

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 allege payment to the payee made after notice of such assignment, as a defence against such assignee. 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.

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

instrument in writing, shall be liable to the action of the assignee thereof, or his executors or administrators, if such assignee shall have used due diligence by the institution and prosecution of a suit against the maker or makers of such assigned note, bond, bill, or other instrument of writing, or against his heirs, executors, or administrators, for the recovery of the money, or property due thereon, or damages in lieu thereof: *Provided*, That if the institution of such suit would have been unavailing, or that the maker had absconded, or left the Territory when such assigned note, bond, bill, or other instrument in writing, become due, such assignee, his executor, or administrator, may recover against the assignor, or against his heirs, executors or administrators, as if due diligence by suit had been used.

Proviso in case of absconding obligors.

Endorsement, and the defence allowed.

SEC. 3. If any such note, bond, bill, or other instrument in writing, shall be endorsed, after the day on which the money or property therein mentioned became due and payable, and the endorsee shall institute an action thereon against the maker and signer of the same, the defendant being maker and signer, shall be allowed to set up the same defence that might have been done had the said action been instituted in the name, and for the use of the person, or persons, to whom the said note, bond, bill, or other instrument in writing, was originally made due and payable.

Notice of payment to endorsee, and its effect, on trial.

SEC. 4. If any such note, bond, bill, or other instrument of writing shall be endorsed, before the day the money or property therein mentioned became due and payable, and the endorsee shall institute an action thereon, the defendant may give in evidence, at the trial, any money or property actually paid on the said note, bond, bill, or other instrument in writing, before the said note, bond, bill, or other instrument in writing was endorsed or assigned to the plaintiff, by proving that the plaintiff had sufficient notice of the said payment before he accepted or received such endorsement.

The consideration, must be good, or valuable.

SEC. 5. In any action commenced in any court of law in this Territory upon any note, bond, bill, or other instrument in writing, for the payment of money or property, or the performance of covenants or conditions by the obligee or payee thereof, if such note, bond, bill, or instrument in writing was made without a good and valuable consideration, or if the consideration upon which such note, bond,

bill, or other instrument in writing was made, has wholly failed, it shall be lawful for the defendant against whom such action shall have been commenced by such obligee, or payee, to plead such want of consideration, or that the consideration has wholly, or in part, failed; and if it shall appear that any such note, bond, bill, or other instrument of writing was made without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant, and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the justice and equity of the case: *Provided*, That nothing in this section contained shall be construed to affect or impair the right of any *bona fide* assignee of any instrument made assignable by this act, where such assignment was made before such instrument became due.

Want of consideration, or its failure, in whole, or in part.

Proviso, as to time.

SEC. 6. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud, or circumvention, may be pleaded in bar to any action brought on any such instruments, whether such action be brought by the party committing such fraud, or circumvention, or any assignee of such instrument.

Fraud, or circumvention, may be pleaded in bar.

SEC. 7. In all cases, where any of the before mentioned instruments of writing are for the payment or delivery of personal property, other than money, and no particular place be specified in such instruments of writing for the payment or delivery thereof, it shall be lawful for the maker of any such instrument to tender, or cause to be tendered, on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument resided, at the time of the execution thereof: *Provided*, however, If such personal property be too ponderous to be easily removed, or if the obligee or payee of such instrument had not, at the time of the execution of such instrument of writing, a known place of residence in the county where the maker or makers reside, then it shall be lawful to tender such personal property at the place where the maker or makers of such instrument resided, at the time of the execution thereof. Any tender made in pursuance of this section, shall be equally as valid and legal in case any such instrument of writing shall have been

Delivery of personal property; the time, place and manner of tender.

Proviso, as to the bulk of property, and residence of parties.

assigned, in pursuance of the first section of this act as if no such assignment had been made.

Effect of legal tender, as to personal property.

SEC. 8. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon, and the property thus tendered is hereby declared to be vested in the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him: *Provided*, however, if any such property, so tendered, shall be of a perishable nature, or shall require feeding, and the person owning and holding such instrument of writing be absent at the time of tendering the same, it shall be lawful for any person making such tender, to preserve, feed, or otherwise take care of the same, and he shall have lien on such tendered property for his, her, or their reasonable trouble, and the expenses of feeding, preserving or sustaining such property until payment be made for such trouble and expense.

Proviso, as to personal property, tender, absence, &c.

Corporations, partnerships, &c., style of suit, judgment, and execution.

SEC. 9. That in all suits brought in any court of this Territory, upon any promissory note, bond, bill, or other instrument of writing, made payable to, or by any corporate body, by their corporate name, or any association of individuals by their associate name, or partners trading together under their partnership name and style, it shall only be necessary to prove the corporate, associate or partnership name and style, without proving the names of the individuals who compose the same, and when in any such suit judgment be rendered against such corporate body, association of individuals, or partners, said judgment shall be entered up against such corporate body, association of individuals, or partners, under the same name and style as that in which said suit is instituted; and the execution, when issued on said judgment, against such corporate body, association of individuals, or partners, in the corporate, associate, or partnership name and style, said execution shall run against his, her, or their individual, as well as corporate, associate, or partnership property, and shall be levied thereon and collected in like manner as if the suit had been instituted in the individual names of the partners composing such corporate body, association of individuals or partnership.

Individual liability herein.

Signatures to notes, bonds,

SEC. 10. The signature to all bills, promissory notes, bonds, or other instruments of writing, on which suit

is or may be commenced in any of the courts of this Territory, shall be considered *prima facie* evidence of their execution, and the party denying the same, his agent or attorney, shall deny the same by oath, when the party introducing the instrument shall prove the signature by extrinsic evidence: *Provided*, If the defendant fails to appear at the first term of the court, the plaintiff, in order to obtain judgment against him at that term, must prove the execution of the note, bond, or other instrument.

bills, &c., denied under oath.

Proviso, as to evidence and judgment.

SEC. 11. That all acts, or parts of acts, coming within the purview of this act, be and the same are hereby repealed; and that this act take effect, and be in force, from and after the first day of March next.

Repealing and enforcing clause.

APPROVED, January 4, 1839.

PUBLIC ADMINISTRATORS.

AN ACT to authorize the appointment of Public Administrators in the several counties of this Territory, and to prescribe their duties.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be elected, biennially, in each organized county in this Territory a suitable person, to be known and named the Public Administrator, whose office and duties shall be prescribed as follows:

Public administrator, biennial election of, in each county.

SEC. 2. That when any person shall die intestate in any county in this Territory, or when any person, a non-resident, shall die intestate, having goods and chattels, rights and credits, or either, in this Territory, and no widow, or next of kin, or creditor, or creditors, shall be living within this Territory, administration of the goods and chattels, rights and credits of such intestate shall be granted to the public administrator of the county, in which such intestate died, or in which the goods and chattels, rights and credits shall be found, in case such intestate shall have been a non-resident, and his successors in office.

To whom administration granted.

Residents and non-residents: the county and effects.

SEC. 3. Each and every public administrator who may at any time be appointed as aforesaid, shall, before entering upon the duties of his office, take and subscribe the following oath, to wit: "I, A. B., public administrator, in and for the county of _____ and Territory of Iowa, do solemnly swear (or affirm) that I will well and truly perform all such duties as

Oath of public administrator, before whom taken, in writing, and with whom filed.