

roll, to deduct from the gross amount of taxes there charged, five per cent. to be set apart, by the said county commissioners, as a debt due from said county to the Territory.

SEC. 2. The county commissioners shall furnish the Treasurer of the Territory, immediately after the same may be filed, with a copy of the duplicate for their respective counties, for the current year, together with the sum which will be due from said county to the Territory, for that year.

Duty of county commissioners, as to duplicate.

SEC. 3. The first moneys which may be returned by the collector, collected from the duplicate of any year, to the amount due the Territory for that year, from the county, shall be retained by the Treasurer of each county for the use of the Territory, and the county treasurers shall pay over the same upon the drafts or warrant of the Treasurer of the Territory.

Money to be retained, and paid over, on draft.

SEC. 4. The duties, herein enjoined upon the county treasurers, shall be so considered, that a departure therefrom shall be deemed a breach of the conditions of their official bonds, so that they, and their securities, shall be liable to the Territory for any loss which may accrue therefrom; and any county treasurer who shall dishonor, or refuse to pay, the drafts of the Territorial Treasurer, for any money which may be in his hands, and due from said county, at the time, to the Territory, shall be amerced in damages of fifty per cent.

Official bonds of county Treasurer,—their duties, &c.

Damages charged at 50 per cent.

APPROVED, January 25, 1839.

## RIGHT.

AN ACT to allow and regulate the action of right.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That hereafter the proper remedy for recovering any interest in lands, tenements, or hereditaments, shall be by an action of right.

Action of right, for interest in lands, &c.

SEC. 2. No person shall recover in this action, unless, at the time of commencing it, he shall have had a valid subsisting interest in the property claimed, and the right to recover the immediate possession thereof.

What right is required therein.

SEC. 3. The action shall be brought in the district court of the county where the property claimed is situated. It shall be commenced by summons, and

Action where bro't, and how.

- all the proceedings therein shall be assimilated, as nearly as practicable, to those in personal actions, except as herein otherwise provided.
- Against whom.** SEC. 4. The action may be brought against any person acting as owner, landlord or tenant of the property claimed.
- Notice to landlord, his agent, &c.** SEC. 5. If brought against the tenant, he shall forthwith give notice thereof to the landlord, his agent, or attorney, under the penalty of forfeiting to such landlord the value of two years' rent, to be recovered in the same manner as other rents.
- Penalty.**
- Substitution of landlord; exception.** SEC. 6. In such cases, the landlord may, at any time appear, and, after having his name substituted in the proceedings, instead of that of the tenant, may become sole defendant in the action: Such substitution, however, shall not take place where the tenant sets up some other claim to the said property than that derived from such landlord.
- The writ how served.** SEC. 7. The summons shall be served on the defendant personally, or, if he cannot be found, by leaving a copy thereof at his residence, with some person of proper age.
- Non-residents and their agents.** SEC. 8. If the defendant be a non-resident of the county, and have a known agent (in relation to the property for which the action was brought) therein, such summons may be served upon said agent in the same manner as though he were the principal.
- Service abroad.** SEC. 9. If being a non-resident, as aforesaid, he have no such agent, the summons may be served either in this Territory, or elsewhere, by any person whatever, in the manner prescribed in section seventh.
- Service, return and proof.** SEC. 10. Where a person, other than the proper officer, shall, in any case, serve such summons, said service must be duly shown to the court by affidavit accompanying the return of the writ and filed therewith, which shall fully state the manner of service.
- Notice by advertisement,—where given, & how long.** SEC. 11. Where the defendant is not to be found in the county in which the action is brought, instead of the mode of service authorized above, the plaintiff may cause an advertisement to be published in some newspaper printed most conveniently to the court where the suit was brought, which publication shall be continued weekly for the term of twelve weeks, in succession.
- Contents and requirements of such notice.** SEC. 12. Such advertisement shall contain the names of the parties, and the description of the property claimed, as stated in the summons, and

shall require the defendant to appear and plead to the action on or before the first day of the term of the court next succeeding the termination of the time of publication, as aforesaid, or that judgment will be rendered against him by default.

