

## PRACTICE.

AN ACT regulating Practice in the district courts of the Territory of Iowa.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all writs issued by any court in this Territory shall run in the name of the United States of America, and bear test in the name of the presiding judge and shall be sealed with the seal of said court, signed by the clerk thereof, and made returnable to the first day of the next term, after the date of such writs.

Authority, test, seal, date and return of writs.

SEC. 2. It shall be the duty of the sheriff, or coroner, to serve all process of summons, or capias, when it shall be practicable, ten days before the return day thereof, and to make return of such process to the clerk who issued the same, by or on the return day, with an endorsement of his service, the time of serving it, and the amount of his fees: *Provided,* That when such process shall have been directed to a foreign county, the officer executing the same, may make return thereof by mail, and the clerk may charge the postage and tax the amount in his fee bill.

Service and return of writs, by whom, to whom, and when, with amount of fees.

Proviso.

SEC. 3. If it shall not be in the power of such sheriff or coroner to serve such summons, or capias ten days before the return day thereof, he may execute the same at any time before or on the return day, but in such case the defendant, or defendants, shall be entitled to a continuance and shall not be compelled to plead before the next succeeding term.

Continuance granted for certain reasons.

SEC. 4. Whenever it shall appear by the return of the sheriff, or coroner, that the defendant or defendants are not found, the clerk shall, at the request of the plaintiff, issue another summons, or capias (as the case may be), and so on until service be had and the defendant or defendants be summoned or brought into court; and if such summons or capias be served on any one or more, but not on all of the defendants, the plaintiff or plaintiffs shall be at liberty to proceed to trial and judgment in the same manner as if the defendants were in court, and any judgment so obtained, shall be valid against the defendant or defendants on whom the process had been served, and the plaintiff or plaintiffs may at any time afterwards have a summons in the nature of a scire facias against the defendant or defendants not served with the first process as aforesaid, to cause him, her, or them to appear in the said court and show cause why he, she,

Original process may be rendered from term to term.

And the trial may proceed and judgt be had, where all the defts have not been served.

How said defts may be made a party in such judgt's.

- Credits, and form and effect of such judgt's. or they should not be made a party to such judgment, and the court shall thereon proceed to hear and determine the matter in the same manner as if such defendant or defendants had been originally summoned or brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered, and the judgment of the court against the defendant or defendants in such case shall be, that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendant in the former judgment, the amount of his debt, or damages, as the case may be.
- Rule on the sheriff to return process. SEC. 5. If any sheriff, or coroner, to whom any summons or capias shall be delivered, shall neglect or refuse to make return of the same before or on the return day of such process, the plaintiff may enter a rule requiring said sheriff or coroner to make return of such process, on a day to be fixed by the court, or to show cause, on that day, why he should not be attached for a contempt of the court; and the plaintiff shall thereupon cause a written notice of such rule to be served on such sheriff or coroner, and if good and sufficient cause be not shown to excuse such officer, the court shall adjudge him guilty of a contempt, and shall proceed to punish such officer as in other cases of contempt.
- Service of notice. SEC. 6. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing, or account on which the action is brought, in case the same be brought on a written instrument or account, ten days before the court at which the summons or capias is made returnable, the court on motion of the defendant shall continue the cause, at the costs of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without costs, unless the parties shall agree to have a trial, and if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of non-suit.
- Contempt and punishment. SEC. 7. The clerks of the district courts in this Territory shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the names of the plaintiff's attorney, and he shall furnish the judge and the bar at each term with a
- Declaration, account, or other writing, to be filed, and when.
- Continuance, the first term.
- Second term, judgt for def't, if declaration, &c., be not filed.
- Clerk shall enter parties, cause of action, names of attorneys, &c., on a docket.

copy of the same, in which all indictments and causes to which the United States may be a party, shall be first set down, after which shall be set down all cases in law, in order, according to the date of their commencement, and lastly, the suits in chancery; and the clerk shall also set and apportion the causes for as many days of the term as he may think necessary, or be directed by the judge, and all subpoenas for witnesses shall be made returnable on the day on which the cause in which the witnesses are to be called, is set for trial.

Classification  
of causes.

Apportion-  
ment of causes,  
and attendance  
of witnesses.

SEC. 8. The clerk shall from time to time issue subpoenas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend is set for trial, and every clerk who shall refuse so to do, shall be fined at the discretion of the court in any sum not exceeding one hundred dollars.

Duty of clerk  
as to witnesses.

Penalty.

