHMENT.

SEC. 157. Any creditor shall be entitled to proceed by attachment in a justices' court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this act.

Who entitled to proceed by attachment.

SEC. 158. Before any such writ of attachment shall be issued, the plaintiff, or some person in his behalf, shall make and file with the justice, an affidavit stating that the defendant therein is indebted to the plaintiff, in a sum exceeding five dollars; and specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs, and that the same is due upon contract, expressed or implied, or upon judgment or decree of some court, and containing a further statement that the deponent has good reason to believe either:

Affidavit to be filed and what to state.

1. That the defendant is a non-resident corporation; or
2. That the defendant is not a resident of this Territory, and has not resided therein for three months immediately preceding the time of making such affidavit;
3. That the defendant has absconded, or is about to abscond from this Territory;
4. That the defendant has removed, or is about to remove any of his property out of the county, with intent to defraud his creditors;

5. That the defendant resides in any other county in this Territory;

6. That the defendant contracted the debt under fraudulent representations.

7. That the defendant so conceals himself that the process of summons cannot be served upon him; or,

8. That the defendant has fraudulently conveyed or disposed of, or is about fraudulently to convey or dispose of any of his property or effects, so as to hinder or delay his creditors.

When writ of attachment returnable.

SEC. 159. In the five first cases mentioned in the preceding section, the writ of attachment shall be returnable in three days; but in all other cases, it shall be returnable as an ordinary summons.

Form of writ

SEC. 160. The writ of attachment may be substantially in the following form:

Territory of Dakota, } ss:  
 County of ..... }

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are commanded to attach the goods and chattels, moneys, effects and credits of ....., or so much thereof as shall be sufficient to satisfy the sum of ....., with interest and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels and other things so attached may be subject to further proceedings thereon, as the law requires; and also to summon the said ..... if to be found, to be and appear at my office in said county, on the ..... day of ....., A. D. 18.., at the hour of .... o'clock in the .... noon, to answer to ....., in a civil action to his damage one hundred dollars or under. Given under my hand, this ..... day of ....., A. D. 18...

W. P., justice of the peace.

How writ to be executed.

SEC. 161. The officer shall execute a writ of attachment, by summoning the defendant as in case of a summons if to be found within the county, and by attaching the goods and chattels, moneys and credits, of the defendant, not exempt by law.

Defendant may obtain possession of property how.

SEC. 162. When property of the defendant shall be actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving bond and secur-

ity to the satisfaction of the officers executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming, when and where the justice shall direct, and shall abide the judgment of the justice.

SEC. 163. When property shall be seized on attachment, which is likely to perish or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer, in the same manner and on the same notice, as goods are required to be sold on an execution; and the proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

Perishable property what to be done with it.

SEC. 164. When property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his trouble and expense in keeping and maintaining the same, as shall be reasonable and just.

Compensation of officer for keeping property.

SEC. 165. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debt.

Notice to defendant by publication.

SEC. 166. The notice may be in the following form:

Form of notice.

Territory of Dakota, } ss.  
County of..... }

To.....

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

the.....noon, judgment will be rendered against you, and your property sold to pay the debt.

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

..... Plaintiff.

Fifteen days notice.

SEC. 167. Such notice shall be set up, or published at least fifteen days before the expiration of the time at which the party is required to appear, and the setting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

Defendant failing to appear, default may be entered.

SEC. 168. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant with security, to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case.

Bond to be executed before execution shall issue.

Proceedings in attachments.

SEC. 169. Like pleadings of the parties and like proceedings shall be had, as far as practicable, in suits commenced by attachment, and suits founded on contracts and commenced by summons.

When and how attachments dissolved.

SEC. 170. Attachments may be dissolved, on motion made in behalf of the defendant, at any time before final judgment, if the defendant shall appear and plead to the action and give bond to the plaintiff, with good and sufficient surety to be approved by the justice, in double the amount of property, effects, and credits attached, conditioned that if judgment be rendered against him in such suit, he will pay the amount thereof, with costs and interest thereon.

Proceedings when attachment dissolved.

SEC. 171. When any attachment shall be dissolved, the property and effects attached shall be released, and the garni-

shees shall be discharged, and the suit proceed as if it had been commenced by a summons only.

SEC. 172. When property of the defendant, found in the hands or possession of any other person than the defendant shall be attached, such person may retain the possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

Property attached in hands of third person may be retained by giving security.

SEC. 173. When judgment shall be rendered in any attachment case, execution may issue thereupon, and the property attached may be sold in the same manner as in other cases, except as otherwise provided by this act.

