THE ANNOTATED

REVISED CODES

OF THE

TERRITORY OF DAKOTA,

1883.

VOLUME I,

EMBRACING

THE CODE OF CIVIL PROCEDURE,
THE PROBATE CODE, THE JUSTICES' CODE.

With Notes and References. and a New Index.

EDITED BY

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ABBREVIATIONS.

Wait, Code—*Wait's (N. Y.) Code of Civil Procedure, Annotated.*

Harst. Pr.—*Harston's Practice, Pleading, and Evidence, (the California Code of Civil Procedure, Annotated.)*

Dak.—*Dakota Reports, vols. I and II.*

N. W. Rep.—*Northwestern Reporter, vols. I to XV.*

Minn. (Gil.)—*Minnesota Reports, Gilfillan Edition, vols. I to XX.*

Minn.—*Minnesota Reports, vols. XXI to XXIX.*

Sec. *or* Secs. *in citations invariably refers to the sections of that Code in which the citation is given.*

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REVISED CODES

OF THE

TERRITORY OF DAKOTA.

CODE OF CIVIL PROCEDURE.

An Act to Establish a Code of Civil Procedure for Dakota Territory.

GENERAL DEFINITIONS AND DIVISIONS.

§ 1. **Title and parts of act.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* This act shall be known as the Code of Civil Procedure of the Territory of Dakota, and is divided into three parts, as follows:

Part 1. Of Courts of Justice.
Part 2. Of Civil Actions.
Part 3. Of Special Proceedings of a Civil Nature.

Wait, Code, 8; Harst. Pr. 1.

§ 2. **Not retroactive.** No part of it is retroactive unless expressly so declared.

Harst. Pr. 3.

§ 3. **Code excludes common law.** The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this territory, respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed with a view to effect its objects and to promote justice.

Wait, Code, 467; Harst. Pr. 4.

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charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Wait, Code, 110; Harst. Pr. 360; Chadwick v. Cornish, 1 N. W. Rep. 55.

CHAPTER VII.

PARTIES TO CIVIL ACTIONS.

§ 74. **Party in interest.** Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section seventy-six; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract. But an action may be maintained by a grantee of land in the name of a grantor, when the grant or grants are void by reason of the actual possession of a person claiming under a title adverse to that of the grantor at the time of the delivery of the grant, and the plaintiff shall be allowed to prove the facts to bring the case within this provision.

Wait, Code, 111; Harst, Pr. 367.

Receiver may sue in his official name. Secs. 223, 373. Successors, intestate or by will. Secs. 85, 86, 677; Wilson v. Bumstead, (Neb.) 10 N. W. Rep. 411; Phinny v. Warren, 1 N. W. Rep. 522.

One who takes a mortgage in his own name for the benefit of another may sue. Allen v. Kennedy, (Wis.) 5 N. W. Rep. 906. An attorney in an action may be admitted a party plaintiff to protect his lien. Reynolds v. Reynolds, (Neb.) 7 N. W. Rep. 322; 9 N. W. Rep. 689.

See, also, Budge v. Mott, 3 N. W. Rep. 381; Wilson v. Bartholomew, 7 N. W. Rep. 227; 10 N. W. Rep. 411; Hecht v. Ferris, 8 N. W. Rep. 82; Pratt v. Radford, 8 N. W. Rep. 606; 12 N. W. Rep. 354; Widner v. W. U. Tel. Co. 11 N. W. Rep. 407; Sick v. Mich. Aid Association, 12 N. W. Rep. 905.

§ 75. **Assignee—equities.** In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of, or before notice of, the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.

Wait, Code, 112; Harst. Pr. 368.

Assignee in bankruptcy. McMasters v. Campbell, 2 N. W. Rep. 836; Id. 50; 7 N. W. Rep. 303; Wetmore v. McMillan, Sheriff, (Iowa,) 10 N. W. Rep. 725; Langdon v. Thompson, 25 Minn. 509.

§ 76. **Executors and trustees.** An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue, without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust,

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CHAPTER IX.

MANNER OF COMMENCING CIVIL ACTIONS.

§ 96. **By summons.** Civil actions in the courts of this territory shall be commenced by the service of a summons.

Sec. 197; Wait, Code, 127; Harst. Pr. 405.

§ 97. **Requisites of same.** The summons shall be subscribed by the plaintiff or his attorney, and directed to the defendant, and shall require him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the territory, to be therein specified, in which there is a post-office, within thirty days after the service of the summons, exclusive of the day of service.

Secs. 98, 427; Wait, Code, 128; Harst. Pr. 407.
Time, for answering. Secs. 112, 115, 99.
" how computed. Sec. 6.
" may be extended, how. Secs. 143, 512.
" for answering amended complaint. Sec. 115.

It is not a fatal defect in a summons that it is styled "State of Wisconsin," instead of "The State," etc. Mabbett v. Vick, 10 N. W. Rep. 84. Summons not void for being issued on a legal holiday. Smith v. Ihling, 11 N. W. Rep. 408.

Error in the name of the defendant in the summons held fatal. Atwood v. Landis, 22 Minn. 558.

In action of partition, what is sufficient. Martin v. Parker, 14 Minn. (Gil.) 1. Summons subscribed by a third person for the plaintiff, and in his presence, good. Hotchkiss v. Cutting, 14 Minn. (Gil.) 408.

Signature must be written, not printed. 9 Minn. (Gil.) 206. Held otherwise in Wisconsin. Mezchen v. More, 11 N. W. Rep. 534.

A summons issued in blank and filled up by another is void. Craighead v. Martin, 25 Minn. 41.

In action of bastardy, clerk signs summons. Sec. 739.

Appearance waives defects in summons. Sec. 108; Hinkley v. St. Anthony Falls W. P. Co. 9 Minn. (Gil.) 44.

§ 98. **Notice required in.** The plaintiff shall also insert in the summons a notice, in substance, as follows:

1. In action arising on contract, for the recovery of money only, that he will take judgment for a sum specified therein if the defendant fail to answer the complaint in thirty days after the service of the summons.

2. In other actions, that if the defendant shall fail to answer the complaint within thirty days after the service of the summons, the plaintiff will apply to the court for the relief demanded in the complaint.

Sec. 229; Wait, Code, 129; Harst. Pr. 407. Service of summons. Sec. 102; Roggenkamp v. Moore, 2 N. W. Rep. 227; Id. 345; Hotchkiss v. Cutting, 14 Minn. (Gil.) 408; Whitt v. Iltis, 24 Minn. 43.

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§ 107. **Proof of service—acceptance.** Proof of the service of the summons, and of the complaint or notice, if any, accompanying the same, must be as follows:

1. If served by the sheriff, his certificate thereof; or,
2. If by any other person, his affidavit thereof; or,
3. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the post-office, as required by law if the same shall have been deposited; or,
4. The written admissions of the defendant.

In cases of service otherwise than by publication, the certificate, affidavit, or admission, must state the time, place, and manner of service.

Sec. 102, and references 467, 490, 611; Wait, Code, 138; Hart. Pr. 415, 2010.

Whether the service be made by the sheriff or by an unofficial person, the return must show when, where, and how it was made; and the return must show a substantial compliance with all the legal requirements to give the court jurisdiction of the party defendant. Newlove v. Woodward, 4 N. W. Rep. 237; Meyers v. Le Poidevin, 4 N. W. Rep. 319; Hall v. Graham, 5 N. W. Rep. 943; Michels v. Stork, 5 N. W. Rep. 1034; Kraft v. Roths, 7 N. W. Rep. 232; Holden v. Ranney, 8 N. W. Rep. 78; American Express Co. v. Conant, 8 N. W. Rep. 574.

Affidavit failing to state place of service is fatally defective. 9 N. W. Rep. 794.

Summons directed to sheriff of particular county cannot be served by unofficial person, unless appointed for that purpose by such sheriff. Railway Co. v. Sayer, 13 N. W. Rep. 404.

Validity of service contested, and held good. Goener v. Woll, 2 N. W. Rep. 163; Elliott v. Preston, 6 N. W. Rep. 238.

Service by acceptance.

The acceptance must be by the party himself, and not by proxy. Chapin v. Pinkerton, 12 N. W. Rep. 282. When the acceptance has been duly made, it must be proved as in other cases. Masterson v. Le Claire, 4 Minn. (Gil.) 108.

An acceptance of service is not an appearance. Bank of Hastings v. Rogers, 12 Minn. (Gil.) 437.

In Reed v. Catlin, 6 N. W. Rep. 326, the affidavit of service failed to specify the date of service; held supplied by the jurat, which did state the date.

In Townsend v. Smith, 3 N. W. Rep. 439, defendant had been induced, by fraudulent pretenses of plaintiff, to come within the jurisdiction of the court, and while there was personally served with the summons; held bad and set aside.

In Mabbett v. Vick, 10 N. W. Rep. 84, an error in the return-day, by mistake, was held not fatal.

