

certified by the clerk, and filed in his office: *Provided*, Provido, touching the third person. that if the parties cannot agree on the third person, the court may name him.

SEC. 16. The like course shall be had with the award of such referees, as herein directed for arbitrators awards, and both referees and arbitrators shall have power to adjourn, from time to time, on good cause shown, and any one of them may administer the necessary oaths to witnesses. Subpœnas for witnesses before referees shall issue from the district court as in other cases; before arbitrators from a justice of the peace. The costs of reference shall be taxed as other costs of suit, and, if not otherwise provided for, may be determined by the district court.

APPROVED, January 25, 1839.

ATTACHMENTS.

AN ACT allowing and regulating writs of attachment.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That when any action founded on contract shall have been commenced, or shall be about to be commenced, in the district court in any county in this Territory, either by summons or *capias*, a writ of attachment shall be issued by the clerk of said court upon an affidavit being filed in his office containing the following requisites.

Writ of attachment to issue upon affidavit filed containing certain requisites.

1st. It must state that something is due from the defendant to the plaintiff, and as nearly as practicable the exact amount.

2nd. It must state that (as deponent verily believes) the said debtor is a non-resident of the Territory, or that he is in some manner about to dispose of or remove his property with intent to defraud his creditors, or that he has absconded so that the ordinary process cannot be served upon him.

SEC. 2. The said writ may also be issued in actions *ex delicto* in cases where bail has been ordered and a *capias* issued thereon, provided an affidavit shall be filed in the manner above directed stating the truth of one of the three requisites specified under the second head of the preceding section.

Other cases in which the writ may issue.

SEC. 3. In such cases the amount in which the defendant is to be held to bail shall be substituted in every instance for the amount sworn to be due, as required in section first. In other respects the pro-

Amount of bail to be substituted for the sum due.

ceedings shall be the same as in actions founded on contract.

Bond to be filed before writ shall issue in any case.

SEC. 4. Such writs of attachment however shall not issue in any case until there shall also be filed in the office of said clerk a bond, with sufficient sureties, to be by him approved, conditioned that the plaintiff shall pay any damages and costs which may be awarded to the defendant in any suit which said defendant may bring on said bond for damages sustained by a wrongful suing out of such writ of attachment.

To be quashed at costs of clerk if issued without affidavit and bond. Service of the writ.

SEC. 5. If any clerk shall issue a writ of attachment without such affidavit and bond filed as aforesaid, such writ shall be quashed at the costs of said clerk.

Property attached.

SEC. 6. The officer to whom the writ of attachment is directed shall, by virtue thereof, in presence of two citizens of the Territory possessing the qualifications of jurors, attach any of the lands, tenements, goods, chattels, rights, credits, moneys, or effects of the said debtor which may be found in his county, in whose hands soever the same may be, or so much thereof as shall be sufficient to pay the debt sworn to as aforesaid, together with the interest and costs of suit.

Inventory and appraisement.

SEC. 7. The said officer, together with the two citizens aforesaid, (who shall be under oath or affirmation to be by him administered) shall make a true inventory and appraisement of all the property so by him attached, which inventory and appraisement shall be signed by the officer and citizens aforesaid, and shall be annexed to and returned with said writ. The property attached shall be bound from the time of serving the writ as aforesaid.

Right of any claimant to be tested by a jury.

SEC. 8. Where the property attached shall be claimed by some person other than the defendant, the right of such claimant shall be tested by a jury, summoned by a justice of the peace in the same manner as is prescribed in like cases where property taken in execution is claimed by some stranger to the suit.

Officer may release or retain according to verdict. Verdict not conclusive against the parties.

SEC. 9. The officer may relinquish or retain said property according as the jury find for or against the title of said claimant thereto. Such verdict however shall not be conclusive against either of the parties interested, but the same proceedings may be instituted to obtain the property, or a compensation

therefor, as though the trial above provided for had not taken place.

SEC. 10. The property attached shall remain in the hands or care of the officer who served the writ to abide the judgment of the court, unless the defendant, or some other person, wishing to replevy the same, shall give bond in double the appraised value of said property, with two sufficient sureties, residents of said county, made payable to the plaintiff in the suit, and conditioned that said property or its appraised value shall be forthcoming to answer the judgment of the court in said suit. Property may be replevied.

SEC. 11. Such bond shall be filed in the office of the clerk who issued the said writ of attachment, and upon a breach of the condition thereof the plaintiff may bring his action of debt thereon for his own benefit. Bond to be filed.

SEC. 12. Should the property attached, or any portion thereof, be lost or destroyed by unavoidable accident, or without negligence, the condition of said bond shall not be deemed to have been broken. No infraction of the condition, if property lost by accident, &c.

SEC. 13. If the sheriff release the property without taking a sufficient bond, he shall be liable to the plaintiff (in case judgment be rendered against the defendant) for the appraised value of the property attached, or so much thereof as will satisfy said judgment. Sheriff liable, if he fail to take sufficient bond.