Property sold as in other cases.

SEC. 174. The return day of the writ 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.

Return day of attachment.

SEC. 175. When there are several writs 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 writ, 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 appraisal of all property attached which shall be signed by the officer and said residents and returned with the writ; when the property can be come at, he shall take the same into custody, and hold it subject to the order of the justice.

Where several writs against same person how executed.

SEC. 176. 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.

Orders of lien of attachment.

Summoning  
person or cor-  
poration as gar-  
nishee:

SEC. 177. 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 writ of attachment, with a written notice that he appear before the justice at the return of the writ of the attachment, and answer as provided in section one hundred and seventy-nine.

How writ and  
notice served  
upon garni-  
shee.

SEC. 178. The copy of the writ 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 security, cashier, or managing agent thereof.

Garnishee  
shall appear  
and answer  
under oath.

SEC. 179. 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  
may pay money  
owing to defen-  
dant, to con-  
stable having  
writ.

SEC. 180. A garnishee may pay the money owing to the defendant by him, to the constable having the writ 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 subject 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.

If garnishee  
do not appear  
and answer he  
may be pro-  
ceeded against  
for contempt,  
&c.

SEC. 181. If the garnishee do not appear and answer, as required by section 179, the justice may proceed against him by attachment, as for a contempt.

Order of Jus-  
tice.

SEC. 182. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the writ 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.

SEC. 183. 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 proceeding 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.

If garnishee fail to comply with order of justice, plaintiff may proceed as in other actions.

SEC. 184. 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 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 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.

As to final judgment against garnishee, costs, and discharge.

SEC. 185. 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.

When judgment is rendered for defendant attachment shall be discharged.

How judgment satisfied when rendered for plaintiff.

SEC. 186. 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.

When justice may order constable to repossess himself of attached property.

SEC. 287. 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 a writ of attachment.

When attached property is claimed by another person validity of claim may be tried.

SEC. 188. 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.

When several attachments are executed on same property, justice may determine amounts and priorities of same.

SEC. 189. Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first writ, 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.

Return of officer.

SEC. 190. The officer shall return upon every writ 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 writ, all undertakings given under it.

A writ of attachment binds property from time of service.

SEC. 191. A writ 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 177; 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.

SEC. 192. 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.

Property to be released, how.

SEC. 193. If in any case where a writ of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and from examination of the garnishee, that no property, 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.

Justice shall certify proceedings to district court, when.

#### ADJOURNMENT.

SEC. 194. 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:

When justice may adjourn trial and how long.

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.

How trial may be adjourned upon application of either party.

SEC. 195. 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 of material testimony which he expects to procure, safely proceed to trial, he must also state on oath what particular facts he expects to prove by such absent witness, and that there is no person present, to his knowledge, by whom he can prove the facts set forth. Whereupon the opposite party may admit that the person named would, if present, testify as stated in the application for an adjournment, in which case the absence of such witness will cease to be a ground for adjournment.

Adjournment may be had for more than thirty days but not to exceed ninety.

SEC. 196. 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 has commenced, and that he expects to procure the evidence at the time stated by him.

#### ARBITRATIONS.

Who may act as arbitrators, how summoned and their fees.

SEC. 197. 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

SEC. 198. 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.

Shall hear cause and make award.

SEC. 199. 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.

Judgment rendered on such award shall conclude rights of parties unless, &c.

SEC. 200. 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.

Justice may set aside award for fraud and try the cause de novo.

SEC. 201. 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 verily believe that such award was obtained by fraud, corruption or other undue means.

When appeal allowed from judgment rendered on award.

SEC. 202. 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.

District court may set aside award for fraud and try cause.

SEC. 203. 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 cost of suit, and award execution as in other cases.

If not fraud, court shall render judgment.

TRIAL OF THE RIGHT OF PROPERTY.

SEC. 204. When a constable shall levy on or attach property, claimed by any person or persons, other than the party

Proceeding on trial of right of property.

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.

How justice proceed when property belongs to claimant.

SEC. 205. 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.

Claimant fails to establish right judgment rendered against him.

SEC. 206. 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.

#### FORCIBLE ENTRY AND DETENTION OF PROPERTY.

Jurisdiction of justice.

SEC. 207. 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.

Whom proceeding may be had against.

SEC. 208. 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 case 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 act.

SEC. 209. Judgments either before the justice or in the district court, under this act, shall not be a bar to any after action brought by either party. Judgments.

SEC. 210. It shall be the duty of the party desiring to commence an action under this act, 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. Three days notice given.