SEC. 9. In all cases pending in any district court of this Territory, if both the parties shall agree, both matters of law and fact may be tried by the court.

When the  
court may de-  
cide the law  
and the facts.

SEC. 10. The several district courts shall have power in any action pending before them, upon motion, and good and sufficient cause shown, and reasonable notice thereof given, to require the parties, or either of them, to produce books or writing in their possession or power, which contain evidence pertinent to the issue, and it shall be the duty of the defendant or defendants, in all cases where he, she, or they intend to prove on trial any accounts or demands against the plaintiff or plaintiffs, to file with his plea a bill of the particular items of such accounts or demands, and no other accounts or demands shall be suffered to be proved to the jury, or court, on that trial.

Books, writings  
and accounts  
may be requi-  
red.

Particular  
items to be  
filed with deft's  
plea.

SEC. 11. On the appearance of the defendant or defendants, the court may allow such time to plead as may be deemed reasonable and necessary, and for want of appearance, may give judgment by default on calling the cause, except in cases where the process has not been served or declaration filed ten days before the term of the court, but all the causes shall be tried, or otherwise disposed of, in the order they are placed on the docket, unless the court, for good and sufficient cause, shall otherwise direct. And whenever either party shall apply for the continuance of a cause on account of the absence of testimony, the motion shall be grounded on the affidavit

Time to plead.

Judgment by  
default.

Exception.

Continuance.

- of the party so applying, or his, her, or their authorized agent, showing that due diligence has been used to obtain it, and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses, and should the court be satisfied that such evidence would not be material on the trial of the cause, or if the opposite party will admit the fact or facts stated in the affidavit, the cause shall not be continued.
- Due diligence.**  
**Names and residence of witnesses, and facts to be proved.**  
**Admission of facts.**  
**Multiplicity of pleas.**  
**General issue, and special matter.**  
**Execution of instruments.**  
**Pleas verified.**  
**Proviso.**  
**Executors, and administrators.**  
**Judgments by default, on written instruments.**  
**Damages.**  
**When judgments by default set aside.**
- SEC. 12.** The defendant may plead as many matters of fact in several pleas as he may deem necessary, for his defence, or may plead the general issue, and give notice in writing under the same of the special matters intended to be relied on for a defence on the trial, under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been especially pleaded and issue taken thereon; but no person shall be permitted to deny on trial the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of defence or set-off, unless the person so denying the same shall, if defendant verify his plea by affidavit, and if plaintiff shall file his or her affidavit denying the execution of such instrument: *Provided*, If the party making such denial be prosecuting, or sued as executor or administrator, it shall be sufficient to state in such affidavit the belief of the party making the same according to his or her best knowledge, that such instrument was not executed by the testator or intestate.
- SEC. 13.** Whenever judgment shall be given against the defendant or defendants by default in any action brought on any instrument of writing for the payment of money only, the court may direct the clerk to assess the damages by computing the interest and principal and report the same to the court, upon which final judgment shall be given, and in all other actions, when judgment shall go by default, the plaintiff may have his damages assessed by the jury in court.
- SEC. 14.** The court may, in its discretion, before final judgment, set aside any default upon good and sufficient cause, upon affidavit, upon such terms and conditions as shall be deemed reasonable: *Provided*,

That no judgment by default shall be set aside unless Proviso, as to the motion, is made at the term said judgment was time. rendered.

SEC. 15. All affidavits made in court during the Affidavits must progress of any cause and relating thereto, shall be be filed and filed and preserved by the clerk. preserved.

SEC. 16. In actions brought on penal bonds, con- Actions on pe- ditioned for the performance of covenants, the plain- nal bonds. tiff may assign in his declaration as many breaches Breaches of co- as he may think fit, and the jury, whether on trial of venants. the issue, or of inquiry, shall assess the damages for so many breaches as the plaintiff shall prove, and the judgment for the penalty shall stand as a secu- Penalty to rity for such other breaches as may afterwards hap- stand as securi- pen; and the plaintiff may, at any time afterwards, ty. sue out a writ of inquiry to assess damages for the Damages. breach of any covenant, or covenants, contained in such bond subsequent to the former trial or inquiry, and whenever execution shall be issued on such judg- Execution. ment, the clerk shall endorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff or coroner (as the case may be) shall only collect the amount so endorsed: *Provided*, That in all cases where a writ of inquiry of damages shall be issued for any such breaches subsequent to the first trial or inquiry, the defendant, or his agent Notice to def't or attorney shall have at least ten days' notice in or his att'y. writing of the time of executing the same.

