

CHAPTER 174.

CIVIL PRACTICE.

AN ACT to amend the Code of Civil Practice at Law and Equity, it being Part Third of the Revision of 1860.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That Section 2852 of the Code of 1851, and of the Revision of 1860, is hereby repealed, and the following is substituted therefor. In an equitable action the defendant shall demur before noon of the second day of the term, and shall answer in the same time, if the notice shall have been served sixty days before such term, and if not, then in sixty days from the day of completed service; but when the sixty days from the service extend beyond the term, if the defendant does not appear and claim that time to answer, and the petition is verified by affidavit, the plaintiff will be entitled to a default, as in ordinary proceedings.

SEC. 2. Section 2834 in Chapter 120 of the Revision of 1860 is hereby repealed, and the following is substituted therefor: Service by publication shall be deemed complete when the affidavit prescribed in section 2832 is filed and the notice is published in the manner and for the time prescribed in the preceding section, and the defendant shall be held to appear at the next term, and the affidavit of proof of publication shall be filed before the default is taken, but the same may be filed without regard to the ten days. The last named affidavit may be made by any person knowing the fact.

SEC. 3. Section 3036 of the Revision of 1860 is hereby repealed, and the following is substituted therefor: Each party shall have the right to challenge peremptorily, five jurors and no more; and the parties shall challenge alternately, commencing with the plaintiff, and the challenges for cause being first exhausted or waived, the parties shall then, in turn, in the same order, exercise the right of peremptory challenge.

SEC. 4. Chapter 138 of the Revision of 1860, is hereby repealed, and the following is substituted therefor: Section 3467. Actions, either *ex contractu* or *ex delicto*, do not abate by the death, marriage, or other disability of either party, nor by the transfer of any interest therein, if from the legal nature of the case the cause of action can survive or continue. In such cases,

the Court may, on motion, allow the action to be continued by or against his legal representative, or successor in interest; but in case of the death of a defendant, a notice shall be served upon his representative, under the direction of the Court.

Acknowledgments.

SEC. 5. Section 3677 of the Revision of 1860 is hereby repealed, and the following is substituted therefor: They shall then appear before some officer of the county authorized to take the acknowledgment of deeds and acknowledge the instrument by them signed to be their voluntary act and deed.

Issuing precept to summon Jurors.

SEC. 6. Section 3890 in Chapter 158 of the Revision of 1860 is hereby repealed, and the following is substituted therefor: If a jury trial be demanded, as provided in section 3880, the Justice shall issue his precept to some Constable of the township, directing him to summon the requisite number of jurors possessing the same qualifications as are required in the District Court.

Forcible detention.

SEC. 7. Section 3952 of the Revision of 1860, subdivision three, is hereby repealed, and the following is substituted therefor: Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless he claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases, such title shall be clearly and concisely set forth in the defendant's pleading, and shall be sworn to.

Duty of Constables.

SEC. 8. Section 3973 of the Revision of 1860, is hereby repealed, and the following is substituted therefor: Any Justice of the Peace may in writing, specially depute any discreet person of suitable age, to perform any particular duty properly devolving upon a Constable for that particular purpose, be subject to the same obligations and receive the same fees.

Deputy give bond.

If such person be appointed to serve a writ of attachment, execution or replevin, he shall, before levying upon property, execute a bond to the State of Iowa in a penal sum of not less than two hundred dollars, to be fixed by the Justice, with one or more freeholders as sureties, to be approved by and filed with the Justice making the appointment; and the usual official oath shall be indorsed thereon and signed.

Damages for breach of bond.

For any breach of such bond, any person injured thereby may bring suit thereon in his own name, and recover the same damages as upon a Constable's bond in like case.

Repealed.

SEC. 9. Sections 4031, 4032, 4033 and 4034 in Chapter 159 of the Revision of 1860 are hereby repealed.

SEC. 10. Section 3268 is amended by adding the following thereto :

But no writ of execution shall be a lien on personal Execution. property, before the actual levy thereof.

Approved April 8th, 1862.

CHAPTER 175.

MILITIA.

AN ACT to amend the Militia Law.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That all able-bodied white male Militia—who citizens of this State, between the ages of eighteen and constitutes, forty-five years, residing in this State, and not exempted by the laws of the United States, shall be subject to military duty, excepting,

1ST—All persons in the Army or Navy of the United States. Who exempt.

2D—Persons who have been or hereafter shall be regularly and honorably discharged from the army and navy of the United States in consequence of the performance of military duty in pursuance of any law of this State, and such firemen as are now exempted by law.

3D—Commissioned officers who shall have served as such in the Militia of this State or in any one of the United States for the space of four years, but no officer shall be exempt unless by his resignation after such term of service duly accepted or in some other lawful manner he shall have been honorably discharged.

4TH—Every non-commissioned officer, musician and private of every uniformed company or troop raised or hereafter to be raised, who has or shall hereafter uniform himself according to the provisions of any law of this State, and who shall have performed service in some uniformed company or troop in this State for the space of six years from the time of his enrollment in the active Militia, shall be exempt from military duty, except in cases of war, insurrection or invasion.

SEC. 2. If any member of such company or troop Same. who shall have been regularly uniformed and equipped, shall, upon his removal out of the beat of such company or troop, or upon the disbandment thereof, enlist into