

to, and returning from, the same, and all arrests in such cases shall be deemed as illegal and void. Arrest of jurors void.

SEC. 15. It shall be the duty of the board of county commissioners to arrange and select the grand and petit jurors, as aforesaid, in such manner as to make the qualified persons of the county perform duties as jurors, as nearly as may be, in rotation, and so that the same may not be unnecessarily burdensome to any of the citizens of the county according to the best information that the said commissioners can obtain. Duty of county commissioners. Rotation in the selection of jurors.

APPROVED, January 4, 1839.

## JUSTICES OF THE PEACE.

AN ACT to make valid and good in law the acts of Robert G. Roberts, done and performed by him as a justice of the peace, in and for the original county of Du Buque, in the Territory of Wisconsin, now the Territory of Iowa.

WHEREAS, Robert G. Roberts, a citizen of the county of Du Buque, late Wisconsin, now Iowa Territory, was in the month of November, in the year of our Lord one thousand eight hundred and thirty-six, duly commissioned, and, in the month of February of the same year, sworn and qualified to act as a justice of the peace, according to the requirements of the law in such case made and provided, except that the bond of the said Robert G. Roberts was not, agreeably to law, filed in the proper office, by the neglect of which requirement doubts have been made as to the validity and virtue of all the official acts done and performed by the said Robert G. Roberts, in pursuance of his commission aforesaid, in and for the county aforesaid: And whereas, it is highly important that his said acts should be declared and rendered legal and valid: Therefore, R. G. Roberts commissioned in November, 1836. Neglected to file his bond.

*Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all and every the official acts and doings of the said Robert G. Roberts, done and performed by him, by virtue of his commission of justice of the peace, in and for the county of Du Buque aforesaid, during the time he held the same, and performed the duties thereof, be and the same are hereby declared to be as good and valid, in law, as if the said bond had been properly filed according to the requirements of the law in Official acts of said R. G. Roberts declared valid.

Rights of appeal, &c., not affected.

such cases made and provided: *Provided*, nevertheless, That nothing in this act contained shall be so construed as to affect the rights of appeal, or such other rights and privileges as are by the laws of this Territory, regulating proceedings had before justices of the peace, extended to the parties interested therein.

APPROVED, December 14, 1838.

## JUSTICES OF THE PEACE.

AN ACT to prescribe the mode of proving, in courts of this Territory, judgments rendered by justices of the peace in the several States.

Official certificates of justices in the States to be evidence in the courts of Iowa.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the official certificate of any justice of the peace, living in any State in the United States, certifying any judgment by such justice rendered, with a certificate thereon, sealed by the clerk of the county, with the county seal, where such justice shall reside, certifying that he, whose signature appears on such exemplifications, was, at the date of such judgment, a justice of the peace, and qualified to act as such, shall be good and legal evidence, in any court in this Territory, to prove the facts contained in such exemplifications, and nothing more.

APPROVED, January 15, 1839.

## JUSTICES OF THE PEACE.

AN ACT to provide for the appointing of Justices of the Peace, to prescribe their powers and duties, and to regulate their proceedings.

Number of justices and term of service.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa, as follows:* There shall be appointed in each of the organized counties of this Territory as many justices of the peace as, in the opinion of the Governor, the public good and the wants of the people may require, and whose term of service shall continue three years, unless sooner removed by the Governor.

Who disqualified.

SEC. 2. No clerk of the District Court shall hold or exercise the office of justice of the peace.

Oath of office.

SEC. 3. Every justice of the peace shall, within twenty days after the receipt of his commission, take

and subscribe an oath to support the Constitution of the United States and the laws of this Territory, and to administer equal justice to the poor and the rich, and to faithfully demean himself in office; which oath shall be endorsed on the back of his commission, shall be recorded in the office of the Clerk of the District Court, and in case of his failing so to do, it shall be deemed a refusal of such appointment. And <sup>To enter into</sup> each and every justice of the peace of this Territory <sup>bond.</sup> shall, at the time of filing his oath of office with the clerk of the District Court, enter into bond with good security to the county commissioners, in the county where he resides, in the sum of five hundred dollars, conditioned that he will faithfully pay over all moneys that may come into his hands on judgments, notes, bills or accounts, and on failure so to do, the party aggrieved may by motion before the District Court where such bond is filed, have judgment for principal with costs and ten per centum interest until paid.

SEC. 4. Any person who shall act as a justice in <sup>Penalty for</sup> violation of the preceding section shall, on conviction <sup>violating 3d</sup> thereof by indictment, be fined in a sum not exceed- <sup>section.</sup> ing five hundred dollars, and his acts shall be null and void.

SEC. 5. No person shall be appointed to the office <sup>Who incap-</sup> of justice of the peace who is not a citizen of the <sup>ble.</sup> United States, and who shall not have been an inhabitant of this Territory twelve months, and of the county for which he is appointed six months before his appointment.

SEC. 6. When a county shall be divided, any justice <sup>Division of</sup> of the peace of the original county, who shall fall <sup>counties.</sup> into the new county, shall continue to discharge the duties of justice of the peace in such new county, until his commission expire, as if the county had not been divided.

SEC. 7. Justices of the peace shall have power and <sup>Jurisdiction</sup> jurisdiction throughout their respective counties as <sup>and powers of</sup> follows:— <sup>justices.</sup>

First—Jointly and severally to cause to be kept all laws made for the preservation of the peace.

Second—To cause to come before them or any <sup>Breach of the</sup> of them, persons who shall break the peace, and <sup>peace.</sup> commit them to jail; or bail them as the case may require.

Third—To arrest and cause to come before them <sup>Arrest and se-</sup> persons who attempt to break the peace or who are <sup>curity.</sup>

- not of good fame, and compel them to give security for their good behavior to keep the peace, or both.
- Commitment.** SEC. 8. If such persons refuse or neglect to give security, they shall be committed, until they find the same.
- Recog. certified to district court.** SEC. 9. Every recognizance so taken for the keeping of the peace, or for good behavior, or for both, shall be certified to the next District Court of the county.
- Contempt.** SEC. 10. In the following cases, and no others, a justice of the peace may punish for contempt persons guilty of the following acts:—  
First—Disorderly, contemptuous, insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which shall tend to interrupt such proceeding or to impair the respect due to his authority.
- Subpœnas.** SEC. 11. Justices of the peace are empowered to grant subpœnas for witnesses, in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for taking depositions.
- Resignation or removal of justice; docket, &c., to whom delivered.** SEC. 12. Whenever a justice of the peace shall resign, move out of the county, or be otherwise disqualified, he shall immediately thereafter deliver to the next nearest justice of the peace in the same county, all dockets, records, books, papers and documents, appertaining to his office, or relating to any suit, matter or controversy committed to him in his official capacity, he taking a receipt therefor.

## ARTICLE II.

### *Of the jurisdiction of Justices of the Peace and authorizing them to hold a Court.*

- Jurisdiction and holding courts.** SEC. 1. Every justice of the peace is authorized to hold a court, for the trial of all actions, in the following section enumerated, and to hear, try and determine the same, according to law and equity.
- Actions.** SEC. 2. First—Of all actions of debt, covenant and assumpsit, and all other actions founded on contract, where the debt or balance due or damages claimed, exclusive of interest, shall not exceed fifty dollars.
- Limitation, §80**
- Trespass.** Second—Actions of trespass and trespass on the case, for injuries to persons or to real or personal property, wherein the damage claimed shall not exceed fifty dollars.

Third—Actions of detinue and replevin, when the thing demanded or claimed does not exceed in value fifty dollars. Replevin, &c.

Fourth—Actions commenced by attachment of property as hereinafter provided, as well as for any penalty given by any statute of this Territory, when the amount shall not exceed fifty dollars; and Attachments.

Fifth—To take and enter judgment on the confession of a defendant, when the amount confessed shall not exceed the amount for which a justice is authorized to render judgment in action. Judgment by confession.

SEC. 3. No justice of the peace shall have cognizance, Actions excluded from cognizance of justice.

First — Against an executor or administrator, for any debt or demand due from the testator or intestate; nor

Second — Of any action of slander, malicious prosecution, or false imprisonment, nor

Third — Of any action, where the title to lands and tenements shall come in question.

SEC. 4. Every justice of the peace shall have jurisdiction co-extensive with the county, for which he is appointed. County limits.

SEC. 5. Every action cognizable before a justice of the peace instituted by summons or warrant, shall be brought before some justice of the township; either Townships;—residents and non-residents.

First — Wherein the defendant resides; or

Second — Wherein the plaintiff resides and the defendant may be found, but if the defendant in any action is a non-resident of the county, or has absconded from the usual place of abode, the action may be brought before some justice of any township where he may be found.

SEC. 6. Every action instituted by attachment shall be brought before some justice of the county, wherein the property of the defendant may be found. Attachments.