SEC. 17. The defendant, or defendants, in any ac- Set-off, plea, tion brought upon any contract or agreement, either and notice. express or implied, having claims or demands against the plaintiff in such actions, may plead the same or give notice thereof under the general issue, as is provided in the twelfth section of this act, or under the plea of payment, and the same or such part thereof as the defendant shall prove on trial shall be set off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due, and if it shall appear that the plaintiff be indebted to the defend- Judgment for ant, the jury shall find a verdict for the defendant, defendant. and certify to the court the amount so found, and the court shall give judgment in favor of such defendant for the amount so certified, with the costs of his de- Execution. fence, and execution shall be issued on such judgment, as in other cases.

SEC. 18. In all civil actions each party shall be en- Preemptory titled to a challenge of three jurors without showing challenge. cause for such challenge, and when the jury retire to

- Documentary evidence.** consider of their verdicts they shall be permitted to take any papers that may have been used as evidence on the trial. And no plaintiff shall suffer a non-suit on the trial, unless he do so before the jury retire from the bar.
- Non-suit.**
- Bill of exceptions part of the record.** **SEC. 19.** If during the progress of any trial in any civil cause either party shall alledge an exception to the opinions of the court and reduce the same to writing, it shall be the duty of the judge to allow the said exceptions and to sign and seal the same, and the said bill of exceptions shall thereupon become a part of the records of such cause; and if any
- Judge's refusal.** judge of the district court shall refuse to allow or sign such bill of exceptions tendered and the same
- How remedied.** is signed by three or more disinterested by-standers, or attorneys of said court, the judge shall then permit the said bill to be filed and become a part of the record, if the judge refuse, the supreme court of this Territory may, when such cause is brought before them, by writ of error or appeal, upon proper affidavit of such refusal, admit such bill of exceptions as a part of the record.
- By supreme court.**
- Verdict, how rendered.** **SEC. 20.** It shall be sufficient for the jury to pronounce their verdict by their foreman in open court, without reducing the same to writing, and the clerk shall enter the same in form under the direction of the court, and if either party may wish to except to the verdict or for other causes to move for a new trial, or in arrest of judgment, he shall, before final judgment be entered, give by himself or counsel to the opposite party or his counsel, the points in writing, particularly specifying the grounds of such motion and shall also furnish the judge with a copy of the same, and final judgment shall thereupon be stayed until such motion can be heard by the court: But no more than two new trials shall be granted to the same party in the same cause, nor shall any verdict or judgment be set aside for irregularity only, unless cause be shown for the same during the sitting of the court at the term such judgment or verdict shall be given.
- Entry in form.**
- Motion for new trial, or in arrest of judgment.**
- Grounds of such motion, how stated. Proceedings stayed. Limitation.**
- Irregularity.**
- General verdict, how sustained.** **SEC. 21.** Whenever an entire verdict shall be given on several counts, the same shall not be set aside or reversed if any one or more of the counts be good.
- Attachment.** **SEC. 22.** In cases of attachment against absent or absconding debtors, the attaching creditor shall, on the return of the writ of attachment, or at the term of the court where the same is made returnable, file

a declaration (unless otherwise provided in the act Declaration regulating writs of attachment), with a copy of the therein, instrument, or account on which the attachment was issued as in other cases; after which the cause shall proceed as in other cases, and if no declaration shall be filed, the defendant, on entering his appearance, shall have a judgment against the attaching creditor Judg't for def't. for costs.

SEC. 23. Any person, for a debt bona fide due, Judg't by confession, release of errors. may confess judgment by himself or attorney, duly authorized without process, and every confession of judgment whether with or without process shall operate as a release of errors on the entering up of the judgment or making record thereof, and in no case, except when the title of land shall come in question, shall it be necessary for the clerk to make a The record, in complete record, unless especially requested by one of such cases. complete record, unless especially requested by one of the parties, who shall pay the costs of the complete record.

SEC. 24. Where judgment shall be arrested for any Judg't arrested defect in the record of proceedings, after the first for error. process, the plaintiff shall not be compelled to commence his action anew, but the court shall order Order of court new pleadings to commence with the error that caused the arrest.

