

agents shall pay to each person so delayed a sum of not less than three dollars, which amount shall be added to the judgment for damage to property should the action be sustained.

Approved, April 16, 1870.

CHAPTER 166.

COUNTY TREASURER.

APRIL 16. AN ACT to Increase the Compensation of County Treasurers.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That section six, of chapter 129, of the laws of the 10th General Assembly is hereby amended by striking out the words "twelve hundred dollars" where they occur in the 12th and 13th lines of said section, and inserting in lieu thereof the words "fifteen hundred dollars."

Maximum compensation increased to \$1500.

Taking effect.

SEC. 2. This act shall take effect and be in force from and after its publication according to law.

Approved, April 16, 1870.

CHAPTER 167.

CIVIL CODE.

APRIL 16. AN ACT to Amend the Code of Civil Practice.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That sections 2708, 2724, 2728, 2729, 2730, 2732, 2733, 2741, 2746, 2771, 2776, 2803, 2805, 2824, 2843, 2856, 2907, 3007, 3189, 3222, 3225, 3227, 3272, 3305, 3308, 3323, 3602, 3603, and 4066 of the Revision of 1860, as now constituted, be and the same are hereby repealed, and there are enacted, in lieu of and as such sections, the following:

Rev. : part 3.

Sections repealed etc.

Attorney's lien;

SEC. 2. (Sec. 2708.) An attorney has a lien for a general balance of compensation, upon any papers of his client, which have come into his possession in the course of his professional employment; upon money in his hands belonging to his client; and upon money due to his client

and in the hands of the adverse party or his attorney in [an] action or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party, which after judgment may be by entering of in the margin of the judgment-record, a memorandum to the claim and amount due, signed by the attorney and attested by the clerk of the court.

On money in hands of adverse attorney;

notice how given.

SEC. 3. (Sec. 2724.) Should there be less than that number of such persons in any county, the list shall comprise all those who answer the above description; and, in counties containing a population of over twenty thousand inhabitants, the list of petit jurors shall consist of two hundred and fifty persons.

List of petit juror increased in counties of over 20,000 people.

SEC. 4. (Sec. 2728.) The Auditor shall thereupon file said lists in his office, and cause a copy thereof to be recorded in the election-book.

Auditor to file list of jurors. Service.

SEC. 5. (Sec. 2729.) Grand jurors shall be selected for the first term in the year at which said jurors are required, commencing next after the first day of January in each year, and shall serve for one year. Petit jurors shall be selected for each term wherein they are required, but no person shall be required to attend as petit juror more than two terms of court in the same year; and, in counties containing a population of more than five thousand inhabitants, it shall be cause for challenge that the person has already served two terms as juror during that year.

Petit jurors not required to serve more than two terms a year: same cause of challenge.

SEC. 6. (Sec. 2730.) At least twenty days previous to the first day of any term, at which a jury of either kind is to be selected, the clerk must write out the names on the lists aforesaid, which have not been previously drawn as jurors during that year, on separate ballots, and the county auditor and sheriff, having compared said ballots with the jury-lists and rectified the same, if necessary, shall place the ballots in a box to be provided for that purpose.

Drawing of jurors.

Auditor and sheriff.

SEC. 7. (Sec. 2732.) When grand jurors are to be selected, their number must be fifteen, and they shall serve for one entire year thereafter; the number of petit jurors shall be fifteen unless the judge of the district or circuit court shall, for the court over which he presides, in writing, direct the county auditor to select a greater number, in which case such greater number shall be selected; and separate lists shall be made for the district and circuit courts.

Number of jurors to be drawn.

Judges may direct oo. auditors to draw more.

Separate lists,

SEC. 8. (Sec. 2733.) Within three days after such drawing, the clerk must issue a precept to the sheriff, commanding him to summon the said jurors to appear

Summoning jurors. before the court for which they were selected, at eleven o'clock, A. M., of the first day of the next term thereof, (naming the month and day,) unless the judge of the court has previously directed a different hour or day for their appearance, in which case such direction must be observed.

Limitation of actions for fraud and for trespass. SEC. 9. (Sec. 2741.) In actions for relief on the ground of fraud, and in actions for trespass to property, the cause of action shall not be deemed to have accrued until the fraud or trespass complained of shall have been discovered by the party aggrieved.