In Gilbert v. Brown, 2 N. W. Rep. 376, it was objected that the officer's return failed to show *in what county* the service was made; held, that it would be presumed that the officer summoned the person in the county for which he (the officer) was elected.

In Millette v. Mehmke, 3 N. W. Rep. 700, the summons was served with a copy of the complaint, but instead of referring to such copy as that which defendant was required to answer, the summons required him to answer the complaint which had been filed in the office of the clerk, etc. No complaint was filed. Held not to invalidate the service of the summons; an irregularity, the defendant's remedy for which is by motion in the court below to set aside the service.

In case of corporations. Dewey v. Central Car Co. 4 N. W. Rep. 179; Sullivan v. La Crosse & M. Steam Packet Co. 10 Minn. (Gil.) 308; Guernsey v. Am. Ins Co. 13 Minn. (Gil.) 256.

Sheriff refusing to make return of service—remedy. Heyman v. Cunningham, 8 N. W. Rep. 401.

Proof of service by publication. Sec. 104 and notes; Auerbach v. Maynard, 4 N. W. Rep. 816; Morey v. Morey, 6 N. W. Rep. 783; Soule v. Hough, 8 N. W. Rep. 50; Flint v. Gurrell, 11 N. W. Rep. 431; Messelroad v. Parrish, 3 N. W. Rep. 45; 6 N. W. Rep. 186; Harrington v. Loomis, 10 Minn. (Gil.) 293; Atkins v. Atkins, 2 N. W. Rep. 466; Broome v. Packet Co. 9 Minn. (Gil.) 225; Cleland v. Tavernier, 11 Minn. (Gil.) 126; Beecher v. Stephens, 25 Minn. 146; Pratt v. Tinkcom, 21 Minn. 142.

§ 108. **Jurisdiction—appearance.** From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

Wait, Code, 139; Harst. Pr. 416; Waldron v. Ry. Co. 1 Dak. 351; Id. 372 and 38; Egan v. Sengfeil, 1 N. W. Rep. 467, (Wis.); 3 N. W. Rep. 831.

A special appearance to object to the jurisdiction of the court does not waive service of summons. Newlove v. Woodward, 4 N. W. Rep. 287; 5 N. W. Rep. 1034; Schwab v. Mabley, 11 N. W. Rep. 294.

Appearance entitles party to usual notices. Sec. 519; Bank of Hastings v. Rogers, 12 Minn. (Gil.) 437.

Jurisdiction is acquired by publication only when the full term of publication has expired. Sec. 106.

CHAPTER X.

OF PLEADINGS IN CIVIL ACTIONS.

THE COMPLAINT.

§ 109. **Forms abolished.** All forms of pleading heretofore existing are abolished; and hereafter, the forms of pleading in civil actions in courts of record, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed by this act.

Wait, Code, 140; Harst. Pr. 421.

§ 110. **Complaint.** The first pleading on the part of the plaintiff is the complaint.

Wait, Code, 141; Harst. Pr. 425.

§ 111. **What to contain.** The complaint shall contain:

1. The title of the cause, specifying the name of the court in which the action is brought, the name of county in which the plain-

tiff desires the trial to be had, and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition.

3. A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated.

Wait, Code, 142; Harst. Pr. 426; sec. 406.

Pleadings are to be construed liberally. Sec. 128.

The title to the action is a part of the complaint, and when the names of the parties are fully set out in the title, it is not necessary to repeat them in the subsequent parts of the complaint. Stubendorf v. Sonnenschein, 9 N. W. Rep. 91; Fanning v. Krapfl, 14 N. W. Rep. 727; Knox v. Starks, 4 Minn. (Gil.) 7; Bidwell v. Coleman, 11 Minn. (Gil.) 45.

When several plaintiffs sue jointly they should allege *the capacity* in which they sue; whether as a copartnership or corporation. Sweet v. Ervin, 6 N. W. Rep. 156; 13 Minn. (Gil.) 50.

"Every fact which the plaintiff must prove to enable him to maintain his suit, and which the defendant has a right to controvert in his answer, must be distinctly averred and set forth according to its legal effect and operation, and *not the evidence* of those facts; *nor arguments, nor inferences, nor matters of law only.*" Clay County v. Simonson, 1 Dak. 430; Bell v. Sherer, 11 N. W. Rep. 861; Clark v. Ry. Co. 28 Minn. 69; 28 Minn. 367; 12 N. W. Rep. 484; 13 N. W. Rep. 508. Nor should the complaint, by any allegation, anticipate the defense. Amer. Button-hole Co. v. Moore, (Dak.) 8 N. W. Rep. 131; 9 N. W. Rep. 17; Hocum v. Weitherick, 22 Minn. 152; Gray v. Ry. Co. 13 Minn. (Gil.) 289; Amos v. Fond du Lac, 1 N.W. Rep. 346; Whittier v. Ry. Co. 24 Minn. 394.

Complaint should set forth only such facts as are material to plaintiff's cause of action. Sec. 129; Rollins v. St. P. Lumber Co. 21 Minn. 5; 13 Minn. 362.

The allegations of the complaint should be positive. Taylor v. Blake, 11 Minn. (Gil.) 170. And not in the alternative. City of St. Paul v. Marvin, 16 Minn. (Gil.) 91. Specific allegations control general. 1 N. W. Rep. 338.

Defective complaint is sometimes cured by the answer. Rollins v. St. Paul Lumber Co. 21 Minn. 5. But see 10 N. W. Rep. 264; Warner v. Lockerby, 28 Minn. 28. Also by evidence without objection. Frank v. Irgens, 27 Minn. 43. But not by verdict. Lee v. Emery, 10 Minn. (Gil.) 151. See Hurd v. Simonton, 10 Minn. (Gil.) 340.

Illustrative cases in which the sufficiency or insufficiency of the complaint has been adjudged by different courts. 2 N. W. Rep. 283, 346. Injunction. 3 N. W. Rep. 488, 698, 818, 589. Action for damages against assignee. 4 N. W. Rep. 1, 19, 41, 44, 325, 805; 5 N. W. Rep. 471, 474, 666, 940; 6 N. W. Rep. 439, 715; 8 N. W. Rep. 131, 879; 9 N. W. Rep. 17, 448; 10 N. W. Rep. 264, 310, 139, 524, 586, 65; 11 N. W. Rep. 117, 891, 750; 12 N. W. Rep. 42, 101, 276; 13 N. W. Rep. 644, 555.

Requisites of complaint in certain cases.

In action for damages. 1 N. W. Rep. 4, 485; 5 N. W. Rep. 666; 8 N. W. Rep. 292, 363; 10 N. W. Rep. 208; 21 Minn. 358, 362, 364. On undertaking. 2 N. W. Rep. 459; 3 N. W. Rep. 667.

As to joinder of several causes in the same complaint. See sec. 136 and references.

Account, how to be stated. Sec. 127.

Judgment, how to be stated. Sec. 130.

Conditions precedent, how to be stated. Sec. 131.

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Private statute, how to be stated. Sec. 132.
Verification of complaint. Secs. 125, 126.
Service of complaint. Secs. 99, 104.
Complaint to be filed, when. Sec. 521.
To be subscribed by party or his attorney. Sec. 125.

Special provisions as to allegations to be made in complaint.

For usurpation of office. Sec. 536.
To foreclose a mortgage. Secs. 620, 637.
To partition estate. Sec. 549.
In action of libel or slander. Sec. 133.
In ejectment. Sec. 637.
To quiet title. Sec. 639.
Demand of complaint limits plaintiff's right to relief. Sec. 293.

THE DEMURRER.

§ 112. **Defendant may demur or answer.** The only pleading on the part of defendant is either a demurrer or an answer. It must be served within thirty days after the service of the copy of the complaint.

Sec. 99; Wait, Code, 143.

Time for answering may be extended by leave of the court. Sec. 143.

Time for answering amended complaint is the same as for the original. Sec. 115.

Requisites of answer. Sec. 118.

When objections to complaint may be taken by answer. Sec. 116.

The delay for answering is computed by excluding the day on which the summons or complaint is served. Secs. 6, 97.

Failure to answer within the given delay authorizes plaintiff to take judgment. Sec. 229.

The answer must be served on the person and at the place indicated in the summons. Sec. 97.

Service to be made on attorney, when. Sec. 522.
How made on attorney. Sec. 514.
Service may be by mail. Secs. 515, 516, 517, 520.
May be made on clerk of court, when. Sec. 520.

§ 113. **When may demur.** The defendant may demur to the complaint when it shall appear upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,
2. That the plaintiff has not legal capacity to sue; or,
3. That there is another action pending between the same parties, for the same cause; or,
4. That there is a defect of parties, plaintiff or defendant; or,
5. That several causes of action have been improperly united; or,
6. That the complainant does not state facts sufficient to constitute a cause of action.

