CHAPTER XXXIV.

Of the Justice's Docket.

§ 600. What shall be entered in the docket.—"Every justice of the peace shall keep a docket, in which he shall enter:

1. The title of all causes commenced before him.[1]

2. The time when the first and subsequent process was issued against the defendant, and the particular process issued;[2]

3. The time when the parties appear before him, either without process, or on the return of process;[3]

4. When the pleadings are made orally, a concise statement of the declaration of the plaintiff, the plea of the defendant, the further pleadings of the parties, if any, and the issue joined;[4]

1—Justice enters judgment against Peter *Mayo* in a suit begun against Peter *Mayhue*. *Held,* error might be amended by following the summons: Merrick v. Mayhue, 40 Mich., 196.

2—The date of the service of the summons need not be shown in the docket: Van Kleek v. Eggleston, 7 Mich., 514. If docket does not show when summons issued the judgment is void on its face: Purdy v. Law, 132 Mich., 622; 94 N. W., 182.

3—Although the statute does not strictly require, it yet the justice should make his docket show in what manner the parties appeared, whether by attorney or in person: Morton v. Crane, 39 Mich., 529. The docket must show the hour as well as the day of appearance. Failure as to either is fatal to the judgment: Mudge v. Yaples, 58 Mich., 307; 25 N. W., 297. Where, however, the process is returnable "forthwith" it is sufficient if the day of appearance is given though the hour is not: Fruitport v. Judge of Muskegon Circuit, 90 Mich., 20; 51 N. W., 109. If defendant does not appear on the adjourned day the docket must show that plaintiff appeared within one hour of the time to which the adjournment was taken: Post v. Harper, 61 Mich., 436; 28 N. W., 161. If time of appearance not shown it is to be assumed that there was no appearance: Purdy v. Law, 132 Mich., 622; 94 N. W., 182.

4—When on entering the substance of an oral declaration the justice made a mistake which was not calculated to mislead, *held,* not to vitiate the judgment: Smoke v. Jones, 35 Mich., 409. Where a docket recited that the plaintiff declared "orally in assumpsit on the common counts, and specially in writing," it cannot in an action on the judgment, be assumed that, in declaring specially, he added

5. Every adjournment, stating on whose motion, and to what time and place;[5]

6. The issuing of a venire, stating at whose request, and the time and place of its return;

7. The time when a trial was had, the names of the jurors returned summoned who did not appear, and the fines imposed upon them, if any;

8. The names of the jurors who appeared and were sworn, the names of the witnesses sworn at the request of either party, stating at whose request; the objections, if any, made to the competency of a witness, and the decision thereon;

9. The verdict of the jury, and when received;

10. The judgment rendered by the justice, and the time of rendering the same;

11. The time of putting in any stay of execution, and the name of the surety or sureties therefor;

12. The time of issuing execution, and the name of the officer to whom delivered.[6]

13. The return of every execution, and when made;

14. The fact of an appeal having been made from any judgment rendered by him, and the time when made;

a count on a cause of action not cognizable by the justice, or that, even if he did, the judgment was rendered upon the bad count: Schlatterer v. Nickodemus, 50 Mich., 315; 15 N. W., 489. Where the defendant notifies the justice orally what his defense is he should enter it in due form on his docket unless imperfect in substance, and even in such a case he should be allowed to amend his statement of defense: Eddy v. Manshaun, 42 Mich., 532; 4 N. W., 286.

5—The neglect of the justice to record in his docket the place to which a cause is adjourned, is a clerical irregularity for which the judgment cannot be reversed, if the defendant was not misled and appeared and answered: Whelpley v. Nash., 46 Mich., 25; 8 N. W., 570. Where docket entry shows that a motion to adjourn was overruled and case adjourned to one o'clock such entry is sufficient though no date is give, it being fairly to be inferred that it is a holding open till one o'clock of the same day: Loder v. Reed, 129 Mich., 180; 88 N. W., 389. A holding over of the case from day to day is not technically an adjournment, within the meaning of that term in this clause of the statute, so as to make necessary the entries required in cases of adjournment: Woempener v. Ketchum, 110 Mich., 34; 67 N. W., 1106. The failure of the docket to show *place* to which the cause is adjourned is fatal to a judgment rendered on the return day, the defendant not then appearing: Waldron v. Palmer, 104 Mich., 556; 62 N. W., 731. It will not be presumed that the adjournment was to the office of the justice: Waldron v. Palmer, *supra*. To the same point: Fitzhugh v. Rivard, 109 Mich., 154; 66 N. W., 947.