SEC. 211. 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. When summons issue, what to state.

SEC. 212. 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. What summons shall state and how served.

SEC. 213. 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. If defendant fails to appear justice shall try cause.

When continuance granted for more than eight days.

SEC. 214. 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.

When justice shall try cause &c.

SEC. 215. 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.

Jury.

SEC. 216. 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 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.

Verdict.

Justice shall enter verdict and render judgment.

SEC. 217. 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.

Exceptions taken by either party.

SEC. 218. Exceptions to the opinion of the justice, in cases under this act, upon questions of law and evidence, may be taken by either party, whether tried by a jury or otherwise.

Justice shall issue execution on judgment of restitution.

SEC. 219. 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:

The Territory of Dakota, }  
    .... county            } ss.

Form of execution.

To one 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.

SEC. 220. 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 an appeal, he shall 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.

Officer shall execute same within ten days, &c.

CONSTABLES AND THEIR DUTIES.

SEC. 221. 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.

Constables ministerial officers.

SEC. 222. 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.

Duties of constables.

SEC. 223. 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,

Powers and duties.

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.

Shall note on process the time of receiving.

SEC. 224. 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.

When constable not to return, not found.

SEC. 225. 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 the usual place of residence of the defendant, if such defendant have any in the county.

Duties of constable in criminal matters.

SEC. 226. 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 of constables.

SEC. 227. 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 elected or 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.

Duty of constable when he commits to jail.

SEC. 228. 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.

Constable to pay over all money, &c.

SEC. 229. 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.

SEC. 230. 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. When liable to penalty.

PROCEEDINGS FOR CONTEMPTS.

SEC. 231. In the following cases and no others, a justice of the peace may punish for contempt; When justice may punish for contempt.

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or to impair the respect due to his authority;

2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;

3. Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him.

SEC. 232. Punishment for contempt may be by fine not exceeding twenty dollars, or by imprisonment in the county jail not exceeding two days, unless otherwise provided, at the discretion of the justice. Punishment for contempt.

SEC. 233. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him. No person fined for contempt until he has an opportunity to be heard.

SEC. 234. If the offender be present he may be summarily arraigned by the justice and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon. If offender be present he may be summarily arraigned.

SEC. 235. The warrant for contempt may be in the following form:

Territory of Dakota, }  
County of . . . . . } ss:

Form of warrant for contempt.

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are hereby commanded to apprehend A. B. and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he, the said A. B. should not be convicted of a criminal contempt, alleged to have been committed on the.....day of....., A. D. 18..., before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this.....day of.....A. D. 18...

J. P., Justice of the peace.

On conviction  
justice shall  
make up record

SEC. 236. Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on the conviction, stating the particular circumstances of the offense, and the judgment rendered thereon, and shall file the same in the office of the clerk of the district court, and shall enter the same in his docket as in civil cases.

Warrant of  
commitment.

SEC. 237. The warrant of commitment for any constable, shall set forth the particular circumstances of the offense, or it shall be void.

Form of re-  
cord of convic-  
tion.

SEC. 238. The record of conviction may be in the following form:

Territory of Dakota, }  
County of..... } ss:

Whereas, on the.....day of.....; A. D. 18..., while we, the undersigned, one of the the justices of the peace of the said county, was engaged in the trial of a cause between C. D., plaintiff, and E. F., defendant, in said county, according to the statute in such case made and provided, A. B. of the said county did interrupt the said proceedings and impair the respect due to the authority of the undersigned, by (here describe the cause particularly); and whereas, the said A. B. was thereupon required, by the undersigned, to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas, the said A. B. did not show any cause against the said charge; be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the criminal contempt aforesaid, before the undersigned, and is adjudged by the undersigned to pay a fine of.....dollars, or to be imprisoned in the common jail of said county for the

term of two days, or until he be discharged from imprisonment according to law.

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

J. P., Justice of the peace.

SEC. 239. When any witness attending before a justice of the peace, in any cause, shall refuse to be sworn in some form prescribed by law, to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county.

Witness committed for refusing to be sworn.

SEC. 240. Such order shall specify the cause for which the same issued; and if it be refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he be sworn, or to answer, as the case may be.

What order shall specify.

SEC. 241. The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

Justice adjourn the case until witness testify.

SEC. 242. If any person duly subpoenaed, and obliged to attend as a witness, shall fail to do so, he shall be considered guilty of contempt, and shall be fined all the costs for his apprehension, unless he shall show reasonable cause to the satisfaction of the justice, for his omission to attend; in which case the party requiring such appearance, shall pay the costs thereof.