SEC. 25. The clerks of the several district courts Clerk's fee book shall keep a fee book, in which shall be clearly and how kept. distinctly set down in items under the proper title, What it shall the costs of each suit, including the sheriffs and wit- set forth. nesses, as well as clerk's fees, noting distinctly what fees have accrued on the part of each party, which fee book shall be a public record, and, whenever any Fee book, a public record. suit shall be determined and final judgment entered, the costs and charges of each party litigant shall be made up, and, together with the costs of the prevailing party, shall be included in the judgment, and the clerk shall always send out a bill of such costs with Bill of costs to accompany execution. How collected. the execution, and the costs of the party failing in the suit, shall be collected in the manner prescribed by law.

SEC. 26. If any clerk shall issue a fee bill, or a bill Bill of costs to of costs, with the execution, without first entering correspond with the record. the same in his fee book, or if any such bill of costs Otherwise void. or fee bill shall be so issued which shall not be in substance a copy of the recorded bill, the same shall be void, and any person having paid such bill of costs, or fee bill, may recover from the clerk the Penalty. amount thereof with costs of suit; in any court

Names of witnesses, and number of days. Docket book.	having cognizance thereof, and in every bill of costs to be made or recorded as aforesaid, the names of the witnesses shall be stated with the number of days each attended at every term.
Character, and correction of fee book.	SEC. 27. It shall not be necessary to insert in the judgment other than the docket book, the costs of the prevailing party, except in cases where a complete record shall be required, but the fee book of the clerk shall be taken and deemed a part of the record, subject, however, at all times to be corrected by the court.
Judgment docket, order thereof.	SEC. 28. The clerks of the several district courts shall provide and keep in their respective offices a well bound book for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts, and it shall be the duty of the said clerks, during every term, or within thirty days thereafter, to enter in such term in alphabetical order by the name of the person against whom the judgment or decree was entered, which shall contain, in columns ruled for that purpose, the names of the parties, the date, the nature of the judgment, or decree, the amount of the debt, damages and costs, the book and page in which it is entered, and leaving a blank column, or columns,
Duty of clerk detailed.	for entering a note or memorandum of the satisfaction, or other disposition thereof; and when any judgment or decree shall be satisfied by execution, or otherwise, or shall be set aside, the said clerk shall enter a memorandum thereof in the column left for that purpose, showing how disposed of, and the date, book, and page where the evidence thereof is recorded, and such docket may be searched by persons, at all reasonable times, without fee; and every clerk who shall fail to keep such docket or to enter therein any judgment, or decree, as aforesaid, shall forfeit and pay a sum not exceeding one hundred dollars, nor less than twenty-five dollars, and costs of suit, the one half to the use of the county where such court is held, and the other half to the use of any person who will sue for the same, to be recovered by action of debt in the district court.
Satisfaction of judgment.	SEC. 29. Whenever any sheriff or coroner shall neglect or refuse to make return of any execution to him delivered, and deliver when the same shall be returnable, or shall refuse or neglect to pay over any moneys collected on such execution, the party suing out such execution on giving to said sheriff or coro-
Penalty.	
How recovered.	
Remedy against sheriff, &c.	

ner five days' notice, in writing, of his, her, or their intention, may apply to the court for relief: and it shall be the duty of the court, on proof by affidavit of the delivery of such execution, if the same be not returned, or on proof that such money has been collected and not paid over, to grant an order against such sheriff or coroner, requiring him to make immediate return of such execution, or if the amount, or any part thereof has been collected, to pay over the same immediately, with twenty per cent. thereon from the time of collection till paid, and on failure of such sheriff or coroner to comply with such order, on demand, and being served with a copy of the order, he shall be judged to be in contempt, and punished accordingly; or the plaintiff in such execution may have judgment for the money, with twenty per cent. thereon so collected, and have execution as in other cases: *Provided*, That in such cases, no stay of execution shall be granted.

Notice.

Duty of court,

To grant an order.

Its requirements.

Contempt, and punishment.

Remedy modified.

Proviso.

SEC. 30. The clerk shall enter, in a book to be kept by him for the purpose, the return of the sheriff or coroner of all executions within thirty days after the same shall be returned, under the penalty imposed in the twenty-eighth section of this act.

Duty of clerk, as regards return of executions.

Penalty.

SEC. 31. Appeals from the district court to the supreme court of this Territory shall be allowed in all cases when the judgment or decree appealed from be final, and shall amount, exclusive of costs, to the sum of twenty-five dollars: *Provided*, Such appeals be prayed for at the time of rendering the judgment or decree, and provided the party praying such appeal shall, by himself, agent, or attorney, give bond, with sufficient security, to be approved by the court, and filed in the office of the clerk; which bond shall be in a reasonable sum, sufficient to cover the amount of the judgment appealed from, and all costs, interests, and damages, in case the judgment shall be affirmed; and also for the due prosecution of said appeal, and the obligee in such bond may at any time on a breach of the condition thereof, have and maintain an action at law, as on other bonds.

