

LAWS OF IOWA TERRITORY.

ABATEMENT.

AN ACT relative to pleas in abatement, and the abatement of suits by the death of parties.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That no plea in abatement, other than a plea to the jurisdiction of the court, or where the truth of such plea appears of record, shall be admitted or received, unless the party offering the same file an affidavit of the truth thereof. And where a plea in abatement shall upon argument be determined insufficient, the plaintiff shall receive full costs to the time of overruling such plea.

Pleas in abatement not to be received unless the party file an affidavit.

If plea be insufficient, plaintiff to have costs.

SEC. 2. When one or more of the parties of a company or association of individuals shall be sued, and the person or persons so sued shall plead in abatement that all the parties were not joined in the suit, such suit for that cause shall not abate, if the plaintiff or plaintiffs sue out a summons against the other partners named in the plea of abatement, and on the return of the summons may insert in the declaration the names of the other partners named in such plea, and proceed in all respects thereafter as though such other partners named in said plea had been included in the original suit. And if such partners named in said plea cannot be found, the plaintiff or plaintiffs, upon the return of the said summons, may suggest in his declaration the names of those not found, and proceed as in other cases where service is only made on part of the defendants. And no other plea in abatement for non-joinder shall be allowed in the case.

Companies or associations.

Case in which suit shall not abate.

Plaintiff how to proceed.

Further proceedings by plaintiff, if parties named in the plea cannot be found.

No other plea for non-joinder allowed.

Suit by a single woman not to abate on account of marriage.

Proviso.

SEC. 3. No action commenced by a single woman, who intermarries during the pendency thereof, shall abate on account of such marriage: *Provided*, the husband shall appear in court, and cause such marriage to be suggested on the record, and the suit may then proceed in the same manner as if it had been commenced after such marriage.

SEC. 4. When any action shall be pending in any of the courts of this Territory, and the plaintiff, before final judgment, shall die, the same shall not abate, if

Suit not to abate by death of plaintiff.

- Executor, &c. how to proceed.** it might originally have been prosecuted by his executor or administrator; and in such cases the executor or administrator may suggest such death on the record, and enter his, her, or their names on the suit, and prosecute the same. And if the defendant, while the action shall be pending in court, and before final judgment, shall die, the same shall not abate if it might originally have been prosecuted against the executor or administrator. And his executor or administrator may suggest such death on the record, and have a summons against the executor or administrator of such deceased defendant requiring them to appear and defend the action. If the said executor or administrator of such deceased defendant shall appear and make him, her, or themselves defendants, or if they shall not appear and make themselves defendants (such summons being served on either the executor or administrator ten days before the sitting of the court) the action shall in either case proceed to final judgment according to law. And when a suit shall be commenced against an administrator, and before final judgment his letters of administration shall be revoked, and letters of administration be granted to another person, the suit shall not abate, but the plaintiff shall suggest such fact upon record, and after summons shall be served upon the last administrator, the suit shall proceed to final judgment as in other cases under this act.
- Suit not to abate by death of defendant.** In a suit against an administrator, if his letters of administration be revoked, plaintiff how to proceed.
- Defendant's executor, &c. to be summoned.** In a suit against an administrator, if his letters of administration be revoked, plaintiff how to proceed.
- Whether such executor &c appear or not, action to proceed to final judgment.** In a suit against an administrator, if his letters of administration be revoked, plaintiff how to proceed.
- 3d, 4th, & 5th sections applicable to appeals &c.** **SEC. 5.** In any action pending before any court, if there be two or more plaintiffs or defendants, and one or more of them die before final judgment, if the cause of action survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not abate, but such death being suggested on the record, the action shall proceed.
- Abbreviations not to prejudice or abate any writ or process.** **SEC. 6.** The third, fourth, and fifth sections of this act shall be applicable to all appeals and writs of error.
- Repealing clause.** **SEC. 7.** No writ or process whatsoever shall abate or be in anywise prejudiced by the use of abbreviations commonly used in the English language, or by the use of figures for numbers as they have been heretofore and are now used.
- SEC. 8.** The act entitled "An act to prevent the abatement of actions in certain cases," approved October 12, 1829, is hereby repealed.
- APPROVED December 5, 1838.