SEC. 7. If there are several persons jointly liable to a suit residing in different townships in the same county, the suit may be brought in any such township, against all such persons; and if any defendant in a suit instituted by attachment has property in several townships in the same county, such attachment may be issued against the property of the defendant, wherever it may be found in the county. Joint defendants.

SEC. 8. Whenever there shall be no justice of the peace within the township where any suit cognizable before a justice ought to be brought, or whenever all the justices of such township are interested in any Adjoining townships.

suit or otherwise disqualified by law from trying the same, every such suit may be brought before some justice of any adjoining township of the same county.

### ARTICLE III.

#### *Of the commencement of suits, and the service and return of process.*

- Docket entries.** SEC. 1. Every justice of the peace shall keep a docket in which he shall enter
- Titles of causes.** First — The titles of all causes commenced before him.
- Process.** Second — The time when first process was issued against the defendant, and the particular nature thereof.
- Appearance.** Third — The time when the parties appeared before him, either without process or upon the return of process.
- Cause of action, &c.** Fourth — A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off was pleaded, a similar statement of the set-off and the amount claimed.
- Continuance.** Fifth — Every adjournment, stating at whose request and at what time.
- Trial.** Sixth — The time when the trial was had, stating whether the same was by jury or by the justice.
- Verdict.** Seventh — The verdict of the jury, and when rendered.
- Judgment.** Eighth — The judgment rendered by the justice, and the time of rendering the same.
- Execution.** Ninth — The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, as the same was endorsed on the back of the execution.
- Appeal.** Tenth — The fact of an appeal having been made and allowed, and when made and allowed.
- Order of docket entries.** SEC. 2. The several items in the preceding section enumerated, together with all other entries specially required by this act to be made in the docket, shall be entered under or opposite to the title of each cause to which they respectively relate; and in addition thereto, the justice may enter any other proceedings had before him in the cause, which he shall think it useful to enter in such docket.
- Suits how instituted.** SEC. 3. Suits may be instituted before a justice either by the voluntary appearance and agreement of the parties, or by process; and the process for the

institution of a suit before a justice, shall be either a summons, a warrant against the person, or attachment against the property of the defendant.

SEC. 4. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs before the institution of the suit; and whenever a suit has been commenced by any person, whether a resident of the county or not, the justice shall, on the application of the defendant, order the plaintiff to give security for the costs; and if the plaintiff refuse to comply with the order, the justice shall dismiss the suit.

Non-residents  
security for  
costs, &c.

Refusal, and  
its effects.

SEC. 5. If any suit or set-off be founded upon any lost or destroyed instrument of writing, the party relying upon such lost instrument shall be required upon the trial or hearing of the cause, to prove such loss or destruction, either by his own oath or by other competent testimony; and if upon such trial or hearing it appears that the same was intentionally put away or destroyed, the demand or set-off, founded upon such instrument, shall be rejected.

Set-off, lost, or  
destroyed in-  
struments, &c.

SEC. 6. All process issued by justices of the peace shall run "In the name of the United States of America," be dated on the day it is issued, and shall be signed by the justice granting the same.

Style of pro-  
cess.

SEC. 7. In all cases not otherwise specially provided for, the process in all suits shall be a summons; and every summons shall be directed to any constable of the county in which the justice, who granted the same, resides, except when it is otherwise specially provided; and shall command him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in the summons, not less than seven nor more than twenty-one days from the date thereof, to answer the complaint of the plaintiff.

Summons and  
appearance.

SEC. 8. Every summons shall be served at least five days before the return day thereof, and shall be executed either.

Time of service  
and manner.

First—By reading the same to the defendant; or

Second—By delivering a copy to the defendant; or

Third—By leaving a copy of such summons at the usual place of abode of the defendant, with some person of the family, above the age of fifteen years.

SEC. 9. A justice of the peace shall issue a warrant in every case, where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and

Warrant, how  
required, and  
for what rea-  
sons.

unsatisfied cause of action against the defendant, and that the defendant is about to remove from the county, or to abscond from his usual place of residence, or that the plaintiff will be in danger of losing his debt or demand, unless such warrant be granted.

Arrest.

SEC. 10. A warrant shall be served by arresting the defendant and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, or if it be made appear to the justice by the affidavit of the defendant, that said justice is a material witness for the defendant in the cause, or is near of kin to the plaintiff in suit, stating therein the degree, the constable shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause and proceed therein, as if the warrant had been issued by himself.

Absence, or inability of justice, &c., to try, how remedied.

Detention of deft. limited.

SEC. 11. When a defendant is brought before a justice on a warrant, he shall in no case be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

service of process, by special deputy.

SEC. 12. Every justice issuing any process, authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same by an endorsement on the process to the following effect:—"At the request and risk of the plaintiff I authorize \_\_\_\_\_ to execute and return this writ.

Form.

E. F. Justice of the Peace."

Incidents.

And the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations and shall receive the same fees for his services.

Payment, discontinuance, costs, &c.

SEC. 13. If at any time after the commencement of a suit, the defendant pay to the constable or the justice of the peace who issued the process, the full amount of the claim and the costs which may have then accrued, the suit shall be discontinued; or if it be further prosecuted, the plaintiff shall pay all costs that may accrue after such payment, and the justice before whom the suit is brought shall endorse the amount upon the summons or warrant, for which suit is commenced, including interest and costs.



SEC. 14. Every constable serving any process authorized by this act, shall return thereon in writing (endorsed on the back) the time and manner of service, and shall sign his name to such return. Return of process.

SEC. 15. If any constable fail to execute any process to him delivered and to make due return thereof, unless for good cause, or make false return, such constable, for every such offence, shall pay to the party injured ten dollars, and all damages such party may have sustained by reason thereof, to be recovered by an action of debt founded upon this statute, and be liable to indictment for misdemeanor. Liabilities of constables; action, penalty, &c.

#### ARTICLE IV.

##### *Of the appearance and pleadings of the parties and of adjournments.*

SEC. 1. Any plaintiff in any suit, except persons under twenty-one years of age, may appear and conduct his suit, either by agent or in person. Who may conduct suit.

SEC. 2. No suit shall be instituted by an infant plaintiff, until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person who will consent thereunto in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein. Infant and next friend,—costs.

SEC. 3. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age. Defendants.

SEC. 4. After the service and return of process against an infant defendant the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person who will consent thereto in writing, to be the guardian of the defendant in defence of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian, and the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any costs in the suit. Guardian for defendant, his consent, and costs.

SEC. 5. A party authorized to appear by agent, may appoint any person to act as such agent, and Agent, and his authority.

the authority of the agent may be either written or verbal, and shall in all cases, when the justice requires proof, be proven either by the agent himself or by other competent testimony, unless admitted by the opposite party.

One hour's  
grace.

SEC. 6. Upon the return of a summons duly served, the justice shall wait one hour after the time specified in such writ, for the appearance of parties, unless they sooner appear.

Verbal state-  
ment.

SEC. 7. When both parties first appear before the justice, either upon the return of process or upon their voluntary appearance without process, the justice shall, on the application of the defendant, and may without such application, require of the plaintiff a brief verbal statement of the nature of his demand.

Set-off allowed.

SEC. 8. A defendant may set-off any demand which he may have against the plaintiff in all cases, where such set-off is allowed by the statutes of this Territory regulating set-off, except in the two following cases:

Two excep-  
tions.

First—When the demand to be set-off exceeds the jurisdiction of a justice's court; or

Second—When it is founded upon an instrument of writing, executed by the plaintiff and assigned to the defendant, and it shall not appear on the trial of the cause that the assignment was made to the defendant previous to the commencement of the suit.

Notice of set-  
off, items, &c.

SEC. 9. To entitle the defendant to set-off any demand, he must give notice thereof in court, either verbal or written, before the jury is sworn or the trial submitted to the justice, and when the set-off is founded upon an instrument of writing, executed by the plaintiff or by his testator or intestate, or upon an account, he must, at the time of giving such notice, file with the justice such instrument or a bill of the items of such account.

Lost, or de-  
stroyed, instru-  
ments.

SEC. 10. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the defendant to file with the justice an affidavit similar to that required of a plaintiff upon instituting a suit in a justice's court, on a lost or destroyed instrument of writing.

Judg'ts, on set-  
off.

SEC. 11. If the amount of the set-off duly established be equal to the plaintiff's debt, judgment shall be entered for the defendant with costs of suit; if it be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only with costs; and if it be more than the plaintiff's debt, the defendant

shall have judgment for the excess with costs; and execution shall be awarded and be subject to the same stay as upon a judgment in a suit brought by such defendant: *Provided*, No such stay shall exceed Proviso. twenty days.

SEC. 12. Whenever a set-off is established in a suit Exec'rs. and adm'rs set-off. judg't. &c. brought by the executors or administrators exceeding the demand of the plaintiff, the judgment shall be against them in their representative character, and shall be evidence of a debt established, but no execution shall issue thereon.