Person subpoenaed not attending is guilty of contempt and subject to fine.

GENERAL PROVISIONS.

SEC. 243. Every summons or process, issued by a justice of the peace, shall be entirely filled up, and shall have no blank either in date, or otherwise, at the time of its delivery to an officer to be executed; every such process which shall be issued and delivered to an officer to be executed, contrary to the foregoing provisions, shall be void.

Every summons and process to be filled up.

SEC. 244. Whenever, by reason of a dismissal, nonsuit, or for any other cause, a judgment shall be rendered against either party, for costs only, by a justice of the peace, execution may issue to enforce such judgment, in the same manner and with the same effect as in every case.

Executive may issue to enforce judgment for costs.

SEC. 245. No justice of the peace, being a member of the council or house of representatives, shall be obliged to take cognizance of any action, or to entertain any proceedings

No justice who is a member of council or house of representatives obliged to act.

under the provisions of this act; but he may act therein or not, at his discretion.

Nearest justice may receive books &c. of deceased justice.

SEC. 246. In case any justice of the peace shall die, or his office shall in any wise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice may demand and receive such books and papers from the person having the same in his possession.

District court may compel production of books and papers.

SEC. 247. If any books or papers required to be delivered to the nearest justice by the preceding section, be withheld, or if any justice shall refuse to deliver over to his successor any books or papers, in either case the person entitled to receive the said books or papers, may make complaint to the district judge of the United States district court of the proper county, and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or papers are withheld, he may grant an order directing the person so refusing, to show cause before him on a day to be mentioned in said order, why he should not be compelled to deliver the same.

Proceedings in such case.

SEC. 248. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances; and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had, shall by warrant commit the person so withholding, to the jail of the proper county, there to remain until he shall deliver the books and papers, or be otherwise discharged according to law.

When justice guilty of misdemeanor.

SEC. 249. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall neglected or refused, within a reasonable time after to pay over the same, such neglect or refusal shall be a misdemeanor, and on conviction thereof, such justice forfeit his

Justices courts public.

SEC. 250. The courts of justices of the peace shall be and every person may freely attend the

Justice to deposit books and papers with successor.

SEC. 251. 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. 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.

SEC. 252. 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.

Justice with whom docket of another is deposited, authorized to issue execution, take bail, &c.

SEC. 253. 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 costs 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, promissory

Proceedings on bonds, sealed bills, promissory notes, and other instruments of writing.

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.

Penalty if justice purchase any judgment.

SEC. 254. 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 offense, 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 offense was committed. Said money so collected and paid in shall be for the support of common schools in said county.

No imprisonment for debt.

SEC. 255. 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.

FORMS IN CIVIL ACTIONS.

SEC. 256. The following, or equivalent forms, may be used by justices of the peace in civil proceedings, to be had under this act, to-wit:

FORM OF SUMMONS.

Form of summons.

Territory of Dakota, }  
 County of ..... } ss:

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are hereby commanded to summon . . . . ., if he shall be found in your count, , to be and appear before the undersigned, one of the justices of the peace in and for said county, on the . . . day of . . . . ., 18., at . . . . . o'clock in the . . . . . noon at . . . . ., in said county, to answer to . . . . . in a civil action for . . . ; and have you then and there this writ.

Given under my hand, this . . . day of . . . A. D. 18...  
J. P., Justice of the peace.

FORM OF EXECUTION.

Territory of Dakota, }  
County of . . . . ., } ss.

Form of execution.

To the sheriff or any constable of said county:

Whereas, judgment against . . . . ., for the sum of . . . . . lawful money of the United States, and for . . . . ., cost of suit was recovered the . . . . . day of . . . . . before me at the suit of . . . . .; these are therefore in the name of the Territory of Dakota, to command you to levy distress on the goods and chattels of the said . . . . ., (excepting such as the law exempts,) and make sale thereof, according to law in such case made and provided, to the amount of the said sum together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said . . . . . for . . . . . said . . . . . and cost. Hereof fail not under penalty of the law.

Given under my hand this . . . day of . . . A. D. 18...  
J. P. Justice of the peace.

FORM OF A WRIT OF REPLEVIN.

Territory of Dakota, }  
County of . . . . . } ss.

Form of writ of replevin.