Sec. 125; Wait, Code, 144; Harst. Pr. 430.
Demurrer to answer. Sec. 122.
Demurrer to reply. Sec. 124.

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§ 117. **When objection waived.** If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Wait, Code, 148; Harst. Pr. 434. Clay Co. v. Simonsen, 1 Dak. 403; Id. 25; Kendig v. Overhulser, 12 N. W. Rep. 264; Donohue v. Hendrix, 13 N. W. Rep. 215.

THE ANSWER.

§ 118. **Requisites of answer.** The answer of the defendant must contain:

1. A general and specific denial of each material allegation of the complaint controverted by the defendant, or any knowledge or information thereof sufficient to form a belief.
2. A statement of any new matter constituting a defense or counterclaim, in ordinary and concise language, without repetition.

Secs. 125, 134, 135, 117, 227, 429; Wait, Code, 149; Harst. Pr. 437

General denial.

A general denial puts at issue all the material allegations of the complaint, and entitles the defendant to negative, by competent evidence, any fact which the plaintiff is bound to prove in order to support his action. Richardson v. Steele, 4 N. W. Rep. 83; 6 N. W. Rep. 816; Phœnix Life Ins. Co. v. Walrath, 10 N. W. Rep. 151; Scott v. Morse, 7 N. W. Rep. 15; Ruth v. Ruth, 12 N. W. Rep. 108; Farmers' Mut. Ins. Co. v. Crampton, 5 N. W. Rep. 447; Lange v. Hook, 7 N. W. Rep. 839; Delany v. Cuming, 8 N. W. Rep. 897; Dale v. Hunneman, 10 N. W. Rep. 711; Bruley v. Rose, 11 N. W. Rep. 629; Kendig v. Overhulser, 12 N. W. Rep. 264; Montrose v. Williams, 13 N. W. Rep. 828; Dale v. Burleigh, 1 Dak. 227; Caldwell v. Bruggerman, 4 Minn. (Gil.) 190. But a general denial of value admits amount alleged. Moulton v. Thompson, 1 N. W. Rep. 836; Coleman v. O'Neil, 1 N. W. Rep. 846; Lillie v. McMillan, 3 N. W. Rep. 601. And a general denial against a corporation plaintiff does not put in issue the plaintiff's corporate existence, nor its capacity to sue. National Life Ins. Co. v. Robinson, 1 N. W. Rep. 124; Dietrich v. Ry. Co. 13 N. W. Rep. 13. Nor does a denial of "knowledge sufficient to form a belief," impose such necessity. First Nat. Bank of Rock Island v. Loyhed, 10 N. W. Rep. 421; Crane Bros. v. Morse, 5 N. W. Rep. 815. Nor does a general denial cover allegations in an amended complaint subsequently filed. Kelly v. Bliss, 11 N. W. Rep. 488; nor the appointment of a guardian *ad litem.* Schuek v. Hagar, 24 Minn. 339.

Answer held insufficient.

Payne v. Hill, 1 N. W. Rep. 235; Smith v. Ehuert, 3 N. W. Rep. 26; Union Lumbering Co. v. Supervisors of Chippewa County, 2 N. W. Rep. 281; Crane Bros. v. Morse, 5 N. W. Rep. 815; Rodifer v. Myers, 9 N. W. Rep. 186; Collins v. Singer Manuf'g Co. 10 N. W. Rep. 477.

The answer must be specific and definite. Sec. 129; Rodifer v. Myers, 9 N. W. Rep. 186; Lampsen v. Brander, 11 N. W. Rep. 94; Collins v. Singer Manuf'g Co. 10 N. W. Rep. 477.

And must state all the facts relied on. Bell v. Dangerfield, 3 N. W. Rep. 698; 8 N. W. Rep. 515; Blazier v. Johnson; 9 N. W. Rep. 543.

Special matters of defense must be specially pleaded. Abatement. 2 N.

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W. Rep. 1123; 6 N. W. Rep. 816; Reif v. Paige, 13 N. W. Rep. 473, 781, 822; 1 N. W. Rep. 106.

Barred by statute.

Hooker v. Green, 6 N. W. Rep. 816, 885; Brush v. Peterson, 6 N. W. Rep. 287; 10 N. W. Rep. 425. By judgment. Beck v. Deveraux, 2 N. W. Rep. 365. Judgment of non-suit is no bar. Gummer v. Trustees of Village of Omro, 6 N. W. Rep. 885.

Counter-claim.

Dale v. Hunneman, 10 N. W. Rep. 711, 436, 623; 4 N. W. Rep. 106; Voechting v. Grau, 13 N. W. Rep. 230; Weatherby v. Mickeljohn, 13 N. W. Rep. 697; Sylte v. Nelson, 1 N. W. Rep. 811; Reynolds v. Martin, 1 N. W. Rep. 620; Goebel v. Hough, 2 N. W. Rep. 847; Robbins v. Brooks, 3 N. W. Rep. 256; 4 N. W. Rep. 192, 306; Findley v. Horner, 4 N. W. Rep. 86, 185, 752; Selleck v. Griswold, 5 N. W. Rep. 213, 699; 7 N. W. Rep. 57; Sigler v. Hidy, 9 N. W. Rep. 375; Ins. Co. v. Walrath, 10 N. W. Rep. 151, 623, 629; 11 N. W. Rep. 409, 513, 631; Heckman v. Swartz, 12 N. W. Rep. 439; Joseph v. Carter, 12 N. W. Rep. 876; Griffin v. Jorgenson, 22 Minn. 92; 21 Minn. 225, 366, 431.

Estoppel.

Must be pleaded. Parliman v. Young, (Dak.) 4 N. W. Rep. 143; (but see, *contra*, Coleman v. O'Neal, 1 N. W. Rep. 846;) Warder v. Baldwin, 8 N. W. Rep. 257, 897, 906; Folsom v. Fast Freight Line, (Iowa,) 6 N. W. Rep. 702.

Exemption from liability to seizure and execution.

Keegan v. Peterson, 24 Minn. 1.

Discharge in bankruptcy.

Benedict v. Smith, 12 N. W. Rep. 866.

Conditions precedent.

Sec. 131; Wheeler v. Teetzlaff, 10 N. W. Rep. 155.

Infancy.

Terry v. McClintock, 2 N. W. Rep. 787; Conrad v. Lane, 4 N. W. Rep. 695; 7 N. W. Rep. 496, 772.

Lis pendens.

Drea v. Cariveau, 9 N. W. Rep. 802; 12 N. W. Rep. 201.

Limitations. Sec. 37.

Payment. Esch v. Hardy, 22 Minn. 65; 12 N. W. Rep. 81.

Statute of frauds. Creswell v. McCaig, 9 N. W. Rep. 52.

Usury.

Bank v. Eyre, 2 N. W. Rep. 995, 339; Hart v. Wills, Id. 619; 4 N. W. Rep. 51; Bank v. Scott, 4 N. W. Rep. 314; Loan Association v. Heider, 5 N. W. Rep. 578.

Miscellaneous defenses.

4 N. W. Rep. 106; 6 N. W. Rep. 427, 68, 702, 885; 7 N. W. Rep. 145; 8 N. N. W. Rep. 95, 268, 389; 9 N. W. Rep. 527; 10 N. W. Rep. 425, 623; 11 N. W. Rep. 639; 12 N. W. Rep. 736, 284, 680.

All the matters specified in section 113 as grounds for demurrer, may be pleaded in answer when the same are not patent on the face of the complaint. Sec. 116.

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and when instructions are asked which the judge cannot give, he shall write on the margin thereof the word "refused," and such as he approves he shall write on the margin thereof the word "given;" and he shall, in no case, after instructions are given, qualify, modify, or in any manner explain the same to the jury, otherwise than in writing; and all instructions asked for by counsel shall be given or refused by the judge, without modification or change, unless such modification or change be consented to by the counsel asking the same.

Harst. Pr. 608, 609.

The charge of the court should be in writing, and confined to the law applicable to the case. Caldwell v. Kennison, 4 Minn. (Gil.) 23 ; Derby v. Gallup, 5 Minn. (Gil.) 85 ; Search v. Miller, 1 N. W. Rep. 975 ; O'Connor v. Railroad Co. 27 Minn. 166. But the court may advise the jury as to character or weight of evidence. Kidd v. Fleek, 2 N. W. Rep. 1121 ; Buford v. McGetchie, 14 N. W. Rep. 790 : Corbin v. Sage, 6 N. W. Rep. 216 ; McArthur v. Craigie, 22 Minn. 351 ; Ames v. Cannon River Manuf'g Co. 27 Minn. 245.

Requests should be given or refused, as requested. The judge has no right to give them in a modified form. Galloway v. McLean, 9 N. W. Rep. 98 ; 1 Dak. 197, 379; Selden v. Bank of Commerce, 3 Minn. (Gil.) 108. But see Dodge v. Rogers, 9 Minn. (Gil.) 209 ; Chandler v. De Graff, 25 Minn. 88 ; State of Minnesota v. Mims, 26 Minn. 183.