Action barred by laws of other country; SEC. 10. (Sec. 2746.) But when a cause of action has been fully barred by the laws of any country where the defendant has previously resided, such bar shall be the same defense here as though it had arisen under the provisions of this chapter; but this section shall not apply to causes of action arising within this State.

Married women may sue and be sued, except, etc. SEC. 11. (Sec. 2771.) A married woman may in all cases sue and be sued without joining her husband with her, except in cases where the cause of action exists in favor or against both.

Deserted wife or husband may prosecute or defend actions. SEC. 12. (Sec. 2776.) When a husband, being a father, has deserted his family, the wife, being a mother, may prosecute or defend, in his name, any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had; and, under like circumstances, the same right shall apply to the husband upon the desertion of the wife.

Cases in which a change of venue may be granted in civil actions. SEC. 13. (Sec. 2803.) A change of venue, in any civil action may be had in any of the following cases:—
1st. Where the county in which the suit is pending is a party thereto.

2d. Where the judge is a party, or is directly interested in the suit, or is connected by blood or affinity with any person so interested nearer than the fourth degree.

Affidavit not to be verified by relatives. 3d. When either party files an affidavit verified by himself and three disinterested persons not related to the party making the motion nearer than in the fourth degree, stating that the inhabitants of the county, or the judge, is so prejudiced against him, or that the adverse party or his attorney has such an undue influence over the inhabitants of the county that he cannot obtain a fair trial. Where it is so made to appear to the judge, that a jury of twelve men cannot be obtained in the county where said action is pending, then, upon application of either party as aforesaid, a change of venue shall be granted to the nearest county in which a jury can be obtained.

Changes granted.

SEC. 14. (Sec. 2805.) The venue shall be changed to Where to. some other county in the same district, unless the objections are to the judge, or unless the objections made is claimed to hold to all the other counties of the district, and shall be to the most convenient county to which no objection is made. Whenever a change of venue shall be granted on account of prejudice or disability of the judge, When to circuit court. the case shall be transferred to the circuit court of the same county, unless the same objection exist to the judge of the circuit court, unless such change of venue be applied for in cases where the circuit court has no jurisdiction, in which case the cause shall be transferred to some other district court.

SEC. 15. (Sec. 2824.) If a county is defendant, service Service of original notice when civil corporation is defendant. may be made on the chairman of the board of supervisors or county auditor. If any other civil corporation, upon a trustee or other officer thereof. If no trustee, officer, agent, or employee of any incorporation, organized under the laws of this State, can be found within the State, on whom service can be made as now provided by law, service may be made on such corporation by publication.

SEC. 16. (Sec. 2843.) When any real property is the Notice to affect land in another county. subject of any action, and the same is situated in any other county than the one in which the action is brought, the plaintiff must, in order to affect third persons with constructive notice of the pendency of the action, file with the clerk of the district court of such county, a notice of the pendency of the action, and a description of the property in that county affected thereby, and from the time of such filing, only, shall the pendency of the action be constructive notice to subsequent vendees or incumbrance[r]s thereof, who shall be bound by all proceedings taken after the filing of such notice to the same extent as if a party to the action, and the clerk of such county must, immediately on receipt of such notice, index and record the same in the incumbrance-book. And within two months after the determination of such action there shall be filed with such clerk a certified copy of the final order, judgment, or decree, who shall enter and index the same in the same manner as though rendered in that county, or such notice of pendency shall cease to be constructive notice.

SEC. 17. (Sec. 2856.) The appearance term shall not be the trial term for equitable actions triable by the first method, except in cases in which notice has been served Trial term for equitable actions triable by first method.

sixty days before such term, and in which also the answer shall be merely a denial, and the proof documentary.

Verification by agent; averments showing competency. SEC. 18. (Sec. 2907.) If the pleading be founded on a written instrument, for the payment of money only, and such instrument be in the possession of the agent or attorney, the affidavit may be made by such agent or attorney, so far as relates to the statement of the cause of action thereon; but, when relief is asked, other than a money judgment or decree of foreclosure, the affidavit must contain averments showing competency, as hereinafter provided.