To the sheriff or any constable of said county:

Whereas, A. B. complains that C. D. has taken and does unjustly detain (as the case may be, particularly describing the goods and chattels to be replevied, and the value thereof,) therefore, in the name of the Territory of Dakota, you are commanded that you cause the same goods and chattels to be replevied without delay; and if the said A. B. shall give security as required by law, that you cause the said goods and

chattels to be delivered to the said A. B., and also that you summon the said C. D. to be and appear before me, one of the justices of the peace in and for said county, on the .... day of ....., A. D. 18.., at .... o'clock in the ..... noon, at ....., in said county, to answer complaint of.....

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

J. P., Justice of the peace.

FORM OF SUBPOENA.

Form of subpoena.

Territory of Dakota, }  
County of..... } ss.

In the name of the Territory of Dakota, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, at ..... on the ..... day of ....., at ..... o'clock, in the ..... noon of said day, to give evidence in a certain cause then and there to be tried between ....., plaintiff, and ....., defendant, on the part of the.....

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

J. P., Justice of the peace.

FORM OF A VENIRE FOR A JURY.

Form of venire.

Territory of Dakota, }  
County of..... } ss.

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are hereby commanded to summon.....to be and appear before the undersigned, one of the justices of the peace in and for said county, on the..... day of....., at..... o'clock in the.....noon of said day, in the town of....., to make a jury for the trial of a civil action betwen....., plaintiff, and....., defendant, and have you then and there this writ.

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

J. P., Justice of the peace.

PROCEEDINGS IN CRIMINAL CASES.

Jurisdiction of justices in criminal cases.

SEC. 257. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

- 1. To cause to be kept all laws made for the preservation of the peace;

2. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail, or bail them; as the case may require;

3. To arrest and cause to come before them, persons who attempt to break the peace, persons who keep houses of ill-fame or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior and to keep the peace.

4. To cause to come before them persons who are charged with committing any criminal offense, and commit them to jail, or bail them, as the case may require.

SEC. 258. Justices of the peace shall have power to hold a court subject to the provisions hereinafter contained, to hear, try and determine the charges for offenses arising within their respective counties, where jurisdiction is conferred upon by any law of this Territory. Justices power.

SEC. 259. Upon complaint made to any justice of the peace by any constable or other person, that any such offense has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it shall appear that such offense has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed, forthwith to arrest the accused and to bring him before such justice or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial. Proceedings on complaint in criminal cases.

SEC. 260. The complaint mentioned in the last preceding section may be substantially in the following form: Form of complaint.

County, }  
The Territory of Dakota, }  
vs. } Before Justice (here insert  
A. B. defendant. } name of the justice).

The defendant is accused of the crime (here name the offense.) 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 offense, as in an indictment).

Justices to  
file complaint.

SEC. 261. The justice must file such complaint, and mark thereon the time of filing the same.

To issue war-  
rant for arrest  
of accused.

SEC. 262. Immediately upon the filing of such complaint, the justice must, if he deems the grounds of complaint sufficient, issue a warrant for the arrest of the accused, directed in the same manner as a warrant of arrest upon a preliminary information, and may be served in like manner.

Officer to ar-  
rest accused.

SEC. 263. 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.

Charge to be  
read to accused  
and ascertain  
his name.

SEC. 264. 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 objects 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 complaint, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection.

Defendant to  
plead same as  
on an indict-  
ment.

SEC. 265. 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.

If defendant  
do not demand  
jury justice  
must try the  
issue.

SEC. 266. 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.

Grounds for  
change of  
venue.

SEC. 267. 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 affiant verily believes.

Proceedings  
when change of  
venue is grant-  
ed.

SEC. 268. 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. And

if there be but one justice in the county, a change of venue cannot be granted.

SEC. 269. 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.

SEC. 270. 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.

Manner of procuring jury.

SEC. 271. 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 summons 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.

When prosecutor or defendant do not strike out names, what to be done.

SEC. 272. 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 receiving venire must summon jury.

SEC. 273. 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.

Names to be called.

Challenges.

SEC. 274. 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 may be taken by either party.

SEC. 275. 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 proceedings shall be had as upon the one first issued.

If officer do not return venire, punished for contempt.

SEC. 276. When six jurors appear and are accepted, they shall constitute the jury.

Six jurors constitute jury.

**Oath to jurors.** SEC. 277. The justice must thereupon administer to them the following oath or affirmation: "You and each of you 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."

**Duty of jury.** SEC. 278. 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 jury do not immediately agree, &c.** SEC. 279. 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."

**Oath.**

**Verdict delivered publicly.** SEC. 280. When the jury have agreed on their verdict, they must deliver it publicly to the justice, who shall enter it on his docket.