SEC. 13. The declaration in this action shall be sufficient in substance if it set forth the names of the parties, and the property, or right, claimed, with such certainty as to leave no grounds of mistake.

SEC. 14. If an undivided share or interest is claimed, the same shall be set forth in the declaration.

SEC. 15. Several tracts of land, or other rights, may be claimed in the same declaration, either in one or several counts.

SEC. 16. The declaration may, at any time before trial, be amended, at the costs of the plaintiff.

SEC. 17. The declaration may charge several defendants jointly in one count, and separately in others.

SEC. 18. The plea to the merits shall be sufficient, if it clearly set forth which of the rights claimed by the plaintiff, or what particular portion thereof, are meant to be defended by such plea.

SEC. 19. The defendant may demur to the declaration, or else he shall plead the general issue only.

SEC. 20. The action of right being intended to supersede the action of ejectment, the writ of right and the writ of dower, whatever might be given in evidence, under the general issue in either of those actions, may also be done in this.

SEC. 21. If the jury find for the plaintiff, they shall also assess the damages sustained by him from the withholding of his rights by the defendant. But no damages shall be recovered for the use, occupation, or intervening profits of the property recovered, which shall have accrued more than six years prior to the commencement of the action.

SEC. 22. If judgment by default be obtained against the defendant, in cases where the summons shall have been personally served, a jury of inquest shall be forthwith empanelled, to assess the said damages of the plaintiff.

SEC. 23. The judgment, in each case, shall be as well for the restoration of the right, as for the amount of the damages and costs: A writ of possession, and also a fieri facias, shall be ordered accordingly.

Verdict and judgment, in certain cases.

SEC. 24. If the interest of the plaintiff in the property sued for expire before the day of trial, the verdict for the plaintiff shall be only for his damages sustained as aforesaid: Judgment shall be rendered for such damages and costs, and, as to the property itself, that the defendant go thereoff without delay.

Default, action on the case, new trial, &c.

SEC. 25. If judgment by default be rendered in a case where the summons was not personally served, there shall be no jury of inquest as above provided, but the plaintiff may bring his action on the case for damages: If, however, the defendant obtains a new trial, as hereinafter provided, the said action on the case shall be dismissed with costs to abide the event of the suit

Proceedings on new trial.

SEC. 26. All the proceedings on the new trial shall be the same as above provided for, in cases where the defendant may have appeared, or been personally served with the summons, and shall be attended with like consequences.

Restitution & damages.

SEC. 27. Where the joint act of several defendants, in withholding the plaintiff's property, is proved on the trial, and the summons shall not have been personally served on all, the plaintiff, if successful, shall be entitled to judgment of restitution against all, but for the recovery of damages he shall proceed as prescribed in section twenty-fifth.

New trial, when allowed, to whom.

SEC. 28. In such cases any of the defendants who have not been personally served, as aforesaid, shall have the right to a new trial, as hereinafter provided, in the same manner as though they had been sole defendants, but the consequences of such new trial shall not enure to the benefit of those defendants upon whom the summons shall have been personally served.

Distinct parcels of property. Plaintiff may elect, &c.

SEC. 29. When on the trial it shall appear that some of the defendants occupy distinct parcels of the property claimed, and other defendants other distinct parcels, the plaintiff shall elect against which to proceed before the testimony shall be deemed closed, and the defendants, not so proceeded against, shall have judgment for their costs.

Discontinuance, in what cases.

SEC. 30. Where there is no proof against some of the defendants, the court may order a discontinuance as to them, at the plaintiff's costs, before the testimony shall be deemed closed.

Verdict and judgment, as to defendants.

SEC. 31. If on the trial, the jury find against some of the defendants and not against the others, the plaintiff shall have judgment against the former,

and judgment shall be rendered against him, for the costs of the latter.

SEC. 32. If the jury find that one or more of several plaintiffs ought to recover, and that the others ought not, the verdict shall specify as to which of said plaintiffs they find for, or against the defendants. As to plaintiffs.

