

VENDERS OF PROVISIONS, &c.

AN ACT to punish the venders of unwholesome liquors and provisions.

- Penalties incurred by a violation of this act.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That if any butcher or other person shall sell, offer, or expose to sale, the flesh of any animal, dying otherwise than by slaughter, or slaughtered when diseased, or any contagious, or unwholesome flesh; or if a baker, brewer, distiller, or other person, shall sell, offer or expose to sale, any unwholesome bread, beer, or liquor whatsoever, he shall be adjudged to be guilty of a misdemeanor, and on conviction, shall be punished by fine for every such offence, in any sum not exceeding five hundred dollars, nor less than thirty dollars, recoverable by action of debt, with costs of suit, in the name of the United States of America, or by indictment, or information, in any court having competent jurisdiction to try the same, or by imprisonment not exceeding six months, or by both.
- Form of action, and costs.** SEC. 2. All fines, collected under the provisions of this act, shall be paid over by the officer collecting the same, to the treasurer of the county for the use of such county.
- Fines, to whom paid.** SEC. 3. This act to take effect, and be in full force, from and after its passage, but shall not vitiate, or render void, any prosecution under any previous act, but such prosecution shall be prosecuted, under the acts now in force, as though this act had not passed.
- Proceedings, under former acts.** APPROVED, December 29, 1838.

VENUE.

AN ACT to provide for changing the venue, in civil, and criminal cases.

- A change of venue, in civil cases, in district court, when and for what causes allowed.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That in any civil cause, in law or equity, pending in any district court, either party may have a change of venue, when he fears he shall not receive a fair trial, for reason that the judge is interested, or prejudiced, or is related to, or shall have been counsel for, either party, or that the adverse party has an undue influence over the minds of the inhabitants of the county, wherein the action is pending, or that the inhabitants of such county are prejudiced against him.

SEC. 2. That the party desiring a change of venue, for any of the foregoing reasons, may apply to the court, in term time, or the judge thereof in vacation, by petition, setting forth the cause of the application, and praying a change of venue, accompanied by an affidavit verifying the facts in the petition stated, and such court, or judge, reasonable notice of the application having been given to the other party, or his attorney, shall award a change of venue to the nearest county where the causes complained of do not exist: *Provided*, That neither party shall have more than one change of venue.

Application, when, to whom, and how made.

Petition, how verified; change, to what county awarded.

Proviso.

SEC. 3. That in all such cases, where the judge is interested, or is related to, or shall have been counsel for, either party, the court may, in their discretion, in term time, without application from either party, award a change of venue, as aforesaid.

The court may award a change, without application.

SEC. 4. That, if any defendant, in any indictment, or information, in any district court, shall fear an unfair and partial trial, for reason that the judge is prejudiced, or that the minds of the inhabitants of the county are prejudiced against him, he, by applying as prescribed in section second of this act, reasonable previous notice being given to the attorney general, or district attorney, may have a change of venue awarded to the nearest county, as in the aforesaid section.

Change of venue, in criminal cases.

SEC. 5. That, when such applicant is in custody, or confined in jail, the court, or judge, shall make an order to the sheriff to remove the body of said applicant, to the common jail of the county to which the venue is changed, there to deliver him to the keeper of said jail, together with the warrant, by virtue of which he is confined, or in custody, not more than three days next before the first day of the term of said court, the sheriff shall obey such order accordingly, and shall endorse, on such warrant of commitment, the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to said keeper, who shall receive the same, and give to the sheriff a receipt therefor, and shall take charge of, and keep, the prisoner in the same manner as if he had originally been committed to his custody: *Provided*, That there shall be but one change of venue, in any criminal case.

When the application is in custody; order for removal of prisoner, warrant, &c.

Endorsement on warrant, receipt for the prisoner, and duty of jailor.

Proviso.