**Jury kept together until agreed.** SEC. 281. 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.

**Jury discharged without agreeing.** SEC. 282. 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.

**When defendant is guilty, justice to impose fine or imprisonment.** SEC. 283. 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 may state that defendant be imprisoned until fine is paid.** SEC. 284. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied.

SEC. 285. When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged. When defendant acquitted, immediately discharged.

SEC. 286. 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. When justice may tax costs against prosecuting witness.

SEC. 287. 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 offense charged and the conviction and judgment thereon, and if any fine has been collected, the amount thereof. Certificate of conviction.

SEC. 288. Within twenty days after such conviction, the justice must cause such certificate to be filed in the office of the clerk of the district court in and for the county where the conviction was had. Certificate of conviction to be filed within twenty days with clerk of district court.

SEC. 289. 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 the such judgment. Who shall execute judgment

SEC. 290. 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. Fine, to whom paid over to, what use applied.

SEC. 291. 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. When defendant committed for not paying fine.

SEC. 292. If the fine or any part thereof is paid to the justice or sheriff, he must execute duplicate receipts thereof, one of which he must file without delay with the register of deeds or recorder of deeds in and for the county. Justice to execute duplicate receipts for fine paid.

SEC. 293. 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.

SEC. 294. The justice, rendering judgment against the defendant, must inform him of his right to appeal therefrom, and the defendant may thereupon take an appeal by giving notice Justice to inform defendant of his right of appeal.

orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice.

**Justice fix bail** SEC. 295. 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:

**Form of undertaking.** The Territory of Dakota, }  
 ..... county, } ss.

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 the bail fixed) for the use of common schools of said county.

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.** SEC. 296. The bail must possess the qualifications required in cases of appeal from the district to the supreme court of the Territory.

**Bail taken by any magistrate.** SEC. 297. The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit the bail, or by the district court, or the clerk thereof.

**In case of appeal, material witnesses to enter into undertaking, &c.** SEC. 298. 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.

SEC. 299. 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.

The cause when appealed shall stand for trial de novo.

SEC. 300. No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed.

No appeal in criminal case dismissed.

SEC. 301. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court.

Certain proceedings had in district court.

MISCELLANEOUS PROVISIONS IN CRIMINAL CASES.

SEC. 302. No assault, battery or affray shall be indictable, but all such offenses shall be prosecuted and determined in a summary manner, by complaint made before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five dollars, nor more than one hundred dollars, according to the nature of the offense.

Certain offenses tried in summary manner.

Punishment.

SEC. 303. If any justice of the peace shall have any knowledge that any of the offenses mentioned in the last section, are about to be committed, he shall issue his warrant and proceed as is directed, when complaint has been made; and if any such offense is committed, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done, and for this purpose no warrant or process shall be necessary; but the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders and all such as obstruct or prevent the justice, or any of his assistants in the performance of their duty; and any person who shall, when summoned to aid in arresting and securing an offender, refuse to give such assistance, shall pay five dollars to the use of the common schools of said county.

Duty of Justice when offenses committed in his presence or come to his knowledge.

Breach of recognizance to be certified to district court.

SEC. 304. In case of the breach of any recognizance entered into in a criminal case, the same shall be certified and returned to the district court, to be proceeded in according to law.

Duty of justice when he has not final jurisdiction.

SEC. 305. If, in progress of any trial before a justice of the peace, under the provisions of this act, it shall appear to the justice that he has not final jurisdiction in the case before him, and the accused ought to be put upon his trial for an offense cognizable before the district court, the justice shall immediately stop all further proceedings before him and proceed as in other criminal cases cognizable before the district court.

Who summoned in criminal case.

SEC. 306. In all criminal cases arising under this act, it shall be the duty of the justice of the peace acting, to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

Justice's duty in case of conviction.

SEC. 307. In all cases of conviction under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the common schools of said county.

When judgment affirmed in district court

SEC. 308. If the judgment of the justice shall be affirmed, or upon any trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties.

Continuance as affecting witnesses.

SEC. 309. When a trial under the provisions of this act shall be continued by the justice it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witnesses, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as the summons.

Security for costs.

SEC. 310. The justice may require of the complainant to give security for costs, as in civil cases security may be required of the plaintiff, and if he refuse, the justice may dismiss the complaint.

Fines go to school fund.

SEC. 211. In all cases under the provisions of this act, where fines, penalties and forfeitures are paid into the county treasury, such money shall be added to the school fund of such county, for the support of common schools.