Verification of exhibits. SEC. 19. All exhibits referred to in the pleadings, the original of which are attached thereto, or are filed with the pleadings, may be introduced as evidence on the trial of equitable causes by the first method, without proof as to their genuineness, unless the same have been positively denied under oath.

Trial at first term. Mortgages and vendors' liens. SEC. 20. (Sec. 3007.) Except where otherwise provided, causes, including those brought to foreclose mortgages, and to enforce vendors' liens, shall be tried at the first term after due, legal, and timely service has been made, unless reasonable causes for continuance be shown.

Defendant may be examined on oath before court where action is pending, or any judge, when. SEC. 21. (Sec. 3189.) Whenever it appears by the affidavit of the plaintiff, or by the return of the writ of attachment, that no property is known to the plaintiff or the officer, on which the order of attachment can be executed, or not enough to satisfy the plaintiff's claim, and, it being shown to the judge of any court, by affidavit, that the defendant has property within the State not exempt from writ, the defendant may be required by such judge to attend before him, or before the court in which the action is pending, and give information on oath respecting his property.

Sheriff's sale of personal property without delay. Depreciation of proceeds. SEC. 22. (Sec. 3222.) When the sheriff thinks the property attached in danger of serious and immediate waste and decay, or when the keeping of the same will necessarily be attend[ed] with such expense as greatly to depreciate the amount of proceeds to be realized therefrom, or when the plaintiff makes affidavit to that effect, the sheriff may summon three persons, having the qualifications of jurors, to examine the same. The sheriff shall give the defendant, if within the county, two clear days' notice of such hearing, and he may appear before such jury and have a personal hearing. If they are of the opinion that the property requires soon to be disposed of, they shall specify in writing a day beyond which they do not

deem it prudent that it should be kept in the hands of the sheriff. If such day occur before the trial day, he shall thereupon give the same notice as for goods in execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. If the defendant give his written consent, such sale may be made without such finding of three men.

SEC. 23. (Sec. 3225.) In an action to enforce a mortgage of, or a lien upon personal property, or for the recovery, sale, or partition of such property, or by a plaintiff having a future estate or interest therein, for the security of his rights, where it satisfactorily appears by the petition verified on oath or by affidavits or the proofs in the cause that the plaintiff has a just claim, and that the property has been or is about to be sold, concealed, or removed from the State, or where the plaintiff states on oath that he has reasonable cause to believe, and does believe, unless prevented by the court, the property will be sold, concealed, or removed from the State, an attachment may be granted against the property.

Specific attachments.

Where property has been sold, concealed, etc.

SEC. 24. (Sec. 3227.) The attachments in the cases mentioned in the two last sections, may be granted by the court in which the action is brought, or by the judge of any court, upon such terms and conditions as to security on the part of the plaintiff, for the damages which may be occasioned by them, and with such directions as to the disposition to be made of the property attached as may be just and proper, under the circumstances of each case.

Attachments may be granted by any judge, and controlled by him as to terms.

SEC. 25. That sub-division one of section 3232 of Revision of 1860 be repealed, and there be enacted in lieu thereof the following:

Rev.: §3232.

1. The money arising from the sales of attached property.

Proceeds of attached property to apply in satisfaction of judgments.

SEC. 26. (Sec. 3272.) Judgments, bank-bills, and other things in action, may be levied upon and sold, or appropriated as hereinafter provided, and assignments thereof by the officer shall have the same effect as if made by the defendant, and may be treated as so made.

Levy on judgments and other things in action.

SEC. 27. (Sec. 3305.) If the debtor is the head of a family, there is further exempt, his homestead, as provided by law; one cow and calf, one horse, unless a horse has been exempted for him under the last section; fifty sheep, and the wool thereon; five hogs, and all pigs under six month[s]; the necessary food for all animals exempt from execution for sixty days; all flax raised by the defendant

Property of head of family exempt from execution enumerated.

Wool on fifty sheep.

Flax from one acre of ground.

on not exceeding one acre of ground, and the manufactures therefrom; one bedstead and the necessary bedding for every two in the family all cloth manufactured by the defendant, not exceeding one hundred yards in quantity; household and kitchen furniture, not exceeding one hundred dollars in value; all spinning-wheels and looms, and other instruments of domestic labor, kept for actual use; and the necessary provisions and fuel for the use of the family for six months. But no exemptions shall extend to property against an execution issued for the purchase-money thereof.