6—A failure to comply with this provision *held* not to vitiate an execution properly issued: Grand Rapids Chair Co. v. Runnells, 77 Mich., 117; 43 N. W., 1006.

15. The fact of his having given a transcript of the judgment to be filed in the clerk's office, and the time when the same was given."[7]

"The several items in the preceding section enumerated, shall be entered under the title of each cause to which they respectively relate; and in addition thereto, the justice may enter any other proceedings had before him in such cause, which he shall think it useful to enter in such docket."[8]

7—C. L., § 957. A docket entry which recites the date and return day of the summons, but contains no other date except that at the end of it, which is the same as the return day of the summons, and does not state on what day the parties were called and plaintiff appeared and defendant failed to appear, is not sufficient to comply with C. L., § 957; it was not the intent of this statute to leave the time of appearance to be referred to the date of the judgment in cases where, from anything appearing on the face of the record, the two acts might have occurred on different days. A docket entry which does not show on what day the plaintiff appeared, does not show that he appeared within an hour after the time of return of process; and, as under C. L., § 836, a failure of the plaintiff to appear within that time works a discontinuance, such docket entry fails to show that the justice was authorized to render judgment, and is therefore not admissible to prove the validity of the judgment: Redman v. White, 25 Mich., 523.

As to the docket, see, further, King v. Bates, 80 Mich., 367; 45 N. W., 147; Hodges v. Bagg, 81 Mich., 243; 45 N. W., 842; Talbot v. Kuhn, 89 Mich., 30; 50 N. W., 791; Township of Fruitport v. Muskegon Circuit Judge, 90 Mich., 20; 51 N. W., 109.

8—C. L., § 958.

The docket entry of a justice's judgment is not technically a record, but it has all the effect of a record, and should be made in language as explicit and certain, as to matters of substance, as a judgment record of the circuit court. There should be no doubt or uncertainty as to the parties; who they are, plaintiff and defendant, and in whose favor, and against whom, the judgment was rendered, should clearly and conclusively appear from the docket itself: Rood v. School District, &c., 1 Doug., 502; Howard v. People, 3 Mich., 209; see, Whitwell v. Emory, 3 Mich., 88; Aldrich v. Maitland, 4 Mich., 205. The record of the court of a justice of the peace consists of the entries required by the statute to be made in his docket: Goodrich v. Burdick, 26 Mich., 39. An oral admission made as evidence merely in a justice's court, is not a matter of record: Morrison v. Riker, 26 Mich., 385. And, in a legal point of view, it is as necessary for a justice to sign, officially, any judgment rendered by him, as for a judge of a court of record to sign officially, the daily proceedings and judgments entered upon the journal kept by the clerk thereof: Howard v. People, 3 Mich., 207. Where the entry of judgment on the docket was followed immediately by the entry of a stay of execution in the same case, each being dated separately, but both dates being the same; *held*, that it was inferable from the docket that both entries were made at the same time, as one transaction, and that the official signature of the justice being appended at the foot of the entry of the stay, the judgment was not void for want of signature, nor the stay for want of attestation: Hollister v. Giddings, 24 Mich., 501.

The entry by the justice of the proceedings in a cause, in his docket, is a ministerial and not a judicial act and the statute requiring such entries, is directory merely: Hickey v. Hinsdale, 8 Mich., 267, 272; People v. Lowell Township, 9 Mich., 147-8. As the docket entry of a judgment is not the judgment itself, but only the evidence of it, it seems that the time

of entry whether at the rendition of the judgment, or subsequently, is not material: 8 Mich., 272. But it has been held that a justice could be required by a mandamus to enter the verdict of a jury and judgment thereon in accordance therewith: Lamberton v. Foot, 1 Doug., 102.

The docket entries should include everything necessary to show that the justice had jurisdiction, both as to the subject matter and the person, and all the proceedings required to constitute a valid judgment: Barnes v. Harris, 4 N. Y., 385; Goodrich v. Burdick, 26 Mich., 39; see, Allen v. Carpenter, 15 Mich., 33. A justice's docket record must disclose jurisdiction, and all docket matters which the law imperatively requires to be entered, but it must be construed fairly and reasonably, and in view of the fact that the justice is not to be expected to be a legal expert or master of legal forms. And as to whether the language of the entries does or does not show all these things, is a subject of construction. Reasonable certainty, or certainty to a common intent, is all that is necessary: Vroman v. Thompson, 51 Mich., 452; 16 N. W., 808.

