

## AMENDMENTS AND JEOFAILS.

AN ACT Concerning Amendments and Jeofails.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That by the misprision of a clerk or other officer of the court in any place wheresoever it be, no record or process shall be annulled or discontinued by mistaking in writing one syllable or one letter too much or too little, but as soon as the thing is perceived by challenge of the party, or in other manner, it shall be immediately amended in due form, without giving advantage to the party that challenges the same because of such misprision; and the court, before whom such plea or record is made, or shall be depending, as well by way of adjournment as by appeal or otherwise, shall have power and authority to amend such record and process as aforesaid, as well after judgment in any suit, plea, record, or process given, as before judgment, as long as the same record and process is before them.

Misprision of clerk &c. not to annul process or record.

Record and process may be amended before or after judgment.

SEC. 2. The court in which any record, plea, process, declaration, count, warrant of attorney, writ, or pannel, is or may be, while the same remains before them, shall have power to examine such records, processes, counts, pleas, warrants of attorney, declarations, writs, pannels, and returns, by them and their clerks, and amend (in affirmance of judgments of such records and processes) all that which, to them in their discretion, seemeth to be misprision of the clerks therein, so that by such misprision of the clerks no judgment shall be reversed or annulled. And if any declaration, process, record, count, plea, warrant of attorney, writ, pannel, or return, be certified defective, otherwise than according to the writing which thereof remaineth in the offices, courts, or places, from whence they are certified, the parties, in affirmance of the judgments of such records and processes, shall have advantage to allege that the same writing is variant from the said certificates; and that being found and certified, the same variance shall be, by the said court, reformed and amended according to the first writing.

Power of court to examine record, plea, &c. and amend misprision of clerks.

Declaration, process &c. certified defective.

Variance to be reformed by the court.

SEC. 3. The courts before whom any misprision or default is or shall be found in any record or process Court may correct misprision

of sheriff and others,

which, or hereafter, shall be depending before them, as well by way of appeal or error, as otherwise, or in the returns (the same made by sheriffs, coroners, or any other) by misprision of the clerk of any of the said courts, or by misprision of the sheriffs, deputy sheriffs, or coroners, or their clerks or other officers, clerks or other ministers whatsoever, shall have power to amend such defaults or misprisions according to their discretion, and by examination thereof by the said courts to be taken where they shall think needful; and all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

As well after judgment, as on matter of law pleaded.

Decree, record, or judgment not to be reversed for erasures or interlineations.

SEC. 4. For errors assigned, or to be assigned, in any record, process, warrant of attorney, writ, original or judicial, pannel, or return, for that in any places of the same there be erasures or interlineations, or that there be any addition, subtraction, or diminution of words, letters, or titles, or parts of letters, found in any such record, process, warrant of attorney, writ, pannel, or return, no judgment, record, or decree, shall be reversed or annulled.

New entries by clerks in no wise to impair pleas, &c.

SEC. 5. Record or process real, personal, or mixed, whereof judgment or decree shall be given and enrolled, or things touching such pleas, shall in nowise be impaired or amended by new entering of the clerks, either by record of things certified in no term subsequent to that in which such judgment or decree is or shall be given and enrolled.

After verdict, judgment not to be stayed by jeofail or other default or negligence.

SEC. 6. If any issue hath been or shall be tried by any court or jury, and be found for either party, in any court of record, then the court, by whom judgment ought to be given, shall proceed and give judgment in the same, any mispleading, lack of color, insufficient pleading, or jeofail, or any miscontinuance or discontinuance, misconceiving of process, misjoining of the issue, lack of warrant of attorney, or any other default or negligence of any of the parties, counsellors, or attorneys to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force to all intents and purposes according to the said verdict or finding, without any undoing the same by appeal, writ of error, or false judgment, in like form as though no such default or negligence had ever been had or committed.

Such judgment to be valid.

SEC. 7. If a verdict of a court or jury shall hereafter be given for either party in any court of record, the judgment thereupon shall not be stayed or reversed by any default in form, or lack of form in any writ, original or judicial, count, declaration, plaint, bill, suit, or demand, for want of any writ, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of warrant of attorney, or by reason of any manner of default in process, upon or after any aid-prayer, or voucher; nor shall any such record or judgment after verdict, to be given hereafter, be reversed for any of the defects or causes aforesaid.

After verdict, judgment not to be reversed for lack of form &c.

SEC. 8. If any verdict be rendered by the court or jury for either party in any court of record, the judgment thereupon shall not be stayed or reversed by reason of variance, in form only, between the original writ or process and the declaration, petition, or demand, or for lack of any averment of any life or lives of any person, so as upon examination the said person be found to be in life, or by reason that any of the persons in whose favor the verdict is rendered, is an infant and appeared by attorney.