SEC. 33. If the verdict be for a part of the property claimed, it should specify particularly what part, if for an undivided share, or interest, in the whole property claimed, or in any part thereof, it shall specify what share. Specifications in verdict.

SEC. 34. Where, however, the verdict follows the declaration, it may be general for the plaintiff, and in all the above cases judgment shall be rendered according to the verdict. General verdict, and judg't.

SEC. 35. Judgments, in actions of right, shall be as conclusive as in personal actions against the plaintiff, and all those defendants who shall appear and plead, and against those who having been personally served with the summons aforesaid, shall make default. Judgments in this action.

SEC. 36. But in all those cases the court, in its discretion, may grant a new trial on application of the defendant, or his legal representatives, made within the time limited in the following section. New trials.

SEC. 37. Such application, if made by the defendant himself, must be within three years after the said judgment by default. Limitation.

If he die, within the three years, his heirs may have at least two years after his death, within which to make such application. Heirs, may apply, and

If any such heirs are minors, they shall have at least one year after they respectfully become of age, within which to make application as aforesaid. When.

SEC. 38. The time during which any of the individuals named in the last section shall have been insane or imprisoned, for a less period than during life, shall not be included in estimating the limitations therein provided for. Insane persons, &c.

SEC. 39. But no further privileges, than as above specified, shall be permitted on account of any of the parties interested having been married women. Married Women.

SEC. 40. When the defendant was without the United States, during the progress of the action against him, he may, on his part, institute the action of right to recover possession of the same property, at any time within two years after his return, provided Def'ts not in the U. S.—Return and limitation.

- the same be within seven years from the date of the judgment against him as aforesaid.
- Writ of possession.** SEC. 41. The defendant, who shall have been successful on the new trial above provided for, may (if the case require it) have a writ of possession to restore him his property.
- Landlord and tenant.** SEC. 42. Where the action is brought against a tenant, the judgment shall be conclusive against his landlord, in case he received due notice of the pendency of the suit, either in the manner provided for in section fifth, or otherwise.
- Want of notice, &c.** SEC. 43. If not thus notified, he shall enjoy the same privileges as defendants who have not been personally served with summons, as provided for in sections thirty-seven and thirty-eight
- Parties to this action.** SEC. 44. No determination of an action of right shall prejudice the interest of any person not a party to the suit, except in case of a landlord as aforesaid.
- Title.** SEC. 45. The plaintiff, in this action, can only recover upon the strength and validity of his own title.
- Limitation, 20 years.** SEC. 46. Twenty years quiet possession, under a claim of title adverse to that of the plaintiff, shall be a bar to the action of right, except as hereinafter provided.
- Disabilities, and their removal.** SEC. 47. Persons insane, or imprisoned, or minors, during any portion of the said twenty years, shall be allowed to commence said action at any time, within two years after such disability has ceased.
- Widow's dower.** SEC. 48. No widow shall commence this action for the recovery of her dower, until after the expiration of six months from the death of her husband.
- Joint tenants, and tenants in common.** SEC. 49. If the action be brought by tenants in common, or joint tenants, against their co-tenants, the plaintiffs must prove, on the trial, that the defendants actually ousted said plaintiffs, or did some act amounting to a total denial of their rights, as such co-tenants.
- Arrest of judgment, &c.** SEC. 50. The same proceedings shall be allowed as in personal actions to arrest, or reverse, any judgment, or obtain a new trial in actions of right.
- Warrant of attorney.** SEC. 51. The attorney of the plaintiff, if required by the defendants, must show, or state sufficient authority for commencing this action, otherwise the suit shall be dismissed, at the costs of such attorney.
- Waste, and damages.** SEC. 52. If the defendant, in an action of right, shall commit any waste upon the property claimed, he shall forfeit treble damages to the party aggrieved, to be recovered in an action on the case, after said

party shall have recovered possession of the property  
s. ed for.

SEC. 53. Where, by the provisions of this act, the Permanent im-  
plaintiff in an action of right shall be entitled to damages for withholding, or using, or injuring his provements. property, the defendant shall be allowed to set off any permanent improvements he may have made thereon, at their fair value, to said plaintiff.