SEC. 312. If any person who shall have received any such fine, penalty or forfeiture, or any part thereof, shall neglect to pay over the same pursuant to the provisions of this act, it shall be the duty of the district attorney immediately to commence suit therefor, and to prosecute the same diligently to effect. And if the district attorney fail so to do, it shall be the duty of the county superintendent of schools or public instruction, or the judge of probate to institute such suit and to prosecute the same to final judgment, and to collect the same for the uses mentioned in section three hundred and nine.

Proceedings when party neglects to pay fines over.

SEC. 313. No property, either real or personal, shall be exempt from levy, seizure or sale, by virtue of any execution, writ or attachment, or any other final process of a justices' court, or of the district court, issued on a judgment rendered by a justice of the peace, or, if upon an appeal, by the district courts, for costs, fines, penalties, or forfeitures of undertakings and bonds in the courts of justices of the peace, authorized by law, or in the district courts, in actions and proceedings in justices courts, and appealed or certified to the district court, any laws now in force to the reverse notwithstanding.

When property not exempt

## COURT OF INQUIRY.

SEC. 314. When it shall be brought to the knowledge of a justice of the peace that a criminal offense, of which he has not final jurisdiction, has been committed within his county, he shall forthwith cause the offending person to be brought before him.

Preliminary examination when justice has not final jurisdiction.

SEC. 315. The justice shall, by the usual process, compel the attendance of witnesses on the part of the Territory, and by the request and at the expense of the accused, he shall in like manner compel the attendance of witnesses on the part of the accused.

Shall compel attendance of witnesses.

SEC. 316. The justice shall diligently inquire into the accusation publicly, and examine under oath such witnesses as may be in attendance, as to the guilt or innocence of the accused.

Shall inquire into accusation publicly.

SEC. 317. After inquiring into the case as fully as circumstances will admit and justice would seem to require, if the

When justice shall commit accused.

justice believes that the accused has committed a criminal offense of which the justice has not final jurisdiction, but which is cognizable by the district court, the justice shall commit the accused to the county jail to await the finding of the grand jury and the action of the district court thereon at the next term thereof.

When receive bail and how.

SEC. 318. If the offense charged be bailable under the statutes of the Territory, the accused shall be admitted to bail in a sum to be fixed by the justice, with good and sufficient surety to be approved by the justice, conditioned that he appear on the first day of the next term of the district court (naming the district) and await the finding of the grand jury and the action of said court thereon, and that he appear before said court from day to day during the term, and that he will not thence depart unless discharged by the court. Upon the tendering and acceptance of such bail, the justice shall order the accused to be set at large.

Accused remain in custody until bail furnished.

SEC. 319. If the offense charged be bailable, and the justice has fixed the amount of penalty, the accused shall remain in custody or confinement until such bail is produced as provided in the last preceding section.

FORMS IN CRIMINAL PROCEDURES.

Form of warrant.

SEC. 320. The following, or equivalent forms may be used by justices of the peace in criminal proceedings, to be had under this act:

FORM OF WARRANT.

Territory of Dakota, }  
County of..... } ss.

To the sheriff or any constable of said county:

Whereas,....., has this day complained in writing to me, on oath, that.....did on the.....day of .....A. D. 18..., at....., and prayed that the said.....might be arrested and dealt with according to law; now therefore in the name of the Territory of Dakota, you are hereby commanded forthwith to apprehend the said.....and bring him before me, to be dealt with according to law.

Given under my hand, this.....day of.....A. D. 18...  
J. P., Justice of the peace.

FORM OF CERTIFICATE OF CONVICTION.

Territory of Dakota, }  
County of..... } ss.

Form of certificate of conviction.

At a justices' court held at my office in said county, for the trial of.....for the offence hereinafter stated, the said .....of, &c., was convicted of having on the..... day of....., A. D. 18..., at.....in said county (here state the offense as in the warrant), and upon such conviction, the said court did adjudge and determine that the said.....should pay a fine of.....dollars, (and if imprisonment be allowed, add) and be imprisoned in the common jail of the county.....days, (if the fine be paid, add) and the said fine has been paid to me.

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

J. P., Justice of the peace.

FORM OF EXECUTION.

Territory of Dakota, }  
County of..... } ss.

Form of execution.

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county, for the trial of....., for the offense hereinafter stated, the said.....of, &c., was convicted of having, on the.....day of....., A. D. 18... in said county, (here state the offense as in the warrant), and upon conviction the said court did adjudge and determine that the said..... should pay a fine of.....dollars; and whereas, the said fine has not been paid by the said....., these are therefore, in the name of the Territory of Dakota, to command you to levy distress on the goods and chattels, &c., (as in execution against the goods in civil cases).