Instructions based upon a state of facts of which there is no proof are erroneous. Clark v. Ralls, 12 N. W. Rep. 260; Ry. Co. v. Greve, 17 Minn. (Gil.) 299; Wilcox v. Ry. Co. 24 Minn. 269; City of Cretė v. Childs, 9 N. W. Rep. 55.

A charge which assumes the existence of controverted facts is erroneous. Smith v. Dukes, 5 Minn. (Gil.) 301; Ry. Co. v. Greve, 17 Minn. (Gil.) 299; Chandler v. De Graff, 25 Minn. 88; Alden v. City of Minneapolis, 24 Minn. 254; Simpson v. Krumdick, 28 Minn. 352; Jones v. Town, 26 Minn. 172.

An instruction which ignores a controverted fact, or which withdraws the same from the jury, is properly refused. Requests not applicable to the issues of the case should be refused. Wilcox v. Railroad Co. 24 Minn. 269; Sanborn v. School-dist. 12 Minn. (Gil.) 1; Minnesota v. Staley, 14 Minn. (Gil.) 75; Marcotte v. Beaupre, 15 Minn. (Gil.) 117. Charges should be definite. Warner v. Myrick, 16 Minn. (Gil.) 81; Stearns v. Johnson, 17 Minn. (Gil.) 116; Johnson v. Wallower, 18 Minn. (Gil.) 262. And unambiguous. Horton v. Williams, 21 Minn. 187; Siebert v. Leonard, 21 Minn. 442; Erd v. City of St. Paul, 22 Minn. 443; Gardner v. Kellogg, 23 Minn. 463; McCormick v. Kelly, 28 Minn. 135. And not misleading. Shartle v. City of Minneapolis, 17 Minn. (Gil.) 284; Hocum v. Weitherick, 22 Minn. 152; Hayward v. Knapp, 23 Minn. 430.

When the instructions are plain and full they need not be repeated at the request of parties. State of Minnesota v. McCartey, 17 Minn. (Gil.) 54; O'Leary v. City of Mankato, 21 Minn. 65; State of Minnesota v. Mims, 26 Minn. 183; Wright v. Ames, 28 Minn. 362.

Presumptions in favor of the charge. Connolly v. Davidson, 15 Minn. (Gil.) 428; Id. 403; State of Minnesota v. Owens, 22 Minn. 238; Erd v. City St. Paul, 22 Minn. 443. Construction of charge. The whole charge must be taken together, and when, as a whole, it gives a full and correct statement of the law, an isolated part of it, which by itself might be considered erroneous, will not vitiate the charge as a whole. Woodruff v. King, 2 N. W. Rep. 452; Spencer v. Tozer, 15 Minn. (Gil.) 112; 1 N. W. Rep. 940.

§ 249. **Order of reading—by whom—jury to have—exceptions before judgment.** All instructions given by the judge shall be read to the jury in the following order:

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when the exception is to the verdict or decision, upon the grounds of the insufficiency of the evidence to sustain it, the objection must specify the particulars in which such evidence is alleged to be insufficient.

Wait, Code, 264; Harst. Pr. 648.

(*a*) Exception contradistinguished from bill of exceptions. St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497; Everett v. Buchanan, 6 N. W. Rep. 439.

(*b*) No error will be reviewed by the appellate court unless presented by bill of exception in due form. Bue v. Ketchum, 8 N. W. Rep. 231; Barkow v. Sanger, 3 N. W. Rep. 16; French v. Lancaster, 9 N. W. Rep. 716; Cramer v. Hanaford, 10 N. W. Rep. 15; Credit Foncier v. Rogers, 4 N. W. Rep. 1012; Dempsey v. Cogswell, 12 N. W. Rep. 148; Kehrig v. Peters, 2 N. W. Rep. 801; Schmeltz v. Schmeltz, 3 N. W. Rep. 536.

(*c*) Except errors patent on the record. Galloway v. McLean, 9 N. W. Rep. 98.

(*d*) The objector must state distinctly, at the time of taking his exception, all the grounds on which he relies to sustain it; for the bill which is then or afterwards prepared is only an embodiment of the exception as originally taken. St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497.

(*e*) *When to be taken.* Exceptions to rulings of the court must be taken and stated at the time the ruling is made. St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497; Light v. Kennard, 7 N. W. Rep. 539; Roode v. Dunbar, 2 N. W. Rep. 345.

(*f*) Exceptions to instructions to the jury may be taken any time before entry of final judgment. Sec. 249; St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497.

(*g*) *The bill of exceptions.* The only purpose or office of a bill of exception is to bring upon the record points or rulings which, without it, could not appear. St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497; Caulfield v. Bogle, Id. 511; Golden Terra Mining Co. v. Smith, 11 N. W. Rep. 98; Emery v. Emery, 6 N. W. Rep. 152; Daniels v. Gower, Id. 525; French v. Lancaster, 9 N. W. Rep. 716; Dufresne v. Weise, 1 N. W. Rep. 59; Donohue v. Hendrix, 13 N. W. Rep. 215.

(*h*) *What the bill of exceptions should contain.* When evidence is in any way involved, the bill must set forth only so much of it as is necessary, together with the directions prayed for, or objection raised, as will suffice for a complete understanding of the question presented. St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497; French v. Lancaster, 9 N. W. Rep. 716; Aultman & Taylor Co. v. Howe, 4 N. W. Rep. 357; Everett v. Buchanan, 6 N. W. Rep. 439; Hill v. Holloway, 3 N. W. Rep. 722; Oliver v. Sheeley, 9 N. W. Rep. 689; McMillan v. Malloy, 4 N. W. Rep. 1004; Davenport Plow Co. v. Mewis, Id. 1059; Woodlock v. Combs, 6 N. W. Rep. 362; West v. Ry. Co. 14 N. W. Rep. 292; Cattle v. Haddox, Id. 803.

(*i*) To insure reviewal of the charge of the court, the entire evidence must be certified and made part of the record. White v. Goodrich Transp. Co. 1 N. W. Rep. 75; Edwards v. Smith, 3 N. W. Rep. 758; McCormick v. Ketchum, 4 N. W. Rep. 798.

(*j*) Also to review the correctness of the verdict. McCormick v. Ketchum, 4 N. W. Rep. 798.

(*k*) Exceptions must be specific, and definitely point out the error complained of. Swenson v. Norton, 1 N. W. Rep. 22; Tower v. Densmore, Id. 315; Galloway v. McLean, 9 N. W. Rep. 98; French v. Lancaster, Id. 716; Stevens v. Taylor, 12 N. W. Rep. 625; Merchants' Bank of Canada v. Ortman, Id. 636.

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preme court to prove the same. The application may be made in the mode and manner, and under such regulations as, the court may prescribe, and the bill, when proven, must be certified by a justice thereof as correct, and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause.

Harst. Pr. 652; Bellows v. Tod, 3 N. W. Rep. 102.

§ 284. **In case of vacancy.** If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in the preceding section, apply to the supreme court to prove the same.

Harst. Pr. 653; Shaffronek v. Martin, 2 N. W. Rep. 343.

ARTICLE IX.—OF NEW TRIALS.

§ 285. **Definition.** A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury or court, or by referees.

Harst. Pr. 656; Barkow v. Sanger, 3 N. W. Rep. 16.

New trial cannot be had before the same referee. Hopkins v. Sandford, 2 N. W. Rep. 39.

Referee cannot grant a new trial. Murray v. School-dist. 9 N. W. Rep. 573.

§ 286. **Causes for—who applies.** The former verdict or other decison may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial.

Harst. Pr. 657; Stebbins v. Field, 2 N. W. Rep. 190; Kidd v. Fleek, Id. 1121; Kruger v. A. & F. Harvester Co. 4 N. W. Rep. 252; Lauer v. Bandow, Id. 774; Konklin v. City of Dubuque, 6 N. W. Rep. 894; City of Crete v. Childs, 9 N. W. Rep. 55; Johnson v. Dinsmore, 9 N. W. Rep. 558; Petrie v. Boyle, Id. 114; Cramer v. Hanaford, 10 N. W. Rep. 15; Hinman v. Hamilton Paper Co. Id. 160; Clutz v. Carter, Id. 541; Brett v. Farr, Id. 853; Fox v. Burke, 12 N. W. Rep. 459; Hill v. Denlinger, 12 N. W. Rep. 808; Golden Terra Min. Co. v. Smith, 11 N. W. Rep. 98.

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

1 Dak. 488; McKinney v. Simpson, 2 N. W. Rep. 535; Scott v. Waldeck, 10 N. W. Rep. 413; Oswald v. Railroad Co. 11 N. W. Rep. 112; Webster Co. v. Hutchinson, 12 N. W. Rep. 534.