SEC. 54. After issue shall have been joined on the Joining of is-  
merits, no exceptions shall be taken to the declara- sue. tion, in any manner whatever.

SEC. 55. Where the action is brought to recover County lines. any particular piece of property, lying partly in one county and partly in another, it may be instituted in the district court of either of said counties.

SEC. 56. Any widow who shall have established Assignment of  
her right to dower, in any property, by means of this dower. action, shall have her dower assigned her, in the following manner:

1. The court shall appoint three reputable and Commission-  
disinterested commissioners, who, after having been ers, their oath  
duly sworn to the honest, faithful and impartial dis- and duties. charge of their duty, shall proceed to lay off the said dower designating the same by metes and bounds.

2. They shall make a written report of their pro- Report. ceedings in the premises to the next term of said court.

3. Said report may then be excepted to, and the Exceptions  
court shall have power, for good cause shown, to set thereto. the same aside, and direct a new commission, as before.

4. After the report of commissioners shall have Possession a-  
been confirmed, a writ of possession shall be awarded, warded. which shall be similar in its character to that provided for in other cases.

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## FORMS OF PROCEEDINGS UNDER THIS ACT.

The following, or other equivalent forms, shall be deemed sufficiently technical and correct, in cases to which they apply.

## SUMMONS.

County, } ss.  
 The United States of America to the Sheriff of said county.

Form of summons, in actions of right.

You are hereby commanded to summons D. F. to appear before the district court of the county aforesaid, on the first day of the next term thereof, to answer unto A. B. in an action of right, for certain land with the appurtenances (or whatever the property claimed may consist of) in said county, which the said A. B. claims to be his right in fee simple (or according to the fact), and of which he complains that the said D. F. wrongfully withholds the possession. Hereof fail not, and have you then there this writ, witness, &c.

ADVERTISEMENT.—[ See Sections 11 and 12.]

Advertisement. Whereas A. B. has brought his action of right in the district court of——county, against D. F. for certain lands, with the appurtenances (or whatever the property claimed may consist of), lying in said county, and which the said A. B. claims to be his right in fee simple (or according to the fact): Now this is to require the said D. F. to appear, and plead, to said action, on or before the first day of the term of said court next succeeding the end of twelve weeks from the day of the date hereof, or that judgment, by default, will be rendered against him; dated this——day of——A. D. 18—[ the day on which the advertisement was first published.]

## DECLARATION.

County, } ss.  
 District court for said county [ to be dated the day on which the declaration was filed ]—A. B. claims against D. F. a tract of land, with the appurtenances [or whatever the property claimed may consist of], lying in the county aforesaid, and described as follows: [state the description] and hereupon the said A. B. says, that he has right to the immediate possession of said property, and to the ownership thereof, in fee simple [ or as the case may be ] and

Declaration.



also to damages for its detention, and offers to prove that such is his right. J. M., Atty. for pl'tff.

### PLEA TO THE MERITS.

County, } ss.

District court for said county [ to be dated the day on which the plea is filed ]—D. F. denies the right of A. B. to the tract of land, with the appurtenances, and damages for the detention thereof, as set forth in his declaration, or to any part thereof, and hereupon he prays a jury to determine the truth of this plea. G. W., Atty. for defendant.

### WRIT OF POSSESSION.

County, } ss.

The United States of America to the Sheriff of said county.

In pursuance of a judgment obtained by A. B. against D. F. in the district court of said county, you are hereby commanded to deliver to the said A. B. without delay, the possession of the following premises, with the appurtenances, to wit [ here describe the property recovered with like certainty as in a declaration ]. And further, that of the goods and chattels, lands and tenements of the said D. F. being in your county, you cause to be made, and delivered to the said A. B. the sum of \_\_\_\_\_ for his damages, costs and charges, as specified in said judgment; hereof fail not, and have you this writ with a return of your doings thereon before said court, on the first day of the next term thereof, witness, &c. [ or the damages, costs and charges aforesaid, may be collected by a separate writ of fieri facias, as in ordinary judgments. ]

APPROVED, December 29, 1838.