SEC. 13. If in a suit of trespass upon any lands or tenements the defendant shall justify the trespass by Trespass, title to lands, &c. a plea of title, the justice shall immediately make an entry of it in his docket, shall cease all further proceedings in the case, and certify and return to the District Court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit and filed therein in the same manner and within the same time, as upon an appeal.

SEC. 14. Upon the filing of the proceedings and papers in the office of the clerk, the court shall become possessed of the cause and proceed therein to final judgment as upon an appeal, but on the trial in such court the plaintiff shall only be required to prove himself entitled to or in possession of the lands or tenements on which the trespass is alleged to have been committed, and no other bar to the action shall be pleaded by the defendant except the plea of title. Suit removed to district court.

SEC. 15. A justice of the peace without the application or consent of either party may, if it be necessary, adjourn a cause not exceeding three days for any one adjournment, but a justice shall in no case adjourn a cause commenced by warrant upon his own motion. Adjournments by justices.

SEC. 16. A justice of the peace on the application of either party with good cause shown, may adjourn a cause not exceeding sixty days for any one adjournment, and may adjourn for a longer period with the consent of both parties. On application of parties.

SEC. 17. No adjournment shall be allowed upon the application of a party, unless such party satisfy the justice by his own oath or affidavit of some other person, that he cannot safely proceed to trial for want of some material testimony or witness, that he used due diligence to obtain the same, and that he cannot prove the fact by any other person, and that Absent witnesses.

if an adjournment be allowed, he will be able to procure such testimony or witness in time to be used upon the trial.

Limitation,  
and costs.

SEC. 18. Every such adjournment shall be for such reasonable time as will enable the party to procure such testimony or witness, not to exceed sixty days, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Recognizance  
on adjourn-  
ment.

SEC. 19. If a cause commenced by summons be adjourned on application of the defendant, he shall, if the plaintiff should request it, enter into a recognizance before the justice with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit and execution be issued against him that he or his security will pay the judgment so recovered; and if the cause be adjourned on application of the plaintiff, he shall, if the defendant should request it, enter into a similar recognizance in a sufficient penalty and under like condition.

When deft. is  
in custody, on  
warrant.

SEC. 20. If a cause commenced by warrant be adjourned on the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody; but the cause shall not be discontinued by such discharge, and at the adjourned day the same proceedings shall be had as on the return of a summons duly served.

And applies for  
adjournment,  
security requir-  
ed, &c.

SEC. 21. But if such cause be adjourned upon the application of the defendant, he shall continue during the time of the adjournment in custody of the constable, unless he shall enter into a recognizance before the justice with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit, and execution be issued against him, that he or his security will pay the judgment so recovered.

New recog.  
when required,  
and by whom.

SEC. 22. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any new recognizance upon a subsequent adjournment, unless such recognizance be required by the justice or the bail of the defendant in such prior recognizance.

Action on re-  
cognizance.

SEC. 23. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover unless he show an execution upon the judgment obtained in the suit, in which such adjournment was

had, duly issued within six days after the time when the same could have been issued against the property of the defendant, and a return thereon that no property of the defendant can be found.

## ARTICLE V.

### *Of witnesses and depositions.*

SEC. 1. A subpoena issued by a justice of the peace shall be valid to compel the attendance in a justice's court of a witness, being in the same county where the cause is to be tried, or being in an adjoining county, and within fifty miles of the place of trial. Effect of justice's subpoena.

SEC. 2. A subpoena may be served either by a constable or any other person duly authorized, and it shall be served by reading it to the witness or by delivering to him or leaving a copy thereof at his usual place of abode. Service of subpoena.

SEC. 3. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpoenaed to appear before him in a suit, shall have failed without just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness:—*Provided*, That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance, if previously demanded by such witness, from the person serving such subpoena. Failure to attend, attachment, &c. Proviso, as to mileage and fees.

SEC. 4. Every such attachment may be directed to any constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officers for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice for his omission to attend, in which case the party, requiring such attachment, shall pay all costs of such attachment. Service of attachment, and costs.

SEC. 5. Every person duly subpoenaed as a witness who shall not appear, or who, when he shall appear, shall refuse to give testimony, shall forfeit for the use of the county in which he is subpoenaed to appear, unless some reasonable excuse shall be Refusal to appear and testimony.

shown (on his oath or the oath of some other person), a fine not exceeding ten dollars, and the justice shall make an entry of the conviction in his docket, and of the cause thereof. At the expiration of thirty days from the entry of such conviction, it shall be deemed a judgment in all respects at the suit of such county, and execution shall be issued thereon as upon other judgments in a justice's court, and the constable shall pay the fine to the treasurer of the county.

**Penalty.** **SEC. 6.** The person upon whom such fine shall be imposed may at any time, before the expiration of thirty days, appear before the justice and show cause against the imposition thereof, and upon the hearing of such cause the justice may remit or mitigate such fine.

**Discretion of justice to remit or mitigate.** **SEC. 7.** Every person subpœnaed as aforesaid and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for damages which such party may have sustained by his non-appearance.

**Damages.** **SEC. 8.** Either party in any civil suit depending before a justice may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace of any county in this Territory where the said witness may be.

**Depositions.** **SEC. 9.** No such deposition shall be taken, unless notice in writing of the time and place of taking the same shall have been served on the other party three days before the taking thereof, with one additional day for every twenty-five miles of distance from the place of such service to the place of taking.

**And notice thereof.** **SEC. 10.** Such notice may be served in like manner as an original summons and the service may be on the party or his agent in the suit, and when such party resides out of the county and has no agent in the suit therein, the service of such notice may be by filing a copy thereof with the justice before whom the suit is pending.

**Serving notice.** **SEC. 11.** The deposition shall be taken and certified according to the statute of this Territory regulating the taking of depositions, and shall be sealed up and returned so sealed to the justice, before whom the suit in which it is taken is pending, and when such deposition is taken out of this Territory, the official character of the officer by whom it is taken, shall be certified under the seal of the State

**Depositions, how certified.**

or county where such deposition is taken, or under the seal of some court therein.

SEC. 12. The justice shall allow every deposition taken and returned, according to the provisions of this act, to be read on the trial of the cause, in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appear to the justice that the witness whose deposition is offered

First—Is dead or resides out of the county; or

Second—Is unable to, or cannot safely attend before the justice, on account of sickness, age or other bodily infirmity; or

Third—Has gone out of the county without the consent or collusion of the party offering the deposition.

## ARTICLE VI.

### *Of judgments on nonsuits, and by default, and of trials.*

SEC. 1. When a defendant, who has been duly served with process, and when a defendant, who has once appeared to a suit, the trial of which has been adjourned, shall neglect to appear within one hour after the return time of the process, or the adjourned time, the justice shall proceed in the cause in the following manner:—

First—If the suit be founded on an instrument of writing and purporting to have been executed by the other party, and the demand of the plaintiff is liquidated by such instrument, the justice shall, whether the plaintiff appear or not, render judgment against the defendant by default, for the amount which shall appear by such instrument to be due to the plaintiff, after allowing all proper discounts for all payments endorsed thereon, with costs.

Second—If the suit be not founded on an instrument of writing, as is declared in the preceding clause of this section, and the plaintiff appears in person or by his agent, the justice shall proceed to hear allegations and proofs, and shall determine as the very right thereof shall appear from the testimony; and if it appear from such testimony that the plaintiff is entitled to recover, judgment shall be rendered by default against the defendant for so

much, as the testimony shows the plaintiff entitled to recover, together with costs. If it do not appear that the plaintiff ought to recover, judgment shall be given for the defendant, as upon a verdict against the plaintiff with costs.

**Nonsuit.**

Third—If the plaintiff fail to appear, except where the suit is founded upon an instrument of writing as is declared in the first clause of this section, the justice shall render judgment of nonsuit against the plaintiff with costs.

SEC. 2. In all cases not otherwise specially provided for, if the plaintiff fail to appear in person or by agent within one hour after the time appointed for the trial of the cause, the justice shall render judgment of nonsuit against him with costs.

**Judg'ts by nonsuit and default when and how set aside.**

SEC. 3. Every justice of the peace shall have power, on the application of the aggrieved or his agent, and for good cause shown, to set aside judgment of nonsuit and by default upon such terms as shall be just. Every such application shall be made within six days after rendering of the judgment, and if in the mean time any execution has been issued, the justice may revoke the same in the manner hereinafter provided for revoking an execution, after an appeal has been allowed, and with like effect. The justice shall in all cases make an entry in his docket of every such application, and of the day on which it was made, together with his orders thereon.

**New trial, and notice thereof.**

SEC. 4. If any judgment be set aside and a new trial granted, the justice shall fix a time for such trial and make out under his hand a notice to the opposite party, stating the fact that such judgment has been set aside, and specifying therein the time and place fixed for the trial. The notice shall be served on the party or his agent six days before the trial, and shall be executed and returned in like manner as a summons, and the same fees allowed therefor.

**Suits when determined.**

SEC. 5. Every suit instituted by summons or warrant, shall be determined on the return of the process duly served, unless the cause be adjourned.