FORM OF ORDER TO BRING UP PRISONER.

Territory of Dakota, }  
County of..... } ss.

Form of order to bring up prisoner.

To the keeper of common jail of said county:

The undersigned, one of the justices of the peace in and for said county, sitting at a court for the trial of.....now in

your custody in the common jail of said county, in the name of the Territory of Dakota, do hereby order and direct you to bring the said . . . . . forthwith before me, at my office in said county, together with the warrant by which he was committed to your custody, in order that he may be tried.

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

J. P., Justice of the peace.

FORM OF COMMITMENT UPON SENTENCE.

Form of com-  
mitment upon  
sentence. Territory of Dakota, }  
County of . . . . } ss.

To any constable and the keeper of any common jail of said county: Whereas, a justice's court held at my office in said county, for the trial of . . . ., for the offense hereinafter stated, the said . . . ., of &c., was convicted of having, on the . . . day of . . . ., A. D. 18 . . ., in the said county; (here state the offense, as in the warrant), and upon conviction the said court did adjudge and determine, that the said . . . should be imprisoned in the common county jail of said county for . . . days; therefore, you the said constable, are commanded in the name of the Territory of Dakota forthwith to convey and deliver the said . . . to the said keeper; and you the said keeper, are hereby commanded to receive the said . . . into your custody, in the said jail, and there safely keep until the expiration of said . . . days, or until he shall be thence discharged by due course of law.

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

J. P., Justice of the peace.

FORM OF COMMITMENT AFTER ARREST, AND BEFORE TRIAL.

Form of com-  
mitment after  
arrest and be-  
fore trial. Territory of Dakota, }  
County of . . . . } ss.

To the sheriff or any constable, and to the keeper of the common jail of said county:

Whereas, . . . . has been this day brought before the undersigned, one of the justices of the peace in and for said county, charged on the . . . . . day of . . . . ., A. D. 18 . . . . ., in said county (here state the offense, as in the warrant), and the said . . . . not having given bail to appear and answer for the said offense, therefore you the said constable, are commanded

in the name of the Territory of Dakota, forthwith to convey, and deliver into the custody of the said keeper the body of the said . . . ; and you the said keeper are hereby commanded to receive the said . . . into your custody in the said jail, and him there safely keep, until he shall be required to be brought before the court to be tried, or shall be otherwise discharged by due course of law.

Given under my hand, this . . . day of . . . , A. D. 18...  
 J. P., Justice of the peace.

FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION OF THE CASE.

Territory of Dakota, }  
 County of . . . } ss.

Form of commitment when justice shall find that he has no jurisdiction.

To the sheriff or any constable of said county:

Whereas, . . . of, &c., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of . . . , with having, on the . . . day of . . . , A. D. 18.., . . . in said county committed the offense of . . . , (here state the offense charged in the warrant,) and in the progress of the trial on said charge, it appearing to the said justice that the said . . . had been guilty of the offense of . . . , (here state the new offense found on the trial,) committed at the time and place aforesaid, of which offense the said justice has not final jurisdiction; and whereas, after examination had in due form of law, touching the said charge and offense last aforesaid, the said justice did adjudge that the said offense had been committed, and that there was probable cause to believe the said . . . to be guilty thereof; and whereas, the said . . . has not offered sufficient bail for his appearance to answer for said offense, you are therefore commanded forthwith to take the said . . . , and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody, in said jail, until he shall be thence discharged according to law.

Given under my hand this . . . day of . . . , A. D. 18...  
 J. P., Justice of the peace.

SEC. 321. *And be it further enacted*, That an act entitled "An act defining the jurisdiction and procedure before justices of the peace, and of the duties of constables in civil" Certain acts repealed.

cases;" approved May thirteenth, eighteen hundred and sixty-two; and an act entitled "An act defining the jurisdiction of justices of peace in criminal cases, and of the proceedings therein," approved May thirteenth, eighteen hundred and sixty-two, and also an act entitled "An act defining the courts and jurisdiction of justices of the peace," approved January seventh, eighteen hundred and sixty-three, be and the same are hereby repealed.

When to take effect.

SEC. 322. This act shall take effect from and after its passage and approval.

Approved, January 4th, 1866.

## MARRIED WOMEN.

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### CHAPTER XXXII.

#### AN ACT RELATING TO MARRIED WOMEN.

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

When married woman may make contracts.

SECTION 1. Any married woman whose husband shall desert her, or from intemperance or other cause shall become incapacitated or neglect to provide for his family, may in her own