

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.

be reached by writ of attachment, and that he is about to abscond, with intent to defraud his creditors, as deponent verily believes.

SEC. 2. A *capias* may also issue in actions of trespass for taking personal property, and in actions for trespass upon lands. Actions of trespass.

SEC. 3. But in such case an affidavit of the plaintiff, or some credible person, must have been filed as aforesaid, stating positively the fact of the trespass having been committed, and specifying, as nearly as practicable, the amount of damages thereby sustained by the plaintiff in action. Trespass and damages to be stated in the affidavit.

SEC. 4. In all other actions, *ex delicti*, a *capias* shall not issue without the order of a judge of the supreme court. Other actions. Order of judge of sup. court.

SEC. 5. The application for such order must be founded on an affidavit, stating the nature of the injury for which reparation is sought, and also the other circumstances which are relied upon for obtaining such order. Affidavit to state the nature of the injury, &c.

SEC. 6. Except for intentional injuries, no such order shall be made, nor then unless it shall be rendered probable that the plaintiff will be otherwise without adequate remedy. Order not to be made except for intentional injuries.

SEC. 7. The judge granting such order shall insert therein the amount in which the defendant shall be held to bail, and the clerk issuing the *capias* shall endorse thereon the same amount. Amount of bail to be inserted in the order, and endorsed on *capias*.

SEC. 8. In other cases he shall thus endorse upon the *capias* double the amount stated in the affidavit on which the writ is founded as aforesaid, but this in no case need be the same as the amount of debt or damages inserted in the body of the writ. In other cases what shall be endorsed.

SEC. 9. Where the name of the defendant shall be unknown to the plaintiff, none of the proceedings in the case shall be deemed defective on account thereof, provided said defendant be therein described with such accuracy as to leave no probable grounds for mistake. In what case proceedings shall not be deemed defective.

SEC. 10. A *capias* shall be served by arresting the defendant, and keeping him in custody until discharged according to law. How *capias* to be served.

SEC. 11. Every defendant so arrested shall be discharged upon executing to the sheriff of the county a bond, with sufficient security, in a penal sum equal to the amount numbered in the writ as aforesaid, conditioned that the said defendant will appear at the return day of said writ, and not depart without Defendant to be discharged on giving bond to sheriff.

permission of the court, which bond shall be filed with the clerk who issued the writ.

If def't be committed, the fact to be stated in the return. Def't may be discharged, and securities released, upon filing special bail.

SEC. 12. Whenever a defendant is committed to prison for want of bail, that fact shall be specially stated in the return of the writ.

SEC. 13. When the action shall have been commenced by *capias*, if the defendant appear agreeably to the conditions of the bail bond, he may at any time thereafter, on motion, be discharged from custody, and the securities in his bail bond released from liability, upon the filing of special bail in the manner hereinafter mentioned, either by the defendant, the sheriff, or the securities in the said bail bond.

What persons shall not be permitted to be special bail.

SEC. 14. No person shall be permitted to be special bail as aforesaid, unless he be a householder, and resident within this Territory, or unless he possesses real estate of sufficient value within the same, and no counsellor or attorney at law, sheriff, or other person concerned in the execution of process, shall be permitted to be special bail in any action.

Bail to be by recognizance.

SEC. 15. Such bail shall be by recognizance, in a penalty equal to the amount endorsed on the *capias* as aforesaid, conditioned that, if judgment in the action be rendered against said defendant, he shall pay the amount thereof, or surrender himself on the issuing of a writ of execution against his body.

In open court, or before a justice of the peace.

SEC. 16. Such recognizance may be entered into in open court in the usual manner, or it may be taken by any justice of the peace of the county, in which case it shall be made in writing, signed by the parties to be thereby charged, and filed with the clerk of the court in which the cause is pending.

Course to be pursued if bail be excepted to as insufficient.

SEC. 17. If such bail be excepted to as insufficient, before the third day of the term to which the writ was returnable, they shall either justify, or new bail shall be put in and justify, before the defendant shall be discharged, or the securities in his bail bond released from their liability. And in all cases where the recognizance of bail shall be entered into before a justice of the peace as aforesaid, such bail shall justify in the first instance.

In what the justification of bail shall consist.

SEC. 18. The justification of bail shall consist in stating on oath, or affirmation, that over and above all just demands against them, they are severally worth an amount equal to that stated in the recognizance as aforesaid.

SEC. 19. Where such justification shall not take place in open court, it shall be made by affidavit, which shall be filed with the clerk of the court aforesaid.

If not in open court, justification to be made by affidavit.

SEC. 20. If the defendant do not appear as aforesaid, the cause notwithstanding may progress in the ordinary manner, the sheriff and the security in the bail bond (if one shall have been taken) may be admitted to defend the action; and if judgment therein be rendered for the plaintiff, it shall be jointly against the defendant, the sheriff, and the security aforesaid, or merely against the defendant and sheriff, if no bail bond shall have been taken.

Def't failing to appear, sheriff and security may defend.

Judgment.

SEC. 21. In such case the sheriff, on motion, may have judgment for the same amount against the defendant, or (if a bail bond shall have been given) against the defendant and the security therein jointly. In the latter event, such security may also, on motion, have judgment for the like amount against the said defendant.

