

NE EXEAT AND INJUNCTIONS.

AN ACT regulating the issuing of writs of *Ne Exeat* and Injunctions.

- Writs of ne exeat, in what cases granted.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That writs of *ne exeat republica* may hereafter be granted, as well in cases where the debt or demand is not actually due, but exists fairly and bona fide in expectancy, at the time of making application, as in cases where the demand is due; and it shall not be necessary to authorize the granting of such writ of *ne exeat* that the application should shew that his debt or demand is purely of an equitable character, and only cognizable before a court of equity.
- Obligors, joint and several, and their remedies against each other.** SEC. 2. In case of joint or joint and several obligors, or debtors, if one or more of them be about to remove without the jurisdictional limits of this Territory, taking their property with them, leaving one or more co-obligors or debtors bound with them for the payment of any sum of money, or for the delivery of any article of property, or for the conveyance of land at a certain time, which time shall not have arrived at the time of such intended removal, such co-obligor or debtor who remains shall be entitled, on application, to writ of *ne exeat* to compel the co-obligor or co-debtor, who is about to remove, to secure the payment of his part of the sum to be paid, or of the delivery of the property, or to convey or to join in the conveyance of the land. Also, in cases of security, the writ of *ne exeat* may issue on application of a security against the principal, or co-security, when the obligation or debt shall not be yet due, and the principal or co-security is about removing out of the Territory.
- Debt, delivery of property, or conveyance of lands.** SEC. 3. No writ of *ne exeat* shall be granted but on bill or petition filed, and affidavit to the truth of such allegations therein contained. Upon the granting of any such writ, the court, judge, or any person he may have appointed for that purpose, granting the same, shall endorse, or caused to be endorsed, on the bill or petition in what penalty bond and security shall be required of the defendant, and shall also, before issuing the said writ, take bond of the complainant with good and sufficient security in such sum as the said court, judge, or person authorized shall deem proper, conditioned that the said complainant will prosecute his bill, or petition, with effect, and that he will reimburse to the defendant
- Securities, principals, and co-securities.**
- Application for writ, how made.**
- Endorsement on writ.**
- Bond and security.**
- Condition.**

such damages and costs as he shall wrongfully sustain by vacation of the said writ. If any defendant to such writ of ne exeat shall think himself aggrieved he may bring suit on such bond, and if on trial it shall appear that such writ of ne exeat was prayed for, without a just cause, the person injured shall recover damage, to be assessed as in other cases on penal bonds.

SEC. 4. All writs of ne exeat shall be returnable into the district court of the proper county, and when granted by the judge, in vacation, may be issued under the hand of the judge, or the judge may direct the clerk of said court to issue the said writ, and to take bond of the complainant as above required.

SEC. 5. The writ of ne exeat shall contain a summons for the defendant to appear in the district court, and answer to the said petition, or bill, and upon the same being served upon him, he shall give bond with security in the sum endorsed on such writ, conditioned that he will not depart the Territory without leave of said court, and that he will render himself in execution to answer any judgment or decree which the said court may render against him; and in default of giving such security, he may be committed to jail as in other cases, for the want of bail; no temporary departure of the defendant from the Territory shall be considered as a breach of the condition of the said bond, if he shall return before personal appearance shall be necessary to answer or perform any judgment, order, or decree of said court.

SEC. 6. The surety, in any bond for the defendant as aforesaid, may at any time before the said bond shall be forfeited, surrender the said defendant in exoneration of himself, in the same manner that bail may surrender their principal and obtain the same discharge.

SEC. 7. On the return of the writ of ne exeat, if the same shall have been duly served, the court shall proceed therein as in other cases in chancery, if the matters alleged in said bill be purely of an equitable character, and the time of performance of the duty or obligation of the defendant has expired, if not, then the proceedings shall be stayed until it has expired; but the court may, nevertheless, proceed to determine whether the said writ ought not to be quashed, or set aside.

Suit on bond and damages.

Return of writ.

Writ in vacation, and requirements, in such cases.

What writ shall contain, and service thereof.

Bond and security.

Condition.

Temporary absence, and return.

Security may surrender the principal, and be discharged.

Return of writ, and proceedings in court.

May be stayed, quashed, or set aside.

- Writs of ne exeat, by whom and when granted.** **Writs of injunction.** **Limitation.** **SEC. 8.** The supreme and district courts, in term time, and any judge thereof in vacation, shall have power to grant writ or writs of ne exeat and injunction. No writ of injunction shall be granted to stay proceedings under a judgment obtained before a justice of the peace, for a sum not exceeding twenty dollars besides the costs.
- Return of writs.** **SEC. 9.** When an injunction shall be granted by the supreme court, or a judge thereof, it shall be made returnable into the district court of the proper county.
- Injunction, to stay proceedings at law.** **SEC. 10.** Where an injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained, or the suit is pending, and the writ of subpoena may be sent, in the first instance, into any county within this Territory where the defendant resides.
- Subpœna.**
- Restriction.** **SEC. 11.** No injunction shall be granted to stay any judgment at law for a greater sum than the complainant shall shew himself equitably not bound to pay, and so much as shall be sufficient to cover costs. Every injunction, when granted, shall operate as a release of all errors in the proceedings at law that are prayed to be enjoined. No injunction shall be issued unless the complainant shall have previously executed a bond with sufficient surety to the defendant, approved by the court or judge granting such injunction, and filed with the clerk in double the sum directed to be enjoined; conditioned for the payment of all money and costs due, or to be due, to the plaintiff in the action at law, and also all such costs and damages as shall be awarded against the complainant, in case the injunction shall be dissolved, or such bond may be entered into before the clerk of the district court of the county where the writ is required to be issued; the court or judge granting the injunction, having first approved the security. If the injunction be dissolved in the whole or in part, the complainant shall pay, exclusive of legal interest and costs, such damages as the court shall award on such part as may be released from the injunction, and the clerk shall issue execution for the same, when he issues execution upon such judgment.
- Release of errors.**
- Bond necessary to procure injunction.**
- Condition, costs and damages.**
- Clerk may take the bond.**
- Dissolution, costs, interests, damages, and execution.**
- Disobedience to, or breach of, injunction.** **SEC. 12.** If any person, against whom a writ of injunction shall be issued, shall, after the service thereof, be guilty of disobedience to, and breach of said injunction, it shall be lawful for the judge granting the

same, or if the same were granted in open court, then for any judge of that court, in vacation, to issue an attachment against the said person for a contempt, upon his being brought before the said judge, unless he shall disprove, or purge the said contempt, the said judge may, in his discretion, commit him to jail until the sitting of the court in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide the order of the court thereon.

SEC. 13. Upon the filing of an answer, it shall be in order at any time, in term, to move for the dissolution of the injunction, and upon such motion it shall be lawful for the parties to introduce testimony to support the bill and answer, the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true. If after such dissolution is moved for the plaintiff in the bill will satisfy the court by his own affidavit, or the affidavit of any disinterested person, that the answer, or any material part thereof (to be specified in such affidavit), is untrue, and that he has witnesses whose testimony he believes he can procure by the next term of the court who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion until the next term. The testimony to be heard on such motions, aside from the bill and answer, shall be by deposition in writing, taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore, and the depositions taken to dissolve an injunction may be read on the final hearing of the cause in which they have been taken.

APPROVED, January 25, 1839.

PARTITION.

AN ACT to provide for the partition of real property.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any one or more joint tenants or tenants in common of any