3. Accident or surprise, which ordinary prudence could not have guarded against.

Tower v. Densmore, 1 N. W. Rep. 315; Nolan v. Grant, 5 N. W. Rep.

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513; Mehan v. C., R. I. & P. R. Co. 7 N. W. Rep. 613; Fetters v. Balch, 7 N. W. Rep. 688.

4. Newly-discovered evidence, material to the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

Bailey v. Landingham, 3 N. W. Rep. 460; Seeley v. Perry, 3 N. W. Rep. 678; Dingman v. State of Wisconsin, 4 N. W. Rep. 668; Helms v. Chadbourne, Id. 1065; Fenno v. Chapin, 8 N. W. Rep. 762; Smith v. Smith, Id. 868; Sheffield v. Mullen, 9 N. W. Rep. 756; Lampsen v. Brander, 11 N. W. Rep. 94; Cook v. Smith, 12 N. W. Rep. 617; Ogden v. State of Nebraska, 14 N. W. Rep. 165; Gorachi v. Hintz, Id. 379; State of Minnesota v. Wagner, 23 Minn. 544.

5. Excessive damages, appearing to have been given under the influence of passion or prejudice.

Bowe v. Rogers, 7 N. W. Rep. 547; Gorachi v. Hintz, 14 N. W. Rep. 379; Corcoran v. Harran, 12 N. W. Rep. 468.

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

Smith v. Lander, 4 N. W. Rep. 767; Jones v. Ry. Co. 5 N. W. Rep. 854; Richardson v. Coddington, 7 N. W. Rep. 903; Campbell v. Landberg, 8 N. W. Rep. 168; Ohlsen v. Manderfield, 10 N. W. Rep. 418; Stillwater Street Ry. Transfer Co. v. Rheiner, 12 N. W. Rep. 449; Potvin v. Curran, 14 N. W. Rep. 400; Id. 414, 365, 406.

7. Error in law occurring at the trial, and excepted to by the party making the application.

Territory of Dakota v. Gay, 2 N. W. Rep. 477; Eisley v. Malchow, 2 N. W. Rep. 372; Huot v. McGowen, 6 N. W. Rep. 426; City of Crete v. Childs, 9 N. W. Rep. 55; Jenks v. Knott's Mexican Silver Min. Co. 12 N. W. Rep. 588; Harrison v. Baker, 14 N. W. Rep. 541.

(*a*) New trial should be granted only for the causes specified. Flower v. Grace, 23 Minn. 32; Smith v. Smith, 8 N. W. Rep. 868.

(*b*) Motion for new trial may be waived and appeal taken. Gutwillig v. Stumes, 2 N. W. Rep. 774.

(*c*) Of the order for new trial. Brown v. Byam, 12 N. W. Rep. 770; Bowe v. Rogers, 7 N. W. Rep. 547.

(*d*) After special verdict has been set aside, party who does not ask for new trial waives it. Brown v. Byam, 12 N. W. Rep. 770.

§ 287. **Application for new trial—how made.** When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the preceding section, it must be made upon affidavits; for any other cause it may be made at the option of the moving party, either upon a bill of exceptions or a statement of the case, or upon the minutes of the court. On such hearing reference may be had in all cases to the pleadings and orders of the court on file; and where the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and stenographic report of the testimony or other papers used upon the trial. (*As amended March 4, 1881.*)

Harst. Pr. 658; St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497; Loucheim v. Strause, 6 N. W. Rep. 360; Hintrager v. Sumbardo, 7 N. W. Rep.

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all other books used as a part of the family library, not exceeding in value one hundred dollars.

5. All wearing apparel and clothing of the debtor and his family.

6. The provisions for the debtor and his family, necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year.

7. The homestead, as created, defined, and limited by law.

Harst. Pr. 690; Wilson v. Bartholomew, 7 N. W. Rep. 227.

§ 324. **Additional exemptions.** In addition to the property mentioned in the preceding section, the debtor may, by himself or his agent, select from all other of his personal property, not absolutely exempt, goods, chattels, merchandise, money, or other personal property, not to exceed in the aggregate fifteen hundred dollars in value, which is also exempt, and must be chosen and appraised as hereinafter provided.

Harst. Pr. 690. See sec. 747.

§ 325. **Specific alternative exemptions.** Instead of the exemption granted in the preceding section the debtor may select and choose the following property, which shall then be exempt, namely:

1. All miscellaneous books and musical instruments for the use of the family, not exceeding five hundred dollars in value.

2. All household and kitchen furniture, including beds, bedsteads, and bedding used by the debtor and his family, not exceeding five hundred dollars in value; and in case the debtor shall own more than five hundred dollars' worth of such property, he must select therefrom such articles to the value of five hundred dollars, leaving the remainder subject to legal process.

3. Three cows, ten swine, one yoke of cattle, and two horses or mules, or two yoke of cattle, or two span of horses or mules, one hundred sheep, and their lambs under six months old, and all wool of the same, and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned for one year, either provided or growing, or both, as the debtor may choose; also one wagon, one sleigh, two plows, one harrow, and farming utensils, including tackle for teams, not exceeding three hundred dollars in value.

4. The tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and, in addition thereto, stock in trade not exceeding two hundred dollars in value. The library and instruments of any professional person, not exceeding six hundred dollars in value.

Harst. Pr. 690; secs. 326, 327, 328, 329; Zielke v. Morgan, 7 N. W. Rep. 651.

§ 326. **Those by number chosen—by value appraised.** All the articles enumerated in the preceding section, which are exempt by limitation of number, must be chosen by the debtor, his agent or attorney; so, also, all property exempt by limitation of

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granting of and before such new trial, five dollars; for attending upon and taking the deposition of a witness conditionally, or attending to perpetuate his testimony, two dollars; for drawing interrogatories to annex to a commission for the taking of testimony, two dollars; for making and serving a case, or case containing exceptions, five dollars, except that when the case shall necessarily contain more than fifty folios, there shall be allowed two dollars in addition thereto.

4. For every trial of an issue of fact, five dollars.

5. To either party, on appeal to the supreme court, before argument, five dollars; for argument, fifteen dollars; and when a judgment is affirmed, the court may, in its discretion, also award damages for the delay, not exceeding ten per cent. on the amount of the judgment.

6. To either party, for every term not exceeding five, at which the cause is necessarily on the calendar, and is not tried, or is postponed by order of the court, three dollars; and for every term not exceeding five, excluding the term at which the cause is argued in the supreme court, five dollars.

§ 2. **When this act not to apply.** That none of the costs provided in this act shall be allowed to any plaintiff in a judgment upon a written contract for the payment of attorney's fees, executed before the passage of this act. (*Act of March* 2, 1883, *Session Laws*, *p.* 17.)

Wait, Code, 303; Harst. Pr. 1021; sec. 378.

§ 378. **Same in written instrument.** When, by the terms of any written instrument, it appears that the debtor has made a written contract for the allowance of attorney's fees, the same must be allowed by the court, in conformity to the instrument, and must form a part of the judgment and be incorporated therein.

Repealed, March 2, 1883; Session Laws, p. 18. See secs. 377, 615, 645.

§ 379. **Costs taxed in judgment.** In all actions and special proceedings the clerk must tax as a part of the judgment, in favor of the prevailing party, the allowance of his witnesses', the jury, officers,' and printers' fees, the compensation of referees, and the necessary expenses of taking depositions and procuring necessary evidence.

Secs. 375, 390, 394, 508, 544, 542, 382.

Witness fees. Pol. Code, Dak. *c*. 39, §§ 25; secs. 451, 452. Jury fees. Id. *c*. 39, § 26. Clerk's fees. Id. Sheriff's fees. Id. *c*. 39, § 9. Printer's fees. Id. *c*. 39, § 22. Referee's fees. Secs. 388, 564; McConkey v. Chapman, 12 N. W. Rep. 295.

The clerk of the court has power to tax and adjust costs only on the application of the prevailing party. Ballou v. Railroad Co. 10 N. W. Rep. 87.

The clerk must compute interest. Sec. 386; Herrick v. Butler, 14 N. W. Rep. 794; Boland v. Benson, 11 N. W. Rep. 911; Fairbanks v. Newton, 4 N. W. Rep. 327; In re Pinney, 7 N. W. Rep. 144; In re Will of Cole, 9 N. W. Rep. 664; State of Wisconsin ex rel. v. Jenkins, 1 N. W. Rep. 241; Siebert v. Mainzer, Id. 824; Thompson v. Townsend, Id. 1042; Drummond v. Irish, 2 N. W. Rep. 622; Schoeffel v. Hinze, 3 N. W. Rep. 379; Fairbanks v. Newton, 4 N. W. Rep. 327; McConkey v. Chapman, 12 N. W. Rep. 295; Weston v. Olson, 13 N. W. Rep. 700.