Remedy to sheriff

To security.

SEC. 22. The judgments aforesaid, in favor of the sheriff and security on the bail bond, being merely intended for their indemnification, execution shall only be issued thereon for the amount collected of such parties respectively on the antecedent judgment as aforesaid; which amount shall appear from the return of the officer in whose hands the execution on such antecedent judgment shall have been placed.

For what am't execution shall issue.

SEC. 23. Where judgment shall have been rendered jointly against the defendant, the sheriff, and the security, the officer, to whom the *feri fencias* thereon shall have been directed, shall levy in the first instance on the property of the defendant, if any such be found.

To be levied on defendant's property, if any.

SEC. 24. If such property be sufficient to satisfy the said judgment and costs, or if, before a levy upon the property of the said sheriff or security, the said defendant be arrested by, or surrendered to, said sheriff, both the sheriff and the security aforesaid shall be released from all liability by reason of said judgment.

Arrest or surrender of def't to discharge sheriff and security.

SEC. 25. The defendant in such case shall be considered as having been arrested by execution against his body (where indeed such was not the fact) and shall remain in the custody of the sheriff until the payment of the judgment, or until he be discharged by due course of law.

To remain in custody of sheriff.

**Bail may surrender principal, or def't may surrender himself.** SEC. 26. The bail of any defendant (whether bound by bail bond, or by recognizance as aforesaid) may surrender their principal, or such defendant may surrender himself in exoneration of his bail; which surrender must be to the sheriff, either in open court, or in vacation.

**Surrender to be certified, and bail discharged.** SEC. 27. Where such surrender shall be made to the sheriff in vacation, he shall thereupon certify the fact, in writing, that the defendant is in his custody. Upon such certificate being filed with the clerk of the court, he shall enter on the record of the court an order of course that the bail be discharged, and shall also, on demand, deliver up the bail bond, or the written recognizance (if such shall have been filed with him as aforesaid) to be cancelled.

**Surrender made before filing special bail.** SEC. 28. Where such surrender shall have been made previous to the time for filing special bail as aforesaid, the sheriff shall again release the defendant upon the same terms and conditions as after the original arrest; and if such surrender shall be made after the filing of special bail as aforesaid, the defendant may give such bail anew in the same manner and with like effect as hereinbefore provided.

**After.** SEC. 29. In all cases where a recognizance and affidavit of justification, as aforesaid, shall be filed with the clerk, he shall enter on the records of the court an order of course that the defendant be discharged from custody, and shall, on demand, furnish the agent or attorney of the defendant an exemplified copy thereof.

**Order for discharge of def't on filing recog. and affidavit.** SEC. 30. The sheriff, upon being served with said copy, shall forthwith discharge the said defendant.

**Copy of order to be served on sheriff. Bail may arrest defendant.** SEC. 31. Any one of the bail aforesaid, upon application to the said clerk of the court, may obtain a *capias* to him, directing and authorizing him to arrest the defendant wherever he may be found in this Territory, and bring him forthwith to be surrendered to the sheriff of the proper county.

**Copy of bail bond must accompany *capias*, to render it valid in other counties.** SEC. 32. Such *capias*, to be valid in any other county than that in which it shall have been issued, must be accompanied by a copy of the bail bond or recognizance aforesaid, certified by the clerk under the seal of the court.

**Defendant may be arrested by bail in any part of the Territory.** SEC. 33. Subject to the qualification contained in the last preceding section, said bail, by virtue of the *capias* aforesaid, shall in any county in this Territory possess all the powers of the sheriff of such county to arrest the defendant, and may use all needful

means to secure said defendant for a reasonable time until he can be surrendered to the sheriff of the proper county.

SEC. 34. All costs and expenses incident to the surrendering of the defendant, and giving new bail as aforesaid, shall be paid eventually by the defendant.

Costs on surrender and new bail.

SEC. 35. The plaintiff in the action shall not be entitled to bring any suit on the recognizance of bail until,

When plaintiff entitled to bring suit on recog. of bail.

1st, An execution against the property of the defendant shall have been issued to the sheriff of the proper county, and the same returned unsatisfied in whole or in part. And,

2d, An execution against the body of the defendant, at least fifteen days between the test and the return day thereof, shall have been issued to said sheriff, and by him returned that the defendant could not be found in his county.

SEC. 36. In such action against bail, they may plead that the plaintiff has not pursued the above directions, or that any collusive or fraudulent means were used to prevent the service of either of said writs; and if any such defense be established, it shall entitle the said bail to a verdict.

What the bail may plead in such action.

SEC. 37. Where the defendant in a suit shall die before the rendering of judgment against his bail, or where, being alive, he shall have been surrendered previous to such judgment, such bail shall be released from further liability upon paying the costs of the proceedings against them, if any shall have been had.

Death or surrender of def't before judgment against bail, to release them from liability.

SEC. 38. Where judgment shall be obtained against the special bail in an action, such bail may, on motion, have judgment for like amount against the said defendant, but execution thereon shall only issue for such amount as by the sheriff's return shall appear to have been collected from such bail on the original judgment.

Special bail may have judgment against defendant.

APPROVED, January 25, 1839.

## BANKING ASSOCIATIONS.

AN ACT to restrain unincorporated Banking Associations.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa, That no per-*