SEC. 14. Whenever goods are attached which, in the opinion of the officer having possession thereof, are in danger of immediate waste or decay, such officer shall summon three inhabitants of the county, having the qualifications of jurors, to examine the same. If these persons shall certify that in their opinion such goods are of a perishable nature, they shall specify a certain day beyond which they would not deem it prudent for such goods to remain in the custody of said officer. And thereupon immediately such officer shall post up notices at the court house and two other public places in his county, stating that, at the time so fixed and at a place to be named in said notices, he will sell said goods at public auction, which sale shall take place accordingly. When the property attached shall be of a perishable nature.

SEC. 15. The money arising from such sale shall remain in the hands of the sheriff, there to abide the event of the suit, for which money he shall be accountable. Authority to sell.

SEC. 16. Upon affidavit filed in the office of the clerk who issued the writ of attachment aforesaid, at Sheriff accountable for the proceeds.

SEC. 16. Upon affidavit filed in the office of the clerk who issued the writ of attachment aforesaid, at Garnishee to be summoned.

any time before the return day of said writ, stating that, as deponent verily believes, a certain person (naming him) has property of the defendant in his possession, or that he is indebted to the said defendant, provided such indebtedness is not for daily labor, said clerk shall issue a summons to said garnishee reciting the above facts, and requiring him to appear at the time and place when and where said writ of attachment is to be returned, which summons shall be issued and returned in the ordinary manner.

May be examined on oath touching the sum due, &c.

SEC. 17. If the said garnishee appears as required, he may be examined under oath as to the amount due from him to the said defendant, or as to the property and credits of the defendant in his hands or possession, and from the day of the service of the summons mentioned in the preceding section such garnishee shall stand accountable to the plaintiff for the property or credits in his hands, or which shall come into his hands after the service of said writ, or the debts due from the said defendant as aforesaid.

Failing to appear, may be proceeded against by attachment. When declaration must be filed.

SEC. 18. If said garnishee do not appear in court in compliance with the summons aforesaid, he may be proceeded against by attachment as for a contempt.

SEC. 19. The writ of attachment authorized by this act being merely auxiliary to the original writ by which the suit was commenced, only one declaration shall be necessary in the whole proceedings, which must be filed within ten days after the writ is issued, and before the return day thereof.

If defendant do not appear, clerk to prepare advertisement.

SEC. 20. If the process by which the suit is commenced should not be served upon the defendant, and a voluntary appearance be not made by him before the end of the term at which the writ of attachment aforesaid was made returnable, immediately after such term the clerk who issued said writ shall make out an advertisement in which he shall state the names of the parties, the time when, from what court, and for what sum, said writ of attachment issued, and that unless the defendant appear and plead before the next term of the court, judgment will be entered and the property so attached will be sold to satisfy the same.

Plaintiff shall cause same to be published.

SEC. 21. Such advertisement shall be delivered to the plaintiff, or his attorney, on demand, who within thirty days thereafter shall cause the same to be published in some newspaper printed in the territory,

most convenient to the place where the court is held, and such publication shall be continued successively for four weeks at least.

SEC. 22. If the plaintiff fail to have such notice so published, his attachment shall be dismissed with costs. Falling to do so, attachment to be dismissed.

SEC. 23. Although the defendant may not have been served with the original process by which the suit was commenced, he may nevertheless appear and plead to the declaration at any time before judgment shall have passed against him by default, after which plea the proceedings to final judgment shall be the same as in ordinary cases. Defendant may plead at any time before judgment

SEC. 24. If after the publication prescribed in section twenty-one the defendant do not appear as therein required, the final judgment thereupon entered shall be conclusive so far as regards the property attached, or the amount obtained from garnishees in the same manner hereinafter provided. If defendant fail to appear after public notice, judgment to be conclusive

SEC. 25. After judgment in such cases, the property attached shall be advertised and sold in the same manner as is provided for property levied on by writ of *fiери facias*, or if such property shall have been replevied, as provided for in section eight, the plaintiff may forthwith bring his action on the bond, unless the condition thereof be fulfilled. Property to be sold; or, if replevied, plaintiff may sue on the bond.

SEC. 26. If the sum thus realized, together with that obtained from garnishees in the manner hereinafter provided, shall be insufficient to satisfy the demand proved, the plaintiff may at any time thereafter bring another suit thereon in the same manner as though the proceedings above authorized had not been instituted, in which said second suit the amount recovered as aforesaid shall be regarded merely as a credit to that extent in favor of the defendant. If plaintiff's demand be not satisfied, a second suit may be instituted.

SEC. 27. Where a summons shall have been served upon any garnishee in the manner prescribed in section sixteenth, if he shall appear and answer as required, the court (after judgment in said action shall have been rendered against defendant) may enter up judgment and award execution against said garnishee to the amount of the defendant's property or credits in his hands, together with debts due by him to said defendant, or so much thereof as shall be necessary to satisfy said judgment, but no prior lien of such garnishee on said property shall be thereby affected. Judgment against garnishee.