**Appearance and trial.**

SEC. 6. When both parties appear before the justice in person or by agent at the time appointed for the trial of the cause, the justice shall proceed to hear the allegations and proofs of the parties and to determine the suit, as the very right of the case shall appear.



SEC. 7. Before the justice shall commence an investigation of the merits of the cause by an examination of witnesses or the hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by a jury. Trial by jury.

SEC. 8. The jury shall consist of six persons, but the parties may agree upon any number of jurors less than six, to try the cause; and in that case the jury shall consist of such number, not exceeding six, as the parties may agree upon. Number of jurors.

SEC. 9. The justice shall issue a summons directed to any constable of the country wherein the cause is to be tried, commanding him to summon six (or such less number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in the District Court of the same county, who shall be nowise of kin to either party nor interested in the suit, to appear before said justice at a time and place to be named therein, to make a jury for the trial of the action between the parties named therein. Summons for jury. Qualifications of jurors.

SEC. 10. The constable shall execute such summons fairly and impartially, and shall not summon any persons whom he has reason to believe are biassed or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons which he shall certify and annex to the summons and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the constable shall immediately summon others to serve in their place. Service, and return of summons, &c.

SEC. 11. To each juror the justice shall administer an oath well and truly to try the matter in difference between ——— plaintiff, and ——— defendant, and unless discharged (by the justice) a true verdict give according to the law and evidence. Juror's oath.

SEC. 12. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence. Duty of jurors.

SEC. 13. If a witness on being produced shall be objected to as being incompetent, such objection shall be tried and determined by the justice. Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn or affirmed, that the evidence he shall give relating to the matter in issue between ——— plaintiff, and Competency and oath of witnesses.

— defendant, shall be the truth, the whole truth, and nothing but the truth.

Evidence.

SEC. 14. If there shall be no evidence given to establish any demand founded upon contract, or to establish any set-off; or if the evidence given be insufficient for that purpose, the justice may, upon the application of the party offering such demand or set-off, order the opposite party to be sworn in relation thereto; if the party thus required refuse to testify, the justice shall allow the party offering such demand or set-off to be sworn and examined in relation to the same matter. After an examination of either party, no further evidence shall be given in relation to such demand or set-off.

Parties may be sworn, and when.

May be subpoenaed and examined.

SEC. 15. Either party in any suit founded on contract may cause the opposite party to be subpoenaed as a witness in the cause, in the same manner and with like effect as any other person. If the party, after being duly subpoenaed, fail to attend the trial personally, and such failure be not accounted for, the justice may allow the other party to be sworn and examined as a witness in all cases and with like effect as if the subpoenaed party had been personally present, and had refused to testify.

Execution of writings.

SEC. 16. If any suit or set-off be founded upon an instrument of writing purporting to have been executed by the opposite party, such instrument shall be received in evidence upon the trial, unless the party (before the jury be sworn or the trial submitted to the justice) charged to have executed the same shall deny the execution thereof, on oath taken before such justice, or by an affidavit filed with the justice, and taken before any court or officer authorized to administer oaths.

Execr's and admr's.

SEC. 17. The preceding section shall not be construed to authorize any instrument of writing to be received in evidence, without proof of its execution against an executor or administrator or any other person, representing the person charged to have executed such instrument.

Verdict.

SEC. 18. When the jurors have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

Jury, when discharged and new jury called

SEC. 19. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new jury summons; unless the parties consent that

the justice may render judgment on the evidence before him, which in such case he may do, unless they consent that the trial upon a new hearing of the evidence shall be by the justice.

SEC. 20. Every person who shall be duly summoned as a juror and shall not appear, nor render a reasonable excuse for his default, shall be subject to the same fine, to be prosecuted for and collected with costs in the same manner, and applied to the same use, as hereinbefore provided in respect to a person subpoenaed as a witness and not appearing. Non-attendance of jurors, and penalty.

## ARTICLE VII.

### *Of judgments and filing transcripts thereof, and the stay of execution.*

SEC. 1. A justice of the peace may enter judgment by confession of the defendant, in any case where the amount confessed does not exceed the amount a justice is authorized to render judgment in an action. Judg't by confession, and requisites herein.

SEC. 2. No confession shall be taken or judgment rendered thereon, unless the following requisites be complied with:—

First—The defendant must personally appear before the justice.

Second—The confession must be in writing signed by the defendant, or by some person by him thereto lawfully authorized and filed with the justice.

SEC. 3. If there be mutual justices judgments between the same parties, one may be set-off against the other by the justice before whom the judgment against which the off-set is proposed may be. Judg'ts may be set off.

SEC. 4. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice, a transcript of such judgment upon which there is a certificate of the justice rendering the judgment, that there is no appeal, and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed. Transcripts thereof.

SEC. 5. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a Entry. Execution for balance due.

justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript and return the same to the party who offered it.

Change of venue, for what causes, and how granted

SEC. 6. If upon the appearance of the parties on the return of process in any case (except when the defendant is arrested by warrant) the defendant shall before the jury is sworn, or the trial submitted to the justice, make affidavit that the justice before whom the same is pending is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, or that he is of near kin to the plaintiff, stating therein in what degree, or that he believes he cannot obtain justice before such justice, the cause shall be transferred to the next nearest justice of the proper county.

Judg't by nonsuit, confession, &c., when entered.

SEC. 7. In cases where a plaintiff shall be nonsuited or withdraw his action, and where judgment shall have been confessed, and in all cases where a verdict shall be rendered or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment and enter the same in his docket. In all other cases he shall render judgment and enter the same in his docket within three days after the cause shall have been submitted to him for his decision.

Jurisdiction, release of excess, &c.

SEC. 8. If any sum be found in favor of a party either by a verdict of a jury or upon hearing of the cause before a justice, exceeding the sum for which a justice is authorized to give judgment, such party may remit and release the excess and take judgment for the residue.

Stay of execution.

SEC. 9. The execution upon a judgment rendered by a justice of the peace may be stayed, in the manner hereinafter provided, and for the following periods of time, to be calculated from the date of the judgment:—

First—If the judgment be for a sum under twenty-five dollars, thirty days.

Second—If the judgment be for more than twenty-five dollars, sixty days.

Security thereon.

SEC. 10. To entitle any person to such stay of execution, some responsible person to be approved by the justice, and not being a party to the judgment, must within five days after the rendering of the

judgment, enter into recognizance before the justice to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

SEC. 11. Such recognizance must be signed by the party entering into the same, and may be in the following form:—"I ——— acknowledge myself indebted to ——— in the sum of ——— dollars, to be void upon this condition: Whereas ——— obtained judgment before ——— a justice of the peace of ——— county on the ——— day of ——— 18— against ——— now if such judgment shall be paid at the expiration of ——— months from the time it was rendered, this recognizance shall be void.

Form of recognizance.

A. B."

SEC. 12. If at the expiration of such stay, the judgment be not paid, the execution shall issue against both principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him on the execution was collected by him from the bail, and the time when the same was received.

Execution against principal and bail, and return thereof.

SEC. 13. After the return of such execution the bail shall be entitled, on motion, to a judgment before the justice for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent. per annum, and such return of the officer upon motion shall be evidence of the facts therein stated.

Judg't for bail, on motion.

SEC. 14. If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution in the same manner and with like effect as he is hereinafter directed to revoke an execution after an appeal has been allowed.

Execution may be revoked.

SEC. 15. Every justice on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment and the clerk of the District Court of the same county in which the judgment was rendered, shall upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the District Court, judg-

Transcript of judg't certified and filed.

ments and decrees, and shall note therein the time of filing such transcript.

**And its effect.** SEC. 16. Every such judgment from the time of such filing of the transcript thereof shall have the same lien on the real estate of the defendant in the county, as a judgment of the District Court of the same county, shall be equally under the control of the District Court, and shall be carried into execution in the same manner and with the like effect, as the judgments of such District Court; but no execution shall be issued thereon out of the District Court, until an execution shall have been issued by a justice and returned, that the defendant has no goods or chattels whereon to levy the same.

**1st execution from justice.**

## ARTICLE VIII.

### *Of executions and proceedings thereon.*

**Execution,** SEC. 1. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed, at any time upon demand.

**To whom directed, when returnable, and against what.** SEC. 2. The execution shall be directed (except where it is otherwise specially provided) to any constable of the county where the justice resides, shall be dated on the day it was issued, and be made returnable within thirty days from the date. It shall be against the goods and chattels of the person against whom the same was issued.

**May be renewed, how, and for how long.** SEC. 3. If any execution be not satisfied it may at the request of the plaintiff be renewed from time to time by the justice issuing the same, by an endorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall renew the execution in full force in all respects for thirty days and no longer, and an entry of such renewal shall be made in the docket of the justice.

**Levy, notice and description of goods** SEC. 4. The constable, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements put up at three public places in the county, of the time and place when and where they will be exposed to sale; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 5. At the time so appointed, if the goods and chattels be present for the inspection of the bidders, the officer shall expose them to sale at public vendue to the highest bidder. He shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

Sale, and return of execution and money.