SEC. 6. That, when any judge shall award a change of venue in vacation, in any cause, he shall immediately transmit to the clerk of the county, wherein

Change, when allowed in vacation, duty of

- the judge and clerk. the cause is pending, the petition and affidavit, together with an order in writing, directing the change of venue, and such clerk shall file the same in his office, make out a copy thereof, and a full transcript of the record and proceedings, in such cause, and shall certify, and transmit the same to the proper court, together with all papers filed in the cause, and appertaining, or forming part of the record, including, in criminal cases, the indictment and recognizance of the party, and all witnesses, and the clerks of the court to which such cause is certified, shall file the same, and the cause shall be docketed by such clerk, and shall be proceeded in, and determined by the court, in all things, as well before and after judgment, as if it had originated therein.
- Transmission of the record, recognizances, indictment, &c. and shall certify, and transmit the same to the proper court, together with all papers filed in the cause, and appertaining, or forming part of the record, including, in criminal cases, the indictment and recognizance of the party, and all witnesses, and the clerks of the court to which such cause is certified, shall file the same, and the cause shall be docketed by such clerk, and shall be proceeded in, and determined by the court, in all things, as well before and after judgment, as if it had originated therein.
- Duty of the clerk and court to whom the record is transmitted. **SEC. 7.** That, when any change of venue shall be granted, in term time, the like proceeding shall be had, and duties performed by the clerks, and sheriffs, respectively, as in the preceding section.
- Change of venue, in term time. **SEC. 8.** That the expenses attending a change of venue, in a civil case, shall be taxed by the clerk of the court from which the cause is certified, according to the rates established by law, for like services, and shall be paid by petitioner, and not taken as part of the costs in the suit, and if the petitioner shall neglect, or refuse, to pay the same, to such clerk, within twenty days after the change of venue is awarded, such clerk may make out a fee bill against such petitioner, and his security (if any), for costs, and deliver the same to any sheriff of any county in this Territory, who shall levy and collect the amount of such fee bill, and twenty per cent. thereon for the use and benefit of such clerk, in the same manner as on executions, and such sheriff shall be entitled to like fees as on executions: *Provided*, That where the venue is changed, without application from either party, the costs of such change shall abide the event of the suit.
- Expenses, by whom paid, in civil cases. **SEC. 9.** That, when the venue shall be changed, in any criminal case, the parties, witnesses and all others, who may have entered into recognizances to attend the trial of such cause, having notice of the change of venue, shall be and are hereby required to attend at the time and place the trial is to be had, according to such change, and a failure to do so shall work a forfeiture of the recognizance.
- Neglect, or refusal, and remedy provided for the clerk in collecting costs. **SEC. 10.** That when the venue is changed, in term time, in a criminal case, the attorney general, or dis-
- Proviso, as to costs.
- Notice of a change of venue, in criminal cases, and forfeiture of recognizance, as to witnesses, &c.
- Duty of district attorney.

trict attorney, shall have all witnesses, on the part of the prosecution, recognized to appear at the court on the first day thereof, when the trial is to be had.

SEC. 11. That, in all cases when a change of venue shall be ordered, in a criminal case, if the defendant shall be convicted, and imprisonment be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the defendant shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody according to the judgment of said court, and all costs and charges incurred in removing any prisoner, as aforesaid, shall be allowed and paid out of the county treasury, where the crime shall have been committed, if the defendant be unable to pay the same.

Where def't is to be imprisoned.

Costs, in removing, by whom paid.

APPROVED, January 18, 1839.

WASTE.

AN ACT to allow and regulate the action of waste.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any person having the possession, or control, of lands, or tenements, and holding the same by any other than a fee simple title, in severalty, who shall commit any waste thereof, or any thing thereunto appertaining, shall be subject to an action of waste, at the suit of any party thereby injured.

By, and against whom, this action may be brought.

SEC. 2. Any such person, who shall not have used due care and exertions to prevent waste, shall be deemed to have committed it.

Prevention of waste.

SEC. 3. Any one seized of an estate in remainder, or reversion, may maintain this action for injuries done to the inheritance, notwithstanding any intervening estate for life, or years.

Estates, in reversion, or remainder.

SEC. 4. An heir, whether he be within or of full age, may maintain his action for waste in the time of his ancestor, as well as in his own time.

Heirs and ancestors.

SEC. 5. No action, however, shall be brought for waste committed more than six years prior to the time of commencing such action.

Limitation, six years.

SEC. 6. The first process, in an action of waste, shall be a summons, which may be substantially in the following form:

Original process.