Executions for purchase money of property.

Exemptions in favor of single men, non-residents, and heads of families who have started to leave the State.

SEC. 28. (Sec. 3308.) None of the exemptions contained in this chapter are for the benefit of a single man not the head of a family, nor of non-residents, nor of those heads of families who have started to leave this State, but their property is liable to execution, with the exception, in the two former cases, of ordinary wearing-apparel, and trunks to contain the same; and in the latter case, of such wearing-apparel, with such property, in addition to such wearing-apparel, as the defendant may select, not to exceed seventy-five dollars in value, to be selected by the debtor, and appraised according to the provisions of section 3220; but, any person coming into this State, with the intention of remaining, is a resident, within the meaning of this chapter.

\$75.00 worth of property in addition to wearing apparel.

Rev.: §3920.

When judgment against executor, or decedent in his life time unsatisfied by personal estate.

SEC. 29. (Sec. 3323.) When a judgment has been obtained against the executor of one deceased, or *against the decedent in his lifetime*, which the personal estate of the deceased is insufficient to satisfy, the plaintiff may file his petition in the office of the clerk of the court where the judgment is a lien, against the executor, the heirs and devisees of real estate (if such there be) setting forth the facts, and that there is real estate of the deceased within the State, describing its location and extent, and praying the court to award execution against the same.

Petition.

Real property.

Redemption of property sold on execution.

SEC. 30. (Sec. 3332.) The defendant may redeem such property at any time within one year from the day of sale, as hereinafter provided, and will in the meantime be entitled to the possession of the property. But in no action where the defendant has taken an appeal from the circuit or district court, or stayed execution on the judgment, shall he be entitled to redeem.

None in case of appeal or stay.

Application for new trial in actions for real property to be made within one year.

SEC. 31. (Sec. 3584.) The court, in its discretion, may grant a new trial on the application of a party, or those claiming under him, made at any time within one year after the determination of the former trial.

SEC. 32. (Sec. 3602.) When a person is in possession

of real property, or in case where no one is in possession, an action may be brought, by any one claiming title, to quiet such title: Such claimant must file his petition under oath, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and averring that he is credibly informed and believes that the defendant makes some claim adverse to the estate of the petitioner, and praying for the establishment of the plaintiff's estate against such adverse claims, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises, adverse to the plaintiff. The notice in such action shall accurately describe the property and in general terms the nature and extent of plaintiff's claim, and shall be personally served on the defendant if he is a resident of the State; otherwise such notice may be served by publication as in ordinary actions. If defendant make default the court shall render judgment in accordance with the prayer of the petition. But defendant may plead to such action as in actions commenced in ordinary proceedings, and the court shall proceed to try and determine the same and render judgment accordingly.

Action to quiet title may be bro't by any one claiming title.

Petition.

Requisites and service of notice. Default.

Trial and judgment.

SEC. 33. (Sec. 3603.) If the defendant shall appear and disclaim all right and title adverse to the plaintiff, he shall recover his costs.

Disclaimer.

SEC. 34. (Sec. 4066.) Reasonable notice of the name of a witness, and the time and place when and where the same will be taken, must be given to the opposite party; but if notices are given in the same case by the same party, and of the taking of depositions at different places upon the same day, they shall be invalid; and no party shall be required to take depositions on the day of general election, or on the fourth day of July.

Notice to take depositions.

When invalid. Depositions not required on election day, or July fourth.

SEC. 35. Sections 2742, 2773, and 2775 are hereby repealed; *Provided*, that the repeal of section 2742 shall not affect the rights of parties in actions pending at the time of the passage of this act.

Sections of Revision repealed; what rights not affected.

SEC. 36. This act, being deemed by the General Assembly of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and Des Moines Statesman, newspapers published at Des Moines, Iowa.

Taking effect.

Approved, April 16, 1870.

I hereby certify that the foregoing act was published in *The Des Moines Daily Statesman*, April 28, 1870, and in the *Daily Iowa State Register*, April 29, 1870.

ED WRIGHT, *Secretary of State.*