Or by reason of any variance in form, or lack of averment,

SEC. 9. If any judgment shall hereafter be given by a court or jury for either party in a court of record, judgment thereon shall not be stayed or reversed for any default in form, or lack of form, as because the name of the sheriff is not returned upon the original writ or process, or for default of entering pledges upon any petition or declaration, or for default of alleging the bringing into court any bond, bill, indenture, or other deed or writing, mentioned in the declaration or other pleading, for default of allegation of bringing into court letters testamentary or of administration, or by reason of the omission of the words "*with force and arms,*" or "*against the peace,*" or for or by reason of mistaking the christian or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month, or year, by the clerk, in any bill, petition, declaration, or pleading, when the right name, sum, day, month, or year, in any writ, record, or proceeding, or on the same record where the mistake is committed, is or are once correctly alleged, whereunto the party might have demurred and shown the same for cause, nor for the want of the averment or words, "*and this he is ready to verify,*" or "*and this he is ready to verify by the record,*" or for not alleging "*as appears by the*

Or for default in form or entering pledges, for misnomer, error in the sum or time, or for want of certain allegations, averments, and entries.

*record,*" or that there was no right venue, so as the cause was tried by a jury of the proper county or place where the action is laid; nor shall any judgment after any verdict be reversed for want of entering that the person against whom such judgment is given, "*be in mercy,*" or "*be taken,*" or by reason that the words "*be taken*" are entered for "*be in mercy,*" or that the words "*be in mercy*" for "*be taken,*" nor for that in the judgment "*it is granted,*" or "*it is adjudged,*" are entered for "*it is considered,*" nor for that the increase of costs after the verdict are not entered at the request of the party for whom judgment is given, nor by reason that the costs on any judgment are not entered to be by consent of the plaintiff; but all such omission, variance, defects, and other matters of like nature, not being against the right of the matters of the suit, nor whereby the issue or the trial is altered, shall be amended by the courts where such judgments are or shall be given, or whereunto the record is or shall be removed by appeal or writ of error.

Demurrers.

Court to decide only the causes set forth by the party demurring.

Certain omissions and defects not causes of demurrer.

SEC. 10. Where any demurrer shall be joined and entered in any action or suit in any court of record, the judges shall proceed and give judgment, according as the very right of the matter in law shall appear unto them, without regarding any imperfection, omission, or defect, for want of form in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as cause of the same, notwithstanding such omission, cause, or defect, might heretofore have been taken as matter of substance, so as sufficient matter appears on the said pleadings on which the court may give judgment according to the very right of the cause; and and therefore no advantage or exception shall be taken of or for an immaterial traverse, or of or for default of entering pledge upon any petition or declaration, for the default of alleging the bringing into court any bond, bill, indenture, or writing, mentioned in the declaration or other pleadings, or of or for the default of alleging the bringing into court letters testamentary or of administration, or of or for the omission of the words "*with force and arms,*" and "*against the peace,*" or either of them, or of or for the want of the averment or words, "*and this he is ready to verify,*" or "*and this he is ready to*

verify by the record." or of or for not alleging "as appears by the record," but the court shall give judgment to the very right of the cause as aforesaid, without regarding any such omission, imperfection or defects, or other matter of like nature, except the same be specially and particularly set down and shown for cause of demurrer: And no judgment shall be reversed for any such imperfection, omission, or defect, or want of form, except such only as are before excepted. And after demurrer joined, the court, before whom the same shall be pending, may, from time to time, amend all and every such imperfection, omission, and defect, and want of form, as before mentioned, other than those only which the party demurring shall specially and particularly set down, together with his demurrer, as aforesaid.

Except specially set forth.

Other omissions and defects may be amended after demurrer joined.

SEC. 11. Every thing hereinbefore contained shall extend to all judgments which shall be entered upon confession, *nihil dicit*, or *non sum informatus*, in any court of record, and no such judgment shall be reversed, nor any judgment upon any writ of inquiry of damages executed thereon shall be stayed or reversed for or by reason of any imperfection, omission, defect, matter or thing, which would have been aided and cured by this act in case a verdict had been given in such action or suit, so there be an original writ duly issued according to law.

Judgments on confession &c. not to be reversed for defects which would have been cured by verdict.

SEC. 12. This act shall extend to all writs of *mandamus*, and informations of the nature of *quo warranto*, and proceedings thereon.

Act to embrace writs of *mandamus* and *quo warranto*.

SEC. 13. All writs of error, wherein there shall be any variance from the original record, or any other defect, may and shall be amended and made agreeable to such record by the respective courts where such writs of error are or shall be made returnable.

Courts may amend writs of error.

SEC. 14. No part of this act shall extend to any indictment or presentment for any criminal matter or process upon the same; nor to any writ, action, or information upon any penal statute; nor to any outlaw or process thereupon in order thereunto.

This act not to extend to criminal matters or *qui tam* cases.

APPROVED, January 24, 1839.