SEC. 6. No constable or other officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, but every such sale shall be absolutely void.

Constable cannot purchase, &c.

SEC. 7. If the goods and chattels so levied on are not sufficient to satisfy such execution, the constable shall, upon the demand of the plaintiff, summon in writing as garnishees such debtors of the defendant in execution, as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be exhibited against them, touching their indebtedness to such defendant; and the like proceedings shall be had therein before the justice to final judgment and execution, as in suits instituted by attachment in a justice's court.

Insufficiency of goods, and summons to garnishees, &c.

SEC. 8. If a constable levy an execution on any goods or chattels, and any person, other than the defendant in execution, claim such property, the constable shall give notice forthwith to some justice of the peace of the same county; in which notice he shall set forth the name of the plaintiff, and defendant in execution, and the name of the person claiming, and also a schedule of the property claimed.

Goods claimed by third persons, and notice.

SEC. 9. It shall be the duty of such justice, immediately upon the receipt of such notice, to issue a jury summons directed to any constable of the county, commanding him to summon six disinterested persons having the qualifications of electors, to appear before him at a time therein mentioned, which shall not be more than three days after the date of the said summons, to try and determine the right of property between the defendant in the execution and the person so claiming.

Right of property how tried.

SEC. 10. The justice shall also give notice to the plaintiff in the execution, his agent or attorney, if any, and the said notice shall be directed to the constable and served and returned in the same manner as a summons.

Notice to plaintiff.

SEC. 11. The justice shall administer the following oath to the jurors:—"You and each of you do

Juror's oath.

solemnly swear (or affirm) that you will well and truly try and determine the right of property between ——— claimant, and ——— defendant in execution, to the goods and chattels in controversy, and a true verdict give according to evidence given before you." And the jury so sworn shall be the judges of the law and the fact.

Verdict and costs.

SEC. 12. If the jury find the goods and chattels, or any part of them, to be the property of the defendant in execution, the verdict shall as against the claimant justify the officer in selling such goods and chattels, as the jury have so found. If the verdict is for the claimant, the plaintiff in the execution shall pay the costs in the trial; if it is against the claimant the costs shall be paid by such claimant, and the jurors, constable and witnesses shall be entitled to like fees as for other services in a justice's court.

Monies paid to constable; effect and remedy.

SEC. 13. The constable of the county shall receive all money that may be tendered to him in payment of any judgment obtained before any justice of the peace of such county, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid. And the payment shall be valid against the judgment; and upon the production of the receipt to the justice shall be credited thereto. The person entitled to the money paid shall have the like remedies against the constable and his securities for the recovery thereof, as if such money was collected by the constable in execution.

Process against constable when issued, and its

SEC. 14. In the following cases the justice shall, upon the demand of the party injured or his agent, issue a warrant against any constable to whom any execution has been delivered or who has received any money upon any judgment of such justice, whether with or without execution:—

First—If the constable fail to make return of the execution according to the command thereof.

Second—If he make a false return.

Third—If he fail to have any money by him collected on execution before the justice on the return day thereof, ready to be paid over to the persons entitled thereto, or the receipts of such persons therefor.

Fourth—If he fail to pay over, upon demand, to the person entitled thereto or his agent, any money by him received in payment of any judgment.

Requirements.

SEC. 15. Such warrant shall require the constable forthwith to appear before the justice and show



cause why execution should not issue against him for the amount due upon the execution, or for the amount received by him upon the judgment according to the nature of the case.

SEC. 16. If the constable fail to appear, or appearing, fail to show good cause to the contrary, the justice shall render judgment against him for the amount due by the execution, or for the amount received by him without execution, according to the nature of the case, together with interest thereon at the rate of one hundred per centum per annum, from the time such execution ought to have been returned, or from the time such money ought to have been had before the justice, ready to be paid over to the person entitled thereto, or from the time the money received on a judgment without execution was demanded by the party entitled thereto or his agent. Upon such judgment there shall be no stay of execution; but an appeal may be had, as in other cases, and with like effect.

SEC. 17. The party injured may proceed in the manner above directed, or may institute a suit against the constable and his securities on his official bond; and in such suit the plaintiff shall be entitled to like recovery as upon a summons against the constable, and suits on such bond may be brought before a justice of the peace, when the amount claimed does not exceed the jurisdiction of a justice of the peace.

## ARTICLE IX.

### *Of appeals and proceedings thereon in the district court.*

SEC. 1. Any person aggrieved by any judgment rendered by a justice of the peace, may in person, or by his agent, make his appeal therefrom to the District Court of the same county where the judgment was rendered.

SEC. 2. But no appeal can be taken, unless within ten days after the rendering of such judgment application shall have been made to the justice by the party aggrieved, to set the same aside, and such application shall have been refused.

SEC. 3. No appeal shall be allowed in any case unless the following requisites be complied with:—

First—The appeal must be made within seven days after the judgment is rendered; or, when the

judgment is by default, within ten days after the refusal of the justice to set aside the default and grant a new trial.

Recognizance,  
and security.

Second—The applicant, or some person for him, together with one or more securities, to be approved by the justice, must within the time prescribed in the first clause of this section, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure such judgment and the costs of the appeal; conditioned, that the applicant will prosecute his appeal with due diligence to a decision; and that if on such appeal, the judgment of the justice be affirmed, or if on trial anew in the District Court, judgment be given against him, he will pay such judgment, and if his appeal be dismissed, he shall pay the judgment of the justice, together with the costs of the appeal.

Form.

SEC. 4. Such recognizance must be signed by the parties entering into the same, and be attested by the justice, and may be in form following:—

“We, the undersigned ——— and ——— acknowledge ourselves indebted to ——— in the sum of ——— dollars to be void upon this condition: Whereas ——— has appealed from the judgment of ——— a justice of the peace in an action between ——— plaintiff and ——— defendant, now if on such appeal the judgment of the justice be affirmed, or if on the trial anew in the District Court, judgment be given against the appellant, and he shall satisfy such judgment, or if the appeal be dismissed and he shall pay the judgment of the justice, together with the costs of appeal, the recognizance shall be void.

C. D.

Attest, G. H., Justice.

E. F.

Allowance of  
appeal entry,  
and stay.

SEC. 5. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal, and if in the meantime execution shall have been issued, the justice shall give to the appellant a certificate that such appeal has been allowed.

Notice to con-  
stable.

SEC. 6. On such certificate being presented to the constable holding the execution, he shall forthwith release the property of the defendant, that may have been taken in execution.

SEC. 7. On or before the first day of the term of the District Court, next after the appeal shall have been allowed, the justice shall file, in the office of the clerk of said court, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, and filed with the justice.

SEC. 8. Upon the return of the justice being filed in the clerk's office, the court shall be possessed of the cause, and shall proceed to hear, try, and determine the same anew, without regarding any error, defect or other imperfection in the proceedings of the justice.

SEC. 9. Upon an appeal being made and allowed, the District Court may, by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned.

SEC. 10. If a justice fail to allow an appeal in a cause where the same ought to have been allowed, the District Court on such fact satisfactorily appearing, may by rule and attachment, compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

SEC. 11. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may by rule and attachment, compel him to amend the same.

SEC. 12. No appeal allowed by a justice shall be dismissed on account that there is no recognizance, or that the recognizance given is defective, if the appellant will, before the motion to dismiss is determined, enter before the District Court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred, by reason of such defect or omission.

SEC. 13. All appeals allowed ten days before the first day of the term of the District Court next after the appeal allowed, shall be determined at such term, unless continued for cause.

SEC. 14. If the appeal be not allowed on the same day on which judgment is rendered, the appellant shall give the appellee at least ten days notice in writing, before the sitting of the court at which the cause is to be determined, stating the fact that an appeal has been taken from the judgment therein

- specified. The notice may be served in like manner as an original writ of summons, and when the appellee does not reside in the county and has no agent in the suit therein, the service may be by leaving a copy of such notice with the justice.
- Continuance for want of notice.** SEC. 15. If the appellant fails to give notice of his appeal in a cause where such notice is required, the cause shall, on the application of the appellee, be continued as a matter of course, until the succeeding term, at the costs of the appellant, but no appeal shall be dismissed for want of such notice.
- Cause of action, set-off, &c.** SEC. 16. The same cause of action and no other that was tried before the justice, shall be tried in the District Court upon the appeal, and no set-off shall be pleaded in the District Court that was not pleaded before the justice, if the summons was served on the person of the defendant.
- Judg't in dis. court.** SEC. 17. In all cases of appeals from a justice's court, if the judgment of the justice be affirmed, or if on a trial anew in the District Court, the judgment be against the appellant, such judgment shall be rendered against him and his securities in the recognizance for the appeal.
- Execution.** SEC. 18. If upon execution being issued upon such judgment the principal shall not pay such execution and the officer cannot find sufficient property of such principal to satisfy the same, such execution shall be enforced against the securities, and the officer shall specify in his return by whom the money was paid and the time thereof.
- Judg't for security, on motion.** SEC. 19. After the return of an execution satisfied in whole or in part out of the property of the security, such security shall be entitled to a judgment, upon motion, against the principal, for the amount so paid by him, together with interest at twelve per cent. per annum, from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence, upon hearing such motion of the facts therein stated.