§ 380. **Appeal from same.** Any person aggrieved by the taxation of costs may appeal therefrom to the court or a judge thereof.

Harst. Pr. 1033.

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23 Minn. 567; Rhoades v. Siman, 24 Minn. 192; State of Iowa v. Foster, 7 N. W. Rep. 643; Thompson v. Howe, 21 Minn. 98; Daniels v. Langdon, 3 N. W. Rep. 497; Bontin v. Grow, 1 N. W. Rep. 11.

Extrajudicial statements are not. Rogers v. Hoenig, 1 N. W. Rep. 17; Smith v. Cumins, 2 N. W. Rep. 1041.

Record must be made up in the court below. Dobbins v. Lusch, 5 N. W. Rep. 205; Abrahams v. Sheehan, 7 N. W. Rep. 822; Alexander v. McGrew, 8 N. W. Rep. 347; Marwick v. Elsey, Id. 587; Nevil v. Clifford, Id. 296; Pittman v. Pittman, 2 N. W. Rep. 536; Weed v. Parsons, 3 N. W. Rep. 635; Hart v. Jackson, 10 N. W. Rep. 295; Deland v. Weddington, 7 N. W. Rep. 156; Wertin v. Crocker, 6 N. W. Rep. 683; State of Iowa v. Henry, 10 N. W. Rep. 678.

Facts certified for appeal. Wheaton v. Foster, 12 N. W. Rep. 629; Green v. Ronen, Id. 765.

Judge's certificate. Alexander v. McGrew, 10 N. W. Rep. 666; Fitch v. Flynn, 11 N. W. Rep. 649; Wheaton v. Foster, 12 N. W. Rep. 629. See sec. 280 and references.

Appeal bond is not necessary part of the record. Hilton v. Ross, 2 N. W. Rep. 862.

§ 409. **Dismissal upon failure.** If the appellant fail to cause the requisite papers to be transmitted to the supreme court, as required by the preceding section and the rules of the court, the appeal may be dismissed.

Harst. Pr. 954.

(*a*) Dismissal of the appeal for imperfect or defective record. Sec. 408 and references.

(*b*) The appeal will also be dismissed when the record fails to meet the strict formal requirements of the statute. St. Croix Lumber Co. v. Pennington, 11 N. W. Rep. 497; Cottrill v. Cramer, 1 N. W. Rep. 106; Betts v. City of Glenwood, 2 N. W. Rep. 1012; Leech v. Philpott, 12 N. W. Rep. 116.

(*c*) The appeal will also be dismissed when the record fails to show affirmatively a distinct question for the consideration of the court. Galloway v. McLean, 9 N. W. Rep. 98; 1 Dak. 335; Wilson v. Iowa Co. 1 N. W. Rep. 490; Throckmorton v. Horton, 3 N. W. Rep. 461; Wheaton v. Foster, 12 N. W. Rep. 629; Landers v. Boyd, Id. 740; Ranney v. Templin, 6 N. W. Rep. 296; Betts v. City of Glenwood, 2 N. W. Rep. 1012; Low v. Fox, 9 N. W. Rep. 131; County of Pottawattamie v. County of Marshall, Id. 326; Wilson v. Klokenteger, Id. 346; Leitelt v. Parker, 12 N. W. Rep. 219; Kitteringham v. Dance, Id. 612; Kehrig v. Peters, 2 N. W. Rep. 801; Nevil v. Clifford, 8 N. W. Rep. 296.

(*d*) But errors patent on the face of the record will be reviewed. Galloway v. McLean, 9 N. W. Rep. 98; Roode v. Dunbar, 2 N. W. Rep. 345; Everett v. Buchanan, 6 N. W. Rep. 439.

(*e*) Nor will the court review any question not submitted to the court below. Birdsall v. Carter, 7 N. W. Rep. 751; Roode v. Dunbar, 2 N. W. Rep. 345; McCormack v. Drummet, Id. 729; Black v. Boyd, Id. 1044; Kidd v. Fleek, Id. 1121; Alleman v. Stepp, 3 N. W. Rep. 636; Smalley v. Green, Id. 78; Kelly v. Rogers, 21 Minn. 147; Spencer v. Railroad Co. 22 Minn. 29, 34; Cogan v. Cook, Id. 137.

(*f*) Nor any new question first raised on appeal. Cottrill v. Cramer, 1 N. W. Rep. 106; Kidd v. Fleek, 2 N. W. Rep. 1121. Farrar v. Peterson, 3 N. W. Rep. 457; Huntley v. Smith, 12 N. W. Rep. 200. In re Campau's Estate, Id. 217; Winchester v. King, Id. 220; Byrne v. M. & St. L. R. Co. Id. 698; Kendig v. Overhulser, Id. 264. But see Holt v. Van Epps, 1 Dak. 207; Drake v. Barton, 18 Minn. (Gil.) 414.

(*g*) Nor errors assigned and not argued. Hepman v. City of Dubuque, 2

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§ 413. **Time for appeals.** The appeal to the supreme court under subdivison two of section twenty-two of this Code must be taken within sixty days after written notice of the order shall have been given to the party appealing. Every other appeal allowed must be taken within two years after the judgment shall be perfected by filing the judgment roll.

Wait, Code, 331; Harst. Pr. 939.

Time for appeal cannot be extended. Sec. 512; Sambs v. Stein, 11 N. W. Rep. 53; County Com'rs v. Saxon, 4 N. W. Rep. 309; Downer v. Howard, 3 N. W. Rep. 1; Republican Valley R. R. v. McPherson, 11 N. W. Rep. 739; Baldwin v. O'Laughlin, 9 N. W. Rep. 79; Humphrey v. Havens, 9 Minn. (Gil.) 301.

Notice given within the legal delay—appeal perfected after the delay had expired. Fairburn v. Goldsmith, 9 N. W. Rep. 300; Washburn v. Sharpe, 15 Minn. (Gil.) 43.

§ 414. **Undertaking required.** To render an appeal effectual for any purpose, a written undertaking must be executed on the part of the appellant by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding two hundred and fifty dollars; or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking or deposit may be waived by a written consent on the part of the respondent.

Wait, Code, 334; Harst. Pr. 941.

Conditions of, in different cases. Secs. 415–418. Stays execution. Sec. 419. To be served with notice of appeal. Sec. 420. May be waived. Sec. 414. Justification of sureties on. Sec. 421. To be filed with the clerk. Sec. 423. Attorneys prohibited from being security on. Pol. Code, Dak. c. 18, § 8; Schuek v. Hagar, 24 Minn. 339. Not a necessary part of record on appeal. Hilton v. Ross, 2 N. W. Rep. 862; sec. 408, and notes.

§ 415. **Stay of execution — additional security — deposit.** If an appeal be from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking be executed on the part of the appellant by at least two sureties, to the effect that, if the judgment appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal. Whenever it shall be made satisfactorily to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file, and serve a new undertaking as above; and in case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring such new undertaking, the appeal may, on motion to the court, be dismissed with costs. Whenever it shall be neces-

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§ 607. **Redemption — by whom — rights.** The property sold may be redeemed within one year from the day of sale in like manner and to the same effect as provided in chapter XIII of this Code for redemption of real property sold upon execution, so far as the sale may be applicable by:

1. The mortgagor or his successor in interest in the whole or any part of the property.
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. Such creditor is termed a redemptioner, and has all the rights of a redemptioner under that chapter.

And the mortgagor and his successor in interest has all the rights of the judgment debtor and his successor in interest as provided therein.

Sec. 633; Daniels v. Smith, 4 Minn. (Gil.) 117; Dickinson v. Dickinson, 1 N. W. Rep. 834; Iowa Co. v. Buson, 7 N. W. Rep. 597; Daniels v. Smith, 4 Minn. (Gil.) 117; Goenen v. Schroeder, 18 Minn. (Gil.) 51; Watkins v. Hackett, 20 Minn. (Gil.) 92; King v. Meighen, Id. 237; Everett v. Buchanan, 8 N. W. Rep. 36.

§ 608. **Notice to officer.** The notice of redemption required to be given to the sheriff under that chapter, may, in foreclosure by advertisement, be given to the officer or person making the sale.

Secs. 344–353, 633.

§ 609. **Deed.** If such mortgaged premises be not redeemed, it shall be the duty of the officer, or his successor in office, or other person, who sold the same, or his executors or administrators, or some other person appointed by the district court for that purpose, to complete such sale, by executing a deed of the premises so sold to the original purchaser, his heirs or assigns, or to any person who may have acquired the title and interest of such purchaser, by redemption or otherwise.

Sec. 623; Miller v. Miller, 12 N. W. Rep. 209; Donnelly v. Simonton, 7 Minn. (Gil.) 110.

§ 610. **Overplus.** If, after any such sale, there remain in the hands of the officer, or other person making the sale, any surplus money, after satisfying the mortgage on such real property sold, and payment of the costs and expenses of such forclosure and sale, the surplus must be paid over by such officer or other person, on demand, to the mortgagor, his legal representatives or assigns.