Appeals from district to supreme court, when allowed.

Proviso.

Bond and security.

Condition.

Forfeiture and remedy.

SEC. 32. The appellant shall lodge in the office of the clerk of the supreme court, an authenticated copy of the record or decree appealed from by or before the third day of the next succeeding term of said supreme court: *Provided*, That if there be not thirty days between the time of making the appeal and the sitting of the court, then the record shall be lodged

Record authenticated and filed.

Proviso, as to time.

- as aforesaid, at or before the third day of the next succeeding term of the supreme court; otherwise the said appeal shall be dismissed, unless further time to file the same shall have been granted by the supreme court, upon good cause shown.
- Dismissal.**            **SEC. 33.** In all cases of appeals and writs of error, the supreme court may give final judgment and issue execution, or remand the cause to the district court in order that an execution may be there issued, or that other proceedings may be had thereon.
- Exception.**
- Execution awarded, or record remanded.**
- Supersedeas, how granted.**    **SEC. 34.** No writ of error shall operate as a supersedeas, unless the supreme court, or some justice thereof, in vacation, after inspecting a copy of the record, shall order the same to be made a supersedeas; nor until the party procuring such writ shall file a bond in the manner and with the condition required in cases of appeals; when the clerk issuing such writ shall endorse thereon that it shall be a supersedeas and operate accordingly, and the parties in writs of error shall be subject to the same judgment and mode of execution as is provided in cases of appeals.
- Bond and condition.**
- Duty of clerks.**
- Judgment and execution.**    **SEC. 35.** Whenever the supreme court shall be equally divided in opinion on hearing an appeal or writ of error, the judgment of the court below shall stand affirmed.
- Difference of opinion.**
- Charge of district court confined to law.**    **SEC. 36.** The district courts in charging the jury, shall only instruct them as to the law of the case.
- Scrawl equal to seal.**    **SEC. 37.** That any instrument of writing to which the maker shall affix a scrawl by way of seal, shall be of the same effect and obligation to all intents as if the same was sealed: *Provided*, The seal be referred to in the body of the instrument.
- Proviso.**
- Incompetent witnesses.**    **SEC. 38.** A negro, mulatto, or Indian, shall not be a witness in any court or in any case against a white person.
- Non-joinder in appeal or writ of error, not to affect proceedings thereon.**    **SEC. 39.** That in all cases where a judgment or decree shall be rendered in any district court in any case whatever, either in law or chancery, against two or more persons, either one of the said persons shall be permitted to remove said suit to the supreme court by appeal or writ of error, and for that purpose shall be permitted to use the names of all of said persons, if necessary; but no costs shall be taxed against any person who shall not join in said appeal or writ of error. And all such cases shall be determined in said supreme court as other suits are, and in the same manner that it would have been

if all the parties had joined in said appeal or writ of error.

SEC. 40. Hereafter minors may bring suits in all cases whatever by any person that they may select as their next friend, and the person so selected, shall file a bond with the clerk of the district court, or justice of the peace, before whom the suit may be brought, acknowledging himself bound for all the costs that may accrue and legally devolve upon such minor; and after bond shall have been so filed, said suit shall progress to final judgment and execution as in other cases.

Minors may sue by next friend.

Bond required for costs.

SEC. 41. That in any species of personal actions in law or equity when there is more than one defendant, the plaintiff commencing his action where either of them reside, may have a writ or writs issued, directed to any county or counties where the other defendants, or either of them, may be found: *Provided*, That if a verdict shall not be found, or judgment rendered against the defendant or defendants, resident in the county where the action is commenced, judgment shall not be rendered against those defendants who do not reside in the county, unless they appear and defend the action.

Proceedings where defendants reside in different counties.

Proviso.

SEC. 42. Interpreters may be sworn truly to interpret when necessary.

Interpreters.

SEC. 43. No declaration shall hereafter be considered necessary to be filed in any scire facias to revive a judgment.

Sci. Fa. to revive judgment, Narr. not required.

SEC. 44. That when any person, holding a bond or note for the direct payment of property or money, shall desire to put the same in suit, he may do so by filing with the clerk of any district court having jurisdiction thereof, together with a petition purporting as follows:

Filing bond or note, &c.

And petition.

District Court, \_\_\_\_\_ }  
County, Iowa Territory. } sct.