## ARTICLE X.

### *Regulating the action of replevin.*

- Replevin and damages.** SEC. 1. Whenever any goods or chattels are wrongfully taken or wrongfully detained (the value of which shall not exceed fifty dollars) an action of

replevin may be brought by the person having a right to the immediate possession, for the recovery thereof, and for the recovery of the damages sustained, by reason of the unjust caption or detention, except as hereinafter specified.

SEC. 2. No cross replevin or replevin for property in the possession of an officer by virtue of any legal authority shall be brought. Exception.

SEC. 3. No writ of replevin shall be issued, unless the plaintiff file with the justice the affidavit of himself or of some credible person, stating that the plaintiff is lawfully entitled to the property mentioned in the declaration, that the same was wrongfully detained by the defendant, and that the plaintiff's right of action has accrued within one year. Affidavit required.

SEC. 4. The writ of replevin shall command the officer, to whom it is directed, to cause (if the plaintiff give the security required by law) the goods and chattels mentioned in the declaration to be delivered to the plaintiff without delay, and to summon the defendant to appear before the justice on the return day of the writ, and answer the plaintiff in the premises. Requirements of writ.

SEC. 5. No writ of replevin shall be executed until the plaintiff enter into a bond to the officer to whom the writ is directed, with sufficient security in double the value of the property, to be ascertained by the officer; conditioned, that he will prosecute the suit with effect, and without delay make return of the property, if return thereof be adjudged, and keep harmless the officer touching the replevying the property. Bond, security and condition.

SEC. 6. Upon the receipt of the writ and the bond required by this article, the officer shall without delay execute the writ, by causing the property mentioned in the declaration to be delivered to the plaintiff, and by summoning the defendant according to the tenor of the writ. Execution of writ.

SEC. 7. The defendant may plead that he is not guilty of the charge alledged against him, and this plea shall put in issue not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof. Plea and issue.

SEC. 8. If a plaintiff in replevin fail to prosecute his suit with effect, and without delay, the justice or jury shall assess the value of the property taken, Failure of pl'ff. and its effects.

and the damages for the use of the same, from the time of suing the same, until return thereof shall be made as in other like cases.

Judg't and its incidents.

SEC. 9. In such case the judgment shall be against the plaintiff and his sureties, that he return the property taken or pay the value so assessed, and also pay double the damages assessed for the detention of the property.

Officer's remedy.

SEC. 10. If an officer is injured by reason of taking any property by virtue of a writ of replevin, by the direction of the plaintiff, he may maintain an action therefor upon the bond by him taken.

On the bond.

SEC. 11. If the plaintiff violate the condition of this bond, the defendant may sue thereon in the name of the officer, to the use of said defendant.

Officer's liabilities.

SEC. 12. If the officer fail to take a bond of the plaintiff and return the same as is required by this article, or if the bond taken be adjudged insufficient by the justice on the return of the writ, and the plaintiff fail to perfect it if required, the officer shall be liable to the party injured for all damages by him sustained, to be recovered by action of debt on the officer's official bond, or by an action on the case.

## ARTICLE XI.

### *Of Attachments.*

Attachments, in what cases granted.

SEC. 1. Creditors whose demands amount to not more than fifty dollars, and not less than five dollars, may sue their debtors by attachment before a justice of the peace in the following cases:—

First—Where the debtor is not a resident of nor residing within the county.

Second—Where the debtor has absconded or concealed himself or so absented himself from his usual place of abode, that the ordinary process of law cannot be served upon him.

Third—Where the debtor is about to remove his property out of the county, so as to hinder and delay his creditors.

Fourth—Where there is good reason to believe that the debtor is about fraudulently to remove, convey or dispose of his property or effects, so as to hinder or delay his creditors.

Cause of action.

SEC. 2. Any such creditor wishing to sue his debtor by attachment, may apply to any justice of the peace who would have jurisdiction of the debt

if the suit was brought in the common form, and if the cause of action be a bond or note, shall file the same with the justice; and if it be any other kind of contract, shall file with the justice a plain intelligible account or statement thereof, together with the affidavit of himself or some other creditable person, stating that the defendant is justly indebted to him, after allowing all just off-sets and credits, in a sum above five dollars, showing the amount in the affidavit and also stating the belief of the affiant of the existence of one or more of the facts, which under the first section of this article would entitle the plaintiff to sue by attachment, and thereupon the justice shall issue a writ of attachment against the property and effects of the defendant.

*Affidavit and its requisites*

SEC. 3. Writs of attachment shall be issued and returned in like time and manner as ordinary writs of summons, and when the defendant is summoned to answer, the like proceedings shall be had between him and the plaintiff as on ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

*Issue, return and proceedings on writ.*

SEC. 4. The manner of serving writs of attachment shall be as follows:—

First—The writ shall be served upon the defendant as an ordinary summons.

*Manner of service.*

Second—Garnishees shall be summoned by the constable declaring to them that he does summon them to appear before the justice at the return day of the writ, to answer the interrogatories which may be put to them by the justice and by reading the writ of attachment to them if required.

*On garnishees.*

Third—When goods and chattels, money or evidences of debt are to be attached, the constable shall seize the same and keep them in his custody, if accessible, and if not accessible, he shall declare to the person in possession thereof, that he attaches the same in his hands and summon such person as garnishee.

*Property, &c., attached,—and*

Fourth—When credits are to be attached, the constable shall declare to the debtor of the defendant that he attaches in his hands all debts due from him to the defendant, or that shall become due before the rendition of judgment, or so much thereof as may be sufficient to satisfy the debt sued for with interest and costs, and summon the debtor as garnishee.

*Credits.*

**Bond, and condition, from third persons.** SEC. 5. When property of the defendant found in the hands or possession of any other person than the defendant, shall be attached, such person may retain the possession thereof by giving bond and security to the satisfaction of the officer executing the writ to the constable, his successors or assignees, in double the value of the property so attached; conditioned, that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

**From defendant.** SEC. 6. When property of the defendant shall be actually seized on attachment, the defendant or any person for him may obtain possession thereof without dissolving the attachment, by giving the officer a bond, with good and sufficient security, in double the amount of property; conditioned, that the property shall be forthcoming when and where the justice shall direct, to abide the judgment which may be rendered in the cause.

**Sale of perishable property.** SEC. 7. When property shall be seized on attachment which is likely to perish, or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the constable in the same manner and on the same notice as goods are required to be sold on an execution, and the proceeds of such sale shall remain in the hands of the constable, subject to be disposed of as the property would have been if seized upon in specie.

**Notice to absent defendant.** SEC. 8. When the defendant cannot be summoned and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket requiring the plaintiff to give notice to the defendant, by three written or printed advertisements set up at three of the most public places in the county, that a writ has been issued against him and his property attached, to satisfy the demand of the plaintiff, and that unless he appear before the justice within thirty days, stating the time and place, judgment will be rendered against him, and his property sold to pay the debt.

**When and how given and proved.** SEC. 9. Such notice shall be set up at least thirty days before judgment, and the setting up thereof may be proved either by the return of the constable upon a copy of the notice, or by the affidavit of any



person who would be a competent witness in the case.

SEC. 10. When the defendant shall be notified as Judgment by default, aforesaid, and shall not appear and answer to the action, judgment by default may be entered which may be proceeded on to final judgment in like manner as in ordinary actions.

SEC. 11. Such judgments shall bind only the And its effect. property and effects attached and no execution shall issue thereon against any other property of the defendant, nor against his body, nor shall any action be brought thereon.

SEC. 12. Attachments may be dissolved on motion Attachments, when, and in what cases, dissolved. made in behalf of the defendant, and at any time before final judgment, in the following cases:—

First—When the defendant shall appear and plead Bond and security, to the action and give bond to the plaintiff with good and sufficient security, to be approved by the justice in double the amount of the property, effects and credits attached, conditioned, that such property, effects and credits shall be forthcoming and abide the judgment which shall be rendered in the cause.

Second—When the defendant shall appear and The sum, &c. plead to the action and give like bond and security, in a sum sufficient to satisfy the debt sworn to in behalf of the plaintiff with interests and costs of suit, conditioned, that the defendant will pay to the Condition. plaintiff the amount which may be adjudged in favor of the plaintiff, interest and all costs of suit, within thirty days after that at which judgment shall be rendered.

SEC. 13. When any attachment shall be dissolved, Effect of dissolution. all proceedings touching the property and effects attached and the garnishees arrested or summoned shall be vacated, and the suit proceed as if it had been commenced by a summons only.