Harst. Pr. 727; Bailey v. Merritt, 7 Minn. (Gil.) 102; Ayer v. Stewart, 14 Minn. (Gil.) 68.

§ 611. **Record evidence of sale.** Any party desiring to perpetuate the evidence of any such sale, made in pursuance of these provisions, may proceed:

1. An affidavit of the publication of the notice of the sale, and of any notice of postponement, may be made by the printer or publisher

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process may be served on him in any other county or subdivision within the territory; or, if he be a non-resident of the territory, or absent, or concealed, the same proceedings may thereupon be had as are provided by this Code in such cases.

Harst. Pr. 392; secs. 92, 104; Civil Code, Dak. 1713; Walton v. Hollywood, 11 N. W. Rep. 209; McMann v. Westcott, 10 N. W. Rep. 190; Foster v. Henderson, 1 N. W. Rep. 596; Dick v. Moon, 4 N. W. Rep. 39; Forrer v. Kloke, 6 N. W. Rep. 428.

Administrator may foreclose. Jones v. Null, 1 N. W. Rep. 867; White v. Secor, 12 N. W. Rep. 586; Bell v. Pate, 11 N. W. Rep. 275.

Who to be made parties defendant. See secs. 82 and 83, and notes, 619 and 638; Merriman v. Hyde, 2 N. W. Rep. 218; Hurley v. Cox, Id. 705; Nims v. Sherman, 4 N. W. Rep. 434; Zaegel v. Kuster, 7 N. W. Rep. 781; Botsford v. Botsford, 12 N. W. Rep. 897; Macloon v. Smith, 5 N. W. Rep. 336; Forrer v. Kloke, 6 N. W. Rep. 428.

Defenses.

Sec. 597. Infancy. Terry v. McClintock, 2 N. W. Rep. 787. Want of notice. Brown v. Conger, 4 N. W. Rep. 1009; Brockway v. Newton, 5 N. W. Rep. 781. Duress. Macloon v. Smith, 5 N. W. Rep. 336. Failure of consideration. Dicken v. Morgan, 7 N. W. Rep. 145. Imperfect description. Botsford v. Botsford, 12 N. W. Rep. 897. Usury. Taylor v. Burgess, 6 N. W. Rep. 350.

Other defenses.

Mally v. Mally, 3 N. W. Rep. 670; Henry v. Evans, 9 N. W. Rep. 216; Maxfield v. Willy, Id. 271; Forrer v. Kloke, 6 N. W. Rep. 428; Lash v. McCormick, 17 Minn. (Gil.) 381.

§ 617. **Judgment includes.** Whenever an action shall be brought for the foreclosure or satisfaction of a mortgage, the court shall have power to render a judgment against the mortgagor for the amount of the mortgage debt due at the time of the rendition of such judgment and the costs of the action, and to order and decree a sale of the mortgaged premises, or such part thereof as may be sufficient to pay the amount so adjudged to be due, and costs of sale, and shall have power to order and compel the delivery of the possession of the premises to the purchaser; but in no case under this chapter shall the possession of the premises so sold be delivered to the purchaser or person entitled thereto until after the expiration of one year from such sale, and the court may direct the issuing of an execution for the balance that may remain unsatisfied after applying the proceeds of such sale.

Harst. Pr. 726; secs. 619, 628, 598, 309, 312, (Redemption,) 607, 633; Davenport Plow Co. v. Mewis, 4 N. W. Rep. 1059; Olinger v. Liddle, 13 N. W. Rep. 703; Johnson v. Van Velsor, 5 N. W. Rep. 265; Powers v. Golden Lumber Co. Id. 656; Johnson v. Payne, 9 N. W. Rep. 81; Maxfield v. Willey, Id. 271; Broquet v. Sterling, Id. 301; Ransom v. Sutherland, Id. 530; Hanford v. Robertson, 10 N. W. Rep. 126; Ketchum v. Breed, 11 N. W. Rep. 238; Gilbert v. Haire, 5 N. W. Rep. 321.

§ 618. **Action exclusive.** After such action shall be commenced, while the same is pending, no proceedings at law shall be

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PART III.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

CHAPTER XXXIV.

PRELIMINARY PROVISIONS.

§ 683. **Parties.** The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

Sec. 34.

§ 684. **Definitions.** A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a similar proceeding.

Secs. 509, 510.

WRIT OF CERTIORARI.

§ 685. **When and by whom granted.** A writ of *certiorari* may be granted by the supreme and district courts when inferior courts, officers, boards, or tribunals have exceeded their jurisdiction, and there is no writ of error or appeal, nor, in the judgment of the court, any other plain, speedy, and adequate remedy.

Harst. Pr. 1068; sec. 712; People ex rel. Scrafford v. Sup'rs Gladwin Co. 2 N. W. Rep. 904; Stone v. Miller, 14 N. W. Rep. 781; Merrick v. Township Board of Arbela, 2 N. W. Rep. 922; State of Minnesota ex rel. v. Board of Public Works of City of St. Paul, 8 N. W. Rep. 161; Woodin v. Phœnix, 2 N. W. Rep. 923; Wilson v. Gifford, 4 N. W. Rep. 170; Bresler v. Ellis, 9 N. W. Rep. 439; Howall v. Shepard, 12 N. W. Rep. 661; Turner v. Village of Stanton, 4 N. W. Rep. 204; Corrie v. Corrie, Id. 213; State of Minnesota v. Probate Court, 10 N. W. Rep. 209; Parman v. School Inspectors, 12 N. W. Rep. 910; Healy v. Kneeland, 4 N. W. Rep. 586; Herrick v. Carpenter, 6 N. W. Rep. 574, 577; Gager v. Chippewa Sup'rs, 10 N. W. Rep. 186; Ishpeming v. Marony, 13 N. W. Rep. 527; Wilson v. Bartholomew, 7 N. W. Rep. 227; Smith v. Powell, Id. 602.

§ 686. **How commenced.** The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party,

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TERRITORY OF DAKOTA, }
COUNTY OF ———. }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, C. D., who is named therein, is hereby appointed executor.

Witness, G. H., judge of the probate court of the county of ———, with the seal of the court affixed, the ——— day of ———, A. D. 18—.

[Seal, and the official signature of the judge.]

§ 54. **Of administration with will.** Letters of administration with the will annexed must be substantially in the following form:

TERRITORY OF DAKOTA, }
COUNTY OF ———. }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, and there being no executor named in the will, [or, as the case may be,] C. D. is hereby appointed administrator, with the will annexed.

Witness G. H., judge of the probate court of the county of ———, with the seal of the court affixed, the ——— day of ———, A. D. 18—.

[Seal, and the official signature of the judge.]

§ 55. **Of administration.** Letters of administration must be signed by the judge, under the seal of the court, and substantially in the following form.

TERRITORY OF DAKOTA, }
COUNTY OF ———. }

C. D. is hereby appointed administrator of the estate of A. B., deceased.

Witness G. H., judge of the probate court of the county of ———, with the seal thereof affixed, the ——— day of ———, A. D. 18—.

[Seal, and official signature of the judge.

Letters of administration.

Form of. Secs. 54, 55.
With will annexed. Secs. 50, 52, 54, 104.
To whom, and the order of preference. Secs. 56–61.
Petition for and contest. Secs. 62–70.
Revocation of, in favor of preferred applicant. Secs. 71–74.
" " will subsequently found. Sec. 101.
" " for failure to furnish additional bond. Sec. 92.
" " for disobedience to orders of court. Sec. 87.
" " for failure to return account of sales. Sec. 208.
" " in case of resignation. Sec. 105.
" " neglect to file inventory. Sec. 120.
" " for embezzlement. Secs. 108–112.
" " for neglect to notify creditors. Sec. 159.
" " for absconding or concealing himself. Sec. 247.
Peck v. Strong, 3 N. W. Rep. 697.

ARTICLE III.—LETTERS OF ADMINISTRATION—TO WHOM AND THE ORDER IN WHICH THEY ARE GRANTED.

§ 56. **Who entitled—order.** Administration of the estate of a person dying intestate must be granted to some one or more of

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Contingent claim. McKeen v. Waldron, 25 Minn. 466; sec. 263; Palmer v. Pollock, 4 N. W. Rep. 1113.

§ 141. **Proof of claims.** Every claim which is due when presented to the administrator must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the claimant or affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate is insolvent, no greater rate of interest shall be allowed upon any claim, after the first publication of notice to creditors, than is allowed by law on judgments obtained in the district court.

Sec. 158; O'Connor v. Beckwith, 3 N. W. Rep. 166; Wilcox v. Jackson, 10 N. W. Rep. 661; Mass. Mut. Life Ins. Co. v. Estate of Elliott, 24 Minn. 134.