A justice cannot give himself jurisdiction to proceed as in case of personal service, or preclude a defendant from proving the truth, by reciting in his minutes or docket that there was personal service, when the service was not personal and the evidence of service before him failed to show that it was: Smalley v. Lighthall, 37 Mich., 348. But, if a justice enters upon the docket all that the statute requires him to enter, the ordinary presumption in favor of the correctness of his official action, must support the judgment: Peck v. Cavell, 16 Mich., 11. Therefore a judgment will be sustained although the docket does not show the day on which process was served, the statute not requiring that to be entered on the docket, and if it becomes necessary to show sufficient service, that may be done by parol or by the return of the officer, endorsed upon the process; and for the same reason a judgment cannot be impeached because the docket does not show to whom the note upon which it was rendered, was payable, or whether it was negotiable: Van Kleck v. Eggleston, 7 Mich., 511. As to the form of the docket entries in this case, see, *Ibid.*, 512. Where an issue was tried by a jury, and the justice entered the subsequent proceedings as follows: "After hearing all the evidence, the jurors returned a verdict for plaintiff for the sum of $48.05, and costs of suit. Damages, $48.05; costs, $7,63." *Held,* that this entry was in effect a judgment, and sufficient to authorize the issue of an execution thereon: Overall v. Pero, 7 Mich., 315. And so, where the entry was, "The jury returned with a verdict for the plaintiff of eighteen dollars damages ($18.00) and costs of suit taxed at five dollars ($5.00);" but no formal judgment was rendered thereon; *held,* that the verdict itself was the judgment of the law in the case, and that execution might issue: Gaines v. Betts, 2 Doug., 98.

Where execution can issue only after five days from the rendition of the judgment unless upon proof of facts showing a necessity therefor, the justice need not enter the proof in his docket: Rash v. Whitney, 4 Mich., 495. Nor is it necessary that the docket should show that an execution was issued at the request of the plaintiff, as that will be presumed: Peck v. Cavell, 16 Mich., 9.

Entries in the docket, of facts coming within the personal knowledge and observation of the justice, cannot be disproved; as that the parties appeared, or pleaded, etc.. Facey v. Fuller, 13 Mich., 532. After a judgment has been entered in the docket, and the parties have left the presence of the justice, he has no power to amend the record of the judgment: Foster v. Alden, 21 Mich., 507; King v. Bates, 80 Mich., 367-8; 45 N. W., 147.

Amendment of docket entries by the justice, whether competent: See, Nicolls v. Lawrence, 30 Mich., 395, 399. And see, King v. McKenzie, 51 Mich., 461; 16 N. W., 813. A justice cannot amend his docket after it is once made up and officially signed by him: Kluck v. Murphy, 115 Mich., 128; 73 N. W., 128. Parol proof is inadmissible to vary or explain a justice's docket as to give him a jurisdiction not apparent on its face: Mudge v. Yaples, 58 Mich., 307; 25 N. W., 297.

§ 601. **Filing papers and indexing judgments.**—"Every justice shall carefully preserve and file all affidavits and papers delivered to him to be filed in any cause."[9]

"Every justice shall keep an alphabetical index of all judgments entered in his docket book, in the course of any judicial proceedings had before him, in which shall be inserted the names of the parties to each judgment, and the page of his docket where such judgment is entered."[10]

For the transfer of causes and proceedings in relation thereto, see chapter VIII., *ante*, and C. L., §§ 964-977, inclusive.

"When the same justice shall be re-elected and qualified to fill the vacancy occasioned by the expiration of his own term of office, his authority shall be considered as having continued without interruption; and all business commenced by or before him during his former term of office, may be prosecuted and completed in the same manner as if such former term had not expired."[11]

To establish a valid judgment the docket must show that the justice acquired and retained jurisdiction and omissions in this regard cannot be supplied by reference to the files in the case: Rasch v. Bissell, 106 Mich., 106; 64 N. W., 7.

9—C. L., § 962.

10—C. L., § 963.

11—C. L., § 965.