SEC. 14. When any garnishee shall appear before Questions to garnishee. the justice to answer, the following interrogatories, and none other, shall be propounded to him to answer under oath:—

First—At the time of the summons being served upon you as garnishee, had you in your possession or under your control any goods, moneys or effects of the defendant? If so, state what property, how much, and of what value, and what money or effects

Second—At the time of the commencement of this suit, did you owe the defendant any money, or do you

owe him any now? If so, how much, on what account, and when did it become due, and if not yet due, when will it be due?

Answers in writing.

SEC. 15. The justice shall write the answer of the garnishee to each interrogatory, separately, and file the answer as a paper in the cause.

Judg't by default against garnishee, and its effects.

SEC. 16. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers upon oath to the interrogatories, the plaintiff may take judgment against him by default, may be proceeded on to final judgment in like cases between plaintiff and defendant, or at the option of the plaintiff, the justice shall attach the body of the garnishee, until he shall make full and direct answers to the interrogatories.

Final judg't.

SEC. 17. No final judgment shall be rendered against the garnishee until final judgment be had against the defendant.

Pl'ff may deny, &c.

SEC. 18. The plaintiff may deny the answer of the garnishee or any part thereof on the same day on which the answer is made, and the justice shall reduce to writing the denial showing what part is denied, and file it as a paper in the cause.

Issue and trial.

SEC. 19. All issues between the plaintiff and garnishee shall be tried as ordinary issues between plaintiff and defendant, and costs may be adjudged for or against either party, as in ordinary cases; and if upon the trial of any such issue, property or effects shall be found in the hands of the garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the amount in money.

Satisfaction by garnishee.

SEC. 20. Any garnishee having property, money or effects of the defendant, may discharge himself by surrendering and paying the same or so much thereof, as shall be sufficient to cover the debt, interest and cost, to the constable, and taking his receipt therefor, at any time before the final judgment against him.

Additional affidavit, process,

SEC. 21. When any plaintiff at the time he applies for an attachment shall, in addition to the affidavit required by the second section of this article, file the affidavit of himself or of some credible person, stating that any particular person in the county other than the defendant has in hands any property, money or effects of the defendant, or is indebted to the defendant; showing the kinds, quantity and value of the property, or the amount of the debt, (being above five dollars), and stating such circumstances as shall satisfy the justice that the debt of the plaintiff will be

endangered, by reason that such person is about to remove or secrete the property, or if a debtor of the defendant, that he is about to abscond or leave the county, not to return, the justice shall issue his warrant commanding the constable to arrest him, and bring such person forthwith before the justice.

SEC. 22. Such arrest shall be an attachment of the property and effects, money and credits of the defendant in his hands, or due from him, and shall be considered as a garnishee summoned to answer. And arrest.

SEC. 23. If it shall appear, either by the answer of the garnishee, or by the finding of the justice or a jury, that the garnishee has in his hands property or effects of the defendant, the justice shall require him to give bond and security in favor of the plaintiff in such sum, as the justice shall direct; conditioned, that the property or effects so confessed or found in his hands and the debts so due from him or the value thereof, shall abide the final judgment in the cause, and shall be produced and delivered when and where and to whom the justice shall appoint. Bond and security, or

SEC. 24. In default of such bond, the justice shall commit the garnishee to the common prison until discharged by due course of law; nevertheless, the garnishee may be discharged by delivering and paying the property and money, according to the provisions of the twentieth section of this article. Commitment.

SEC 25. In cases where judgment is rendered against the defendant, upon publication of notice without service of summons, or his appearance to the action, no execution shall be awarded either against the defendant or garnishee, or property attached, until the plaintiff or some person for him shall give bond and security in favor of the defendant to be approved by the justice in double the amount of the judgment; conditioned, that if the defendant shall, within one year from the date of the bond, appear and disprove or avoid the debt or damages adjudged against him, or any part thereof, the plaintiff will pay and refund to the defendant all such money as shall have been received by and not justly due to him, together with all such damages as shall be assessed Bond and security by pl'ff. and execution.

SEC. 26. The manner of disproving or avoiding the debt shall be by petition to the justice, who gave the judgment, or his successor, or to the courts into which the records and papers may have been removed, stating the grounds on which he resists the Condition.  
Avoiding debt, petition and notice.

claim of the plaintiff, giving to the plaintiff ten days notice of the time and place the petition will be presented.

Petitioner's oath.

SEC. 27. If the petition deny the original cause of action and be supported by the oath of the petitioner, the plaintiff shall be required to prove his demand, and in default thereof, it shall be adjudged to be disproved and avoided, and the plaintiff shall pay the costs of the petition and of the original suit.

Set-off, or collateral avoidance.

SEC. 28. If the petition allege a set-off or other collateral avoidance, the petitioner shall be required to prove the same, and in default thereof, shall be adjudged to pay costs, and a general judgment may be rendered against him for any balance remaining unpaid on the original judgment and the costs.

SEC. 29. Executions may be awarded and issued on judgments in attachment causes, according to the circumstances of the case, as follows:—

When execution may be awarded,

First—Where there is a general judgment against the defendant the execution shall be a common *feri facias*, which may be levied upon all the property of the defendant (subject to execution) whether attached in the case or not.

General and special.

Second—Where there is a judgment against the property, money or effects attached, the execution shall be a *feri facias* against such property, money or effects only, and may be levied upon the same whether in the hands of the officer or secured by bond, as provided for in this article.

Against garnishee.

Third—Where the judgment is against the garnishee, the execution shall be such as is used and allowed on general judgments in common actions on contracts.

Officer's compensation.

SEC. 30. When property is seized on attachment, the justice may allow to the officer having charge thereof such compensation for his trouble and expenses in keeping and maintaining the same, as shall be reasonable and just.

## ARTICLE XII.

### *Proceedings in case of breach of the peace.*

Summary process.

SEC. 1. No assaults, battery or affray shall be indictable, but all such offences shall be prosecuted and punished in a summary manner before justices of the peace, as hereinafter provided.

SEC. 2. The foregoing section shall not extend to Exceptions. the trial or punishment of any case of riot or unlawful assembly, nor to any assault with an intent to maim, nor an assault with intent to commit a rape, nor an assault with intent to commit robbery, nor an assault with intent to kill; nor shall it embrace the offences of shooting at or stabbing, but all such offences shall be punishable by indictment.

SEC. 3. Whenever a complaint shall be made to a Complaint and justice of the peace on the oath or affirmation of any warrant; by person competent to testify against the accused that whom execu- an assault, battery, affray or other breach of the peace has been or is about to be committed, the justice shall forthwith issue his warrant for the arrest of the offender, which warrant shall be executed by the sheriff of the county or any constable of the county, or by some competent person specially deputed by the justice for that purpose.

SEC. 4. If any justice of the peace shall have any Arrest on view, knowledge that any of the offences mentioned in the or from person- last section are about to be committed, he shall issue al knowledge, his warrant and proceed as is directed in that section, aid and assist- and if any such offence is committed, threatened or attempted in his presence, he shall immediately arrest the offender or cause it to be done; and for this purpose no warrant or process shall be necessary. But the justice may summon to his assistance any sheriff, coroner or constable, and all other persons then present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice or any of his assistants in the performance of their duty.

SEC. 5. When any person shall be brought before Summary a justice of the peace under the provisions of this mode. act, it shall be the duty of the justice to hear and determine, in a summary mode, the complaint alleged against the defendant.

SEC. 6. Upon good cause shown, the justice may Trial, when postpone the trial of the cause to a day certain, in postponed, se- which case he shall require the defendant to enter curity, &c. into a recognizance, with sufficient security, conditioned, that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him.

SEC. 7. If the defendant shall fail or refuse to Commitment. enter into recognizance, the justice shall commit him to the common jail of the county, there to remain

until the day fixed for the trial of the complaint alleged against him.

Breach of recog.

SEC. 8. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the District Court, to be proceeded in according to law.

Want of jurisdiction, how remedied.

SEC. 9. If in the progress of any trial before a justice of the peace, under the provisions of this article, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the District Court.

Witnesses, &c.

SEC. 10. In all cases, arising under this article, it shall be the duty of the justice of the peace acting, to summon the injured party and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

Jury trial, and its incidents.

SEC. 11. All trials before a justice of the peace under this article, shall be by a jury of six competent men, unless the parties agree to leave the decision to the justice, who, if they find the defendant guilty, shall assess the fine to be paid by him, which shall not be less than five dollars nor more than fifty dollars, according to the nature of the offence.

Complainant liable for costs.

SEC. 12. When proceedings are commenced under the provisions of this article on the information or complaint of the injured party, his name shall be entered by the justice in his docket as prosecutor, and if the defendant shall be discharged or acquitted the prosecutor shall be adjudged to pay costs; in all other cases of discharge or acquittal, the costs shall be paid by the county.

Judg't, fine, costs, and execution.

SEC. 13. In all cases of conviction under the provisions of this article, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

Imprisonment and discharge, costs, and privilege.