§ 142. **How allowed not proved.** When it shall appear, upon the settlement of the accounts of any executor or administrator, that debts against the deceased have been paid without the affidavit and allowance prescribed by the preceding section, and shall be proven by competent evidence to the satisfaction of the probate court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set-offs, and that the estate is *insolvent*, [solvent,] it shall be the duty of the said court to allow the said sums so paid in the settlement of said accounts.

Sec. 249; Bunnell v. Post, 25 Minn. 376.

§ 143. **Claim by probate judge.** Any judge of the probate court may present a claim against the estate of a decedent, for allowance, to the executor or administrator thereof; and if the executor or administrator allows or rejects the claim, he must in writing present the same to the county clerk of the county, who shall thereupon be substituted in the settlement of said estate in place of the probate judge, as provided by law, and the judge of the probate court presenting such claim, in case of its rejection by the executor or administrator, or by such county clerk, acting as judge, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected. Secs. 4, 5.

§ 144. **Allowance and rejection of claims.** When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator, he must indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it must be presented to the judge for his approval, who must, in the same manner, indorse upon it his allowance or rejection.

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§ 207. **Legal disabilities.** The preceding section shall not apply to minors, or others under any legal disability, to sue at the time when the right of action first accrues; but all such persons may commence an action at any time within three years after the removal of the disability.

Secs. 387, 388.

§ 208. **Account of sales.** When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglect to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

§ 209. **Representative not purchaser.** No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must he be interested in any sale.

Watkins v. Zwietusch, 3 N. W. Rep. 35; Welsh v. McGrath, 13 N. W. Rep. 638; Baldwin v. Allison, 4 Minn. (Gil.) 11.

CHAPTER VIII.

OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND OF THE MANAGEMENT OF ESTATES.

§ 210. **Possession, powers, and duties.** The executor or administrator must take into his possession all the estate of the decedent, real and personal, except the homestead and personal property not assets, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees. Such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator, for the purposes of administration, as provided in this title.

Administrator—Powers and duties of.

To collect and possess the entire estate. Secs. 122, 98, 102.
To sue for recovery of property embezzled. Secs. 124–127.
" " " generally, for claims due estate. Secs. 211, 295, 230.
" " " damages from waste or conversion. Secs. 212, 213.
" " " rescission of fraudulent conveyance. Sec. 218.
" " " predecessor for account. Sec. 215.
" complete conveyances of property. Secs. 221–231.

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

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

7. To actions of forcible entry and detainer, or detainer only of real property, where the title or boundary thereof in nowise comes in question.

§ 1. **Jurisdiction of township justices.** That all justices of the peace of any township of this territory shall have the same power and jurisdiction in their respective counties as is now or hereafter may be conferred upon justices of the peace by law, and by an act entitled "An act to establish a Code of Procedure in courts of justices of the peace, and to limit the jurisdiction of the same," approved February 13, 1877, and all amendments made or which may be hereafter made to said act. (*Approved March* 1, 1881; *Sess. Laws*, *c.* 129, § 1.)

§ 2. **Proceedings—how governed.** That the civil and criminal proceedings before all justices of the peace of any township shall be governed and controlled by an act entitled "An act to establish a Code of Procedure in courts of justices of the peace, and to limit the jurisdiction of the same," approved February 13, 1877, and the Code of Criminal Procedure, and all amendments made, or which may be hereafter made, to said act and codes. (*Approved March* 1, 1881; *Sess. Laws* 1881, *c.* 129, § 2.)

Sec. 103.

§ 1. **Jurisdiction of justices.** That section sixty-two of chapter twenty-four of the Political Code be, and the same is hereby, amended to read as follows:

"§ 62. Justices of the peace of any town heretofore or hereafter organized *under* the provisions of said chapter twenty-four, shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of such town, and concurrent jurisdiction with all other justices in all civil cases, and in all criminal cases for offenses against the laws of the territory, committed within the county where such town is situated; and whenever complaint shall be made to the justice of the peace of such town, upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which such justice of the peace has jurisdiction, said justice of the peace shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the marshal of the town, the sheriff, or any constable of the county, or any person specially appointed by the justice for the purpose, and in all preliminary examinations before such justice he shall be governed by the Code of Criminal Procedure, and in all trials before such justice for offenses against the territory he shall be governed by the justice's Code." (*Approved February* 17, 1881; *Sess. Laws* 1881, *c.* 134.)

§ 15. **Jurisdiction of justices over unorganized counties—when territory to pay expenses.** The civil and criminal jurisdiction of justices of the peace in organized counties, in any judicial subdivision containing one or more unorganized counties, shall extend over all such unorganized county or counties in such subdivision; and all summons, warrants, orders, or process issued by such justice of organized counties, shall be served or executed by the sheriff or any constable of the same county; and the costs in all criminal prosecutions in the district and justices' courts, for offenses heretofore or hereafter charged to have been committed, when the same is not collected from the defendant, shall be audited and paid out of the territorial treasury; but no such costs shall be so audited or paid unless a duplicate itemized account of

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the same shall be certified to as correct by the district attorney of the district, and examined and allowed by the district court, one of which accounts shall be preserved as a public record in the office of the clerk of the district court of the subdivision; and the court shall have full authority to disallow any or all such costs and fees, whenever it deems the same illegally or unnecessarily incurred. And the expenses of all criminal prosecutions arising, or having arisen, in such unorganized counties, including the lawful costs of keeping the prisoners, shall be audited and paid out of the territorial treasury when the same is certified and allowed in the manner prescribed in this section. But no fees, costs, or charges shall be certified or allowed unless the same is first duly adjusted; and no fees, costs, or charges shall be so certified, allowed, or audited, as in this section provided, unless the officer prosecuting the same shall attach to such itemized account an affidavit that the same and every item thereof has been actually, legally, and necessarily incurred, and that no part thereof has been paid. (*Approved February* 23, 1881; *Sess. Laws* 1881, c. 87, § 15.)

Jurisdiction.

Of action to foreclose liens. Code Civil Proc. Dak. § 675.
" " under herd law. Code Civil Proc. Dak. § 754.
" " for damages against railroad for injuries to person or property. Code Civil Proc. Dak. §§ 680, 681.
" " in case of estrays. Pol. Code, Dak. c. 34.
" " under the poor laws. Pol. Code, Dak. c. 33.
" justice of the peace as coroner. Pol. Code, Dak. c. 21, §§ 67–87.
" " " " to issue subpœnas. Code Civil Proc. Dak. § 447.
" " " " to take depositions. Code Civil Proc. Dak. § 471.
" " when a school corporation is a party. Sess. Laws 1883, p. 111, § 116.
" " under game laws. Sess. Laws 1883, p. 147, § 6.
" " under act to prevent the spread of glanders. Sess. Laws 1883, p. 148, §§ 2, 3, 4.
" " under road laws. Sess. Laws 1883, p. 261, § 24, and Sess. Laws 1881, p. 198, §§ 3, 4.

Powers and duties assigned to justices of the peace by the Civil Code.

To apprentice children. Secs. 141, 143.
To take acknowledgment of indenture. Secs. 150, 157.
May authorize assignment of indenture. Sec. 151.
To authorize apprenticing of Indian children. Sec. 144.
May issue order to stockholders to call meeting. Sec. 412.
May take proof or acknowledgments of instruments for record. Sec. 656.
To hear complaint against bridge corporation. Sec. 533.

The courts of justices of the peace possess only such jurisdiction as is conferred on them by the organic laws and the statutes of this territory. Code Civil Proc. Dak. § 32.

The territorial jurisdiction of justices of the peace is co-extensive with the limits of the county. Secs. 97, 4. But a non-resident of the county may be summoned to answer on a joint contract. Secs. 16, 17.

Jurisdiction acquired by due legal service of summons. Code Civil Proc. Dak. 102, 103, 104. Newlove v. Woodward, 4 N. W. Rep. 237; Vleit v. Westenhaven, 4 N. W. Rep. 448.

By voluntary appearance. Sec. 11, Code Civil Proc. Dak. § 108.

Jurisdiction as to amount sued for. Bishop v. Freeman, 4 N. W. Rep. 290; Gates v. Neimeyer, 6 N. W. Rep. 150; Henckel v. W. & W. Manuf'g Co. 7 N. W. Rep. 780; Orr v. Le Claire, 12 N. W. Rep. 356; Storm v. Adams, 14 N. W. Rep. 70; Stevens v. Gunz, 23 Minn. 520.

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INDEX.

[NOTE. In the following general index the references to the several Codes in this volume are grouped separately under the subject-headings, the Code referred to being indicated in the "section" column at the beginning of each group. "C. C. P." refers to the Code of Civil Procedure, "P. C." to the Probate Code, and "J. C." to the Justices' Code. The abbreviation applies in each case not only to the section to which it is attached, but to all the following sections until a new abbreviation is introduced.]

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