

CHAPTER 46.

AN ACT to amend an act entitled "an act in relation to the safe custody of persons, arrested for crimes and misdemeanors.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. County to be paid for custody of prisoners—rate of compensation. That the board of commissioners of any county, from which a prisoner may be transferred under the provisions of the act to which this is amendatory, shall pay the county to which such prisoner may be transferred, the sum of two dollars per month for each prisoner during his confinement, for the use of the jail of such county.

Approved February 10, 1842.

[34] CHAPTER 47.

AN ACT defining the jurisdiction of the supreme and district court.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Appellate jurisdiction—in what cases final and conclusive. That the supreme court of this Territory, shall exercise appellate jurisdiction only as is hereinafter provided, and shall have final and conclusive jurisdiction of all matters of appeal, error or complaint, from the judgments or decrees of any of the district courts of this Territory, and from such other inferior courts as may hereafter be established by law, in all matters of law and equity, where the rules of law or the principles of equity appear from the files, records or exhibits of any such court, to have been erroneously determined.

SEC. 2. Powers. The said supreme court is hereby empowered and authorized to take cognizance of all such causes as may be brought before them in manner aforesaid; and to carry into complete execution all their judgments and decrees, according to the rules and principles of common law and equity, and their judgment and decrees shall be final and conclusive on all parties concerned.

SEC. 3. Rules of practice, etc. The said supreme court may, from time to time, institute such rules of practice, forms of process to be used, and rules for keeping the dockets, records, and proceedings of said court, as shall be by them deemed conducive to the administration of justice.

SEC. 4. Court stands adjourned until a quorum of justices attend. If there shall not be a quorum of the justices of the supreme court, on the first day of the term, the court shall stand adjourned from day to day until a quorum shall attend; and if from any cause the supreme court shall not sit on any day during a term, there shall be no discontinuance by reason thereof.

SEC. 5. Supervision of inferior courts—writs of error. The said supreme court shall have the general supervision of all inferior courts, to prevent and correct abuses where no other remedy is expressly provided by law, and shall have authority to issue writs of error, certiorari, habeas corpus, procedendo, supersedeas, and all other writs and process which may be necessary for the due execution of law, the administration of justice, and the perfect exercise of their jurisdiction.

SEC. 6. Writs of error shall be writs of right—time allowed to infants, etc., to take—not to operate as a supersedeas—proviso—bond to be given to opposite party—amount of bond. Writs of error from the supreme court to the district courts, shall be writs of right, and may be taken at any time within two years after the rendition of judgment or decree, by any party who shall feel himself aggrieved by said judgment or decree; and if any such party entitled to such writ of error, shall be an infant, feme covert or non-compos, then in two years after the removal of such disability. No writ of error shall operate as a supersedeas, unless some one of the justices of the supreme court shall endorse upon the transcript of the court below the allowance of said writ of error for probable cause of error, and in all such cases, the party issuing out such writ of error, shall give bond to the opposite party with good security, to be approved of by said judge or by the clerk of the district court where such cause was tried; conditioned duly to prosecute said writ of error, and to pay all costs, interest, damages, and the principal debt, in case the judgment or decree of the court below shall be affirmed; such bond shall be in a sum sufficient to cover principal, interest, damages and costs.

[35] **SEC. 7. Application for writ of error—duty of clerk—of sheriff—of court—when defendant resides out of Territory.** The party applying for a writ of error, shall file a transcript of the cause with the clerk of the supreme court, who shall issue a writ of scire facias to hear errors, to the sheriff of the proper county to be served on the adverse party; and if thirty days shall have elapsed from the time of serving said scire facias, and the first day of the supreme court, the said court shall proceed to hear and determine said cause, whether the defendant in error appear or not; if thirty days do not intervene, the cause shall be continued until the next term of court, unless the defendant in error shall enter a voluntary appearance. Whenever the defendant in error resides out of the Territory, and process shall be returned not found, the plaintiff in error may cause publication of the cause to be made, according to such rules as the court may establish, and at the next term after such publication, the court shall proceed to hear the cause in the same manner as if process of scire facias had been duly served.

SEC. 8. Appeals allowed—in case of writs of error with supersedeas proceedings to be stayed. Appeals shall be allowed from the district court to the supreme court, as is now provided by law. In cases of writs of error with a supersedeas, it shall be the duty of the clerk of the supreme court as soon as the transcript with the bond, conditioned and approved as above, is filed in his office, to issue a writ of supersedeas directed to the sheriff of the proper county, who shall, on receiving the same, stay all proceedings in his hands if execution has issued, and file the same with the clerk of the district court, and said clerk shall not issue execution thereafter, unless ordered by writ of procedendo from the supreme court.

SEC. 9. Kind of judgment to be given—damages given when appeals, etc., taken for delay only—rate of damages in certain cases. The supreme court shall give judgment according to the very right of the cause; and if the judgment shall be reversed from any informality or other proceeding, not requiring a new trial in the court below, they shall give such judgment as the district court ought to have given, and issue execution in the same manner as the district court ought to have done; and on all appeals, or writs of error, taken after the passage of this act, if the said supreme court shall be satisfied that the same is taken for delay only, they may give damages not exceeding twelve per cent. against the appellant or plaintiff in error. If the appellant or plaintiff in error shall not file a transcript of the cause, on or before the third day of the term, the appellee or defendant may file a certificate of the clerk of the court below, that an appeal or writ of error has been taken in the cause, with the

names of the sureties in the appeal or writ of error; thereupon it shall be the duty of the supreme court, to dismiss the appeal or writ of error with ten per cent. damages.

SEC. 10. Limits of jurisdiction—plaintiff may not sue out of county—proviso. The district courts shall be held at the court houses in each county; and the judges thereof shall have jurisdiction over all matters and suits at common law and in chancery, arising in each county in their respective districts; when the debt or demand shall exceed fifty dollars, and in all cases of appeal or certiorari from a justice of the peace, judge of probate, or the board of county commissioners, a plaintiff shall not sue a defendant out of the county where he resides, or where he may be found, unless the debt, contract, or cause of action, occurred in the county where the plaintiff resides, or the contract was specifically made payable or to be performed there, when it shall be lawful to sue in such county, and process may issue to the sheriff of the county where the defendant resides; and when there are several defendants living in different counties, the plaintiff may sue, either in the county where the cause of action [36] arose, or where any of the defendants reside, and shall have like process against such as reside out of the county where the action is commenced.

SEC. 11. Judges to be conservators of the peace—powers as such. The said judges of the district court, shall be conservators of the peace, and the said courts in term time, and the judges thereof in vacation, shall have authority to award throughout the Territory, returnable to the proper county, writs of injunction, ne exeat, habeas corpus, quo warranto, mandamus, and other writs and process, which may be necessary to the due execution of the powers with which they are or may be invested.

SEC. 12. Powers of courts. The said courts shall respectively have authority to hear and determine, all cases of crimes and misdemeanors of whatever kind, that may be committed within any county, and that may be brought before them, by any rules and regulations provided by law.

SEC. 13. All acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

SEC. 14. This act to be in force from and after its passage.

Approved February 10, 1842.

CHAPTER 48.

AN ACT concerning oaths and affidavits.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. What officers are empowered to administer oaths. That the following officers are hereby authorized and empowered to administer oaths and affidavits, in all cases wherein such oath or affidavit may be required by law, viz.: Justices of the peace, clerks of the district court, the clerk of the supreme court, notaries public, and judges of probate.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved February 10, 1842.