SEC. 14. Any defendant who shall be committed or taken in execution on such judgment, may at any time after ten days actual imprisonment in jail, be discharged; and in that case, the county shall pay the costs of the prosecution and charge of imprisonment, and for the amount thereof shall be a priv-

ileged creditor of the defendant, entitled to be first satisfied out of his property and effects.

SEC. 15. Either the prosecutor or the defendant may appeal to the District Court, if he shall on the day of the rendition of the judgment file an affidavit, stating that he verily believes that injustice has been done by the verdict and judgment, and also enter into a recognizance with two sufficient securities, which recognizance shall be in the form and with the same condition required in appeals from a justice of the peace in civil cases.

SEC. 16. All appeals taken ten days or more before any term of the District Court of the county, shall be returnable to that term, but if taken within ten days next before the commencement of a term, shall be returnable to the second term.

SEC. 17. When an appeal is taken it shall be the duty of the justice to cause all material witnesses to enter into recognizance in the sum of fifty dollars each, conditioned, for their appearance to testify in the cause at the term to which the appeal is returnable, and shall, on or before the first day of such term, file in the office of the clerk of the District Court a copy of the entries on his docket, with a copy of the process and affidavit of appeal, and the original recognizances of the appellant and witnesses duly certified.

SEC. 18. The clerk of the District Court shall enter the cause on his docket, and if the appeal be regularly taken, the cause shall be heard on the merits at the return term, unless good cause be shown for a continuance; and the costs in both courts shall abide the event of a trial in the District Court.

SEC. 19. If the appeal be not taken and perfected within ten days after rendering judgment by the justice, the judgment shall be affirmed.

SEC. 20. If the judgment of the justice shall be affirmed, or upon a trial in the District Court the defendant shall be convicted and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his securities.

SEC. 21. If in an appeal taken by the prosecutor the judgment of the justice shall be affirmed, the prosecutor and his securities shall pay all costs of said appeal, and if the judgment of the justice should have imposed the payment of the costs upon said prosecutor and said judgment be affirmed, the

Appeal to dis.  
court. Recog-  
nizance.

Appeals, when  
to be taken.

Recog. of wit-  
nesses, process,  
entries, affida-  
vit, &c.

Trial on the  
merits, costs,  
&c.

Judg't, when  
affirmed.

Def't. and se-  
curities.

When prosecu-  
tor to pay costs

judgment of the District Court shall include the costs of both courts, and be against the prosecutor and his securities.

**Execution.** SEC. 22. If the judgment of the District Court be not satisfied in thirty days after the rendition thereof, execution may issue against the party against whom judgment has been rendered, and his securities, which shall be made out of the property of the said party, if sufficient thereof be found; if not, then out of the property of said securities.

**General rule.** SEC. 23. In all cases not specially provided for by this article, the process and proceedings before the justice shall be governed by the laws regulating proceedings in justices courts in civil cases.

**Duty of justice as to fines, &c.** SEC. 24. It shall be the duty of the justice, before whom any conviction may be had under this article, if there be no appeal, to make out and certify and within fifteen days after the date of the judgment deliver to the treasurer of the county a statement of the case, the amount of the fine, and the name of the constable charged with the collection thereof; and the county treasurer shall charge the constable with the amount of such fine, and unless the same be paid into the county treasury within sixty days after the date of the judgment, the said justice shall render judgment against such officer for the amount due and twenty per centum thereon, making, however, proper deductions for insolvencies, on which judgment execution shall be issued as other executions are, and the proceeds paid into the county treasury.

**Constable's liabilities.**

SEC. 25. Any justice of the peace, sheriff, coroner, constable or other officer, who shall wilfully neglect or refuse to perform any duty enjoined on him by this article, shall be deemed guilty of a misdemeanor in office, and shall moreover pay the sum of fifty dollars. And any person who shall, when summoned to aid in arresting or securing an offender, refuse to give such assistance, shall pay five dollars.

**Penalty.**

**Fine and penalties.** SEC. 26. Fines and penalties incurred under the provisions of this article in cases not otherwise provided, may be recovered before any justice by action of debt.

**Verbal notice to witnesses.** SEC. 27. When a trial, under the provisions of this article, shall be continued by the justice, it shall not be necessary for the justice to summon any witness who may be present at the continuance, but such justice shall verbally notify such witnesses, as either party may require, to attend before him to



testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

SEC. 28. Previous to the commencement of any trial before a justice of the peace, the defendant or his agent may make oath that it is the belief of such deponent, that the defendant cannot have an impartial trial before such justice; whereupon, it shall be the duty of the justice immediately to transmit all the papers and documents belonging to the suit, to the nearest justice of the peace, who shall proceed as if the said suit had been instituted before him: *Provided*, There shall be but one change of venue.

### ARTICLE XIII.

#### *Of the forms of writs of process.*

SEC. 1. The following, or other equivalent forms, shall be used by the justice of the peace, in proceedings to be had under this act, to wit:

#### A SUMMONS.

TERRITORY OF IOWA, ——— county, ss.

To any constable in said county.

In the name of the United States of America, you are hereby commanded to summon if shall be found within your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on day of 18 at of the clock, in the noon, at in the said county, to answer the complaint of . Given under my hand this day of 18 .

A. B., Justice.

Form of summons.

#### A WARRANT.

TERRITORY OF IOWA, ——— county, ss.

To any constable in said county.

In the name of the United States of America, you are hereby commanded to take the body of if he be found within your county, and bring forthwith before the undersigned, or some other justice of the peace, in and for said county, at in said county to answer the complaint of and you are also commanded to give due notice thereof to the said plaintiff.

Given under my hand this day of 18 .  
C. D., Justice.

Warrant.

## A SUBPŒNA.

TERRITORY OF IOWA, ——— county, ss.

To

Subpœna.

In the name of the United States of America, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, at ——— on the — day of — at — of the clock in the ——— noon of said day, to give evidence in a certain cause then and there to be tried between ——— plaintiff, and ——— defendant, on the part of the ———.

Given under my hand this — day of — 18—.

E. F., Justice.

## A VENIRE FOR A JURY.

TERRITORY OF IOWA, ——— county, ss.

To any constable of said county.

Venire for a jury.

In the name of the United States of America, you are hereby commanded to summon ——— good and lawful men to be and appear before the undersigned, one of the justices of the peace in and for said county, on the — day of — present (or next) at — of the clock in the ——— noon of said day in the town of ——— to make a jury, for the trial of an action of ——— between ——— plaintiff and ——— defendant.

Given under my hand this — day of — 18—.

G. H., Justice.

## AN EXECUTION.

TERRITORY OF IOWA, ——— county, ss.

To any constable of said county.

Execution.

Whereas, judgment against ——— for the sum of ——— and ——— costs, lawful money of the United States, was recovered the — day of — before the undersigned, one of the justices of the peace in and for said county, at the suit of ———. These are therefore in the name of the United States of America, to command you to levy distress, on the goods and chattels of the said ——— (excepting such as the law exempts) and to make sale thereof according to law in such cases made and provided, to the amount of said sums, together with thirty-seven and a half cents for this execution, and the same return to me within thirty days.

Given under my hand this — day of — 18—.  
J. K., Justice.

Where security has been given for stay of execution <sup>Against securi-</sup>  
on the judgment against the principal and security:—<sup>ty.</sup>

TERRITORY OF IOWA, ——— county, ss.

To any constable in said county.

Whereas, judgment against ——— for the sum of  
——— and ——— costs, lawful money of the United  
States, was recovered the ——— day of ——— 18—  
before the undersigned, a justice of the peace in and  
for the said county, at the suit of ———. And  
whereas ——— on the ——— day of ——— in the  
year aforesaid became security to pay the said judg-  
ment with interest on the same, in — months from  
the date of the judgment aforesaid, agreeably to law,  
in the payment of which the said ——— have failed.

These are therefore in the name, &c. (as in com-  
mon form.)

#### A WRIT OF ATTACHMENT.

TERRITORY OF IOWA, ——— county, ss.

To any constable of said county.

In the name of the United States of America, you <sup>Writ of attach-</sup>  
are commanded to attach C. D. by all and singular <sup>ment.</sup>  
his goods, chattels, moneys, effects, and credits, or so  
much thereof as shall be sufficient to satisfy the sum  
of ——— (the sum sworn to) with interests and costs  
of suit, in whosoever hands or possession the same  
may be found in your county, and so provide, that  
the goods and chattels so attached, may be subject  
to further proceedings thereon, as the law requires;  
and also to summons the said C. D. if to be found, to  
be and appear before me at my office, in the town of  
——— on the — day of — 18— to answer unto  
——— plaintiff; and also that you summon as gar-  
nisees all such persons found in your county, as  
may be directed by the plaintiff or his agent to ap-  
pear before the said justice at the time and place  
aforesaid, to answer such interrogatories as the  
justice may propound, and have you then and there  
this writ.

Given under my hand this — day of — 18—.

O. P., Justice.

APPROVED, January 21, 1839.