If garnishee fail to appear conditional judgment to be given, and *scire facias* to issue.

SEC. 28. Where such garnishee, having been **duly** summoned, shall fail to appear and answer in **the** manner provided in section seventeenth, the **court** shall direct a conditional judgment to be entered **up** against him to the full amount of the plaintiff's **law-**ful demand against the defendant, together with costs of suit. Thereupon a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to show cause why final judgment should not be entered against him. Upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear, or if he cannot be found in the county, or if, having appeared, he shall fail to show sufficient cause as aforesaid, the court shall confirm the judgment against him and award execution accordingly.

Set off.

SEC. 29. The defendant, against whom an attachment has been issued under the provisions of this act, may avail himself of any set off properly pleadable in other respects although not due when the suit was commenced, provided such set off be due at the time of trial. And any claim, due or not due, may be set off by the garnishee, whether it exist against the plaintiff or defendant in the suit.

Writ may issue and be served on Sunday.

SEC. 30. The writ of attachment as authorized by this act may be issued and served on Sunday, *provided*, in addition to the requisites prescribed in section one, the affidavit shall state that it would be unsafe to delay proceedings till Monday.

Remedies for parties aggrieved.

SEC. 31. Any person feeling himself aggrieved by the judgment of the court, made under the authority of any of the provisions of this act, shall be entitled to the same remedies as are allowed under similar circumstances in ordinary cases.

Attachment not to be quashed for insufficiency of affidavit, &c.

SEC. 32. No writ of attachment shall be quashed, nor the subsequent proceedings deemed invalid, on account of any defect in the writ which would not have been fatal in a summons, nor on account of any insufficiency in the affidavit or attachment bond, provided a sufficient affidavit or bond shall be filed within a reasonable time after objections have been taken to those originally filed.

May issue against separate or joint estates, or both.

SEC. 33. When two or more are jointly bound or indebted, the writ of attachment provided for by this act may be issued against the separate or joint estates, or both, of such joint debtors, or any of them, in the same manner as provided for in other cases.

SEC. 34. The act of the Legislative Council of the Territory of Michigan, approved April 12th, 1827, entitled "An act allowing and regulating writs of attachment" is hereby repealed: *Provided*, that nothing in this act contained shall be so construed as to affect any suit of attachment already commenced in this Territory. This act to take effect, and be in force, from and after the first day of June next.

FORMS.

The following, or other equivalent forms, shall be deemed sufficient in cases to which they apply:

WRIT OF ATTACHMENT.

County } 88

To the sheriff of said county:—Whereas, A. B. has stated on affidavit that J. S. is justly indebted to him [*or the plaintiff whoever he may be*] in an amount not less than — dollars. [If the writ is issued in an action *ex delicto* it should state that] Whereas, in an action of (*here state the action*) brought by A. B. against J. S., an order has been duly obtained directing the said defendant to be held to bail in the sum of — dollars: and whereas, an affidavit has been filed according to law, stating that, as deponent verily believes, the said J. S. is a non-resident, &c. (*the same as above*) and also that, as deponent verily believes, said J. S. is a non-resident of this Territory [or that he has absconded, or is about to dispose of his property, &c. according to the requirements of section first.]

These are therefore, in the name of the United States, to command you to attach the lands, tenements, goods, chattels, rights, credits, moneys, and effects of the said J. S., wherever the same may be found within your county, or so much thereof as may be necessary to satisfy the amount above stated, together with interest and costs of suit, and safely to preserve said property to be dealt with according to law. And you are also required to make due return of your doings in the premises to the district

court of said county, on the first day of the next term thereof, and have you then and there this writ. Witness, &c.

SUMMONS TO GARNISHEES.

County. } s s.

To the sheriff of said county:—Whereas A. B. has sued out a writ of attachment against J. S. and whereas the said A. B. (*or whosoever was the deponent*) has stated on affidavit that K. S. and M. N. have property or credits in their hands or care belonging to the said J. S. and that R. H. is indebted to the said J. S. These are therefore, in the name of the United States, to command you to summon the said K. S., M. N., and R. H., to appear before the district court of said county, on the first day of the next term thereof, to answer such questions in the premises as may be propounded to them by the said court, or under its direction. Hereof fail not, and have you then and there this writ, with a return of your doings thereon. Witness, &c.

APPROVED, January 7, 1839.

BAIL.

AN ACT concerning Bail.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That in all actions founded on contract a *capias* may be the first process, provided the affidavit of the plaintiff, or some credible person, containing the following particulars, be first filed with the clerk who is to issue the same. 1st, It must state (either absolutely, or as deponent has been credibly informed and verily believes) that there is an indebtedness of the defendant to the plaintiff, and that at least a certain amount (*numing it*) is due. 2d, Also that the defendant has removed his property (or a portion thereof) from the Territory, or concealed or otherwise disposed of the same with intent (*in either case*) to defraud his creditors. Or, that he has within this Territory, money, or other property or things in action, which cannot

In actions on contract *capias* to be the first process.

Particulars to be stated in plaintiff's affidavit.