A. B., plaintiff, states that he holds a bond, or note, (as the case may) on the defendant, C. D., in substance as followeth: (here insert a copy of the bond or note), yet the same debt remains unpaid, wherefore he prays judgment for his debt and damages for the detention of the same, together with his costs.

Form.

SEC. 45. If the plaintiff shall hold the bond or note as indorsee, then after reciting the bond or note, say on which is the following assignment: (recite the assignment) whereby the plaintiff hath become the

Assignment of bond or note.

proprietor thereof, of which the defendant hath had due notice.

Summons and petition, their requirements and service.

SEC. 46. A copy of the petition shall be sent out with the summons annexed thereto, requiring the defendant or defendants to appear and answer the said demand on the first day of the succeeding term, which shall be executed by the sheriff by delivering a copy of the petition and summons to the defendant, and each of them, if there be more than one.

Time of service and its effect.

SEC. 47. The sheriff or other officer, in his return, shall note the day on which it shall have been executed; and whenever it shall appear therefrom that it was executed ten days or more before the return day, judgment shall be rendered at the first term, subject to be continued on affidavit, as provided in this act, but if the process shall not have been executed ten days before the sitting of the court to which the same is made returnable, a continuance shall be entered, unless a trial shall be had by consent of parties.

Continuance.

Petition equal to declaration.

SEC. 48. The said petition shall stand in the place of a declaration, the defendant or defendants may appear and plead, and then an issue may be joined as in actions of debt on such bond or note; but if the defendant or defendants shall not appear and plead, the plaintiff may take judgment by default, as in other cases.

Judgment by default.

Defects after verdict, how cured.

SEC. 49. After verdict, the act of jeofails shall apply as in actions of debt heretofore; nothing herein shall prohibit any person who shall choose so to do, from suing in the ordinary way, and the fees shall be the same as in other cases.

Election of remedies.

Holding to bail — affidavit required.

SEC. 50. When a petition shall have been filed according to the provisions of this act, and on affidavit to hold to bail as herein provided, there shall be issued by the clerk a *capias* and an order to hold to bail, as is now or may be provided by law. In such cases the affidavit shall be in substance as follows:

Territory of Iowa, }  
 \_\_\_\_\_ county. } ss.

Form.

A. B., plaintiff in the above petition, maketh oath and saith, that he has a real, subsisting, and unsatisfied cause of action set out in the above petition, and amounts to the sum of \_\_\_\_\_; and further, that the deponent will be in danger of losing his debt unless the defendant be held to bail. Signed, A. B.

Acknowledgment, before whom taken.

Sworn to and subscribed before me at my office, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. — G. W. H., Clerk.

Which affidavit may be made before the clerk of the district court, or any justice of the peace of the proper county.

SEC. 51. This act to take effect and be in force from and after the first day of May next. This act, when to take effect.

APPROVED, January 25, 1839.

## PROMISSORY NOTES.

AN ACT relative to promissory notes, bonds, due bills, and other instruments of writing.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all promissory notes, bonds, due bills, and other instruments of writing, made by any person, body politic, or corporate, whereby such person, or persons, promise to pay any sum of money, or articles of personal property, or any sum of money in personal property, or acknowledge any sum of money, or articles of personal property to be due, shall be taken to be due and payable to the person to whom the said note, bond, bill, or other instrument of writing is made; and any such note, bond, bill, or other instrument of writing, made payable to any person, shall be assignable, by endorsement thereon, under the hand of such person and of his assignee in the same manner as bills of exchange, so as absolutely to transfer and vest the property thereof in each and every assignee successively; and any assignee to whom such sum of money, or personal property is, by such endorsement, made payable, or in case of the death of such assignee, his executor or administrator, may, in his name, institute and maintain the same kind of action for the recovery thereof, against the person who made and executed any such note, bond, bill, or other instrument of writing, or against his executor or administrator, as might have been maintained against him by the obligee or payee, in case the same had not been assigned; and in every such action, in which judgment shall be given for the plaintiff, he shall recover his damages and costs of suit as in other cases: *Provided,* That the maker shall never be allowed to al- Bonds, notes, &c., shall be taken according to their purport. Assignment thereof, and its effect. Suits for the recovery of the money or property promised and the right of action hereina. Proviso. ledge payment to the payee made after notice of such assignment, as a defence against such assignee.

SEC. 2. Every assignor, or his heirs, executors, or administrators, on every such note, bond, bill, or other Due diligence of assignee.