

with the preceding section, they may elect their officers and fill vacancies, under such regulations as they may deem proper and expedient; may make and publish such rules, regulations and by-laws, as may be deemed necessary and expedient for the government of said society, not incompatible with the constitution and laws of the United States and of this territory. And such rules, regulations and by-laws, shall have the same force and effect as if passed by the legislative assembly of this territory, provided they do not transcend the legitimate purview of this act.

SEC. 4. Process how served on; length of time before return. That mesne process may be served on such society by leaving an attested copy of such process with the secretary, or any other officer thereof; or in case they may not be known or cannot be [5] found, with any member of such society, at least ten days before the return day of such process.

SEC. 5. Repealing clauses; saving clause. That the act entitled "An act relative to incorporated religious societies," approved December 22nd, 1840; also, an act entitled "An act supplemental to an act relative to incorporated religious societies," approved February 14th, 1842, be and the same are hereby repealed: provided, that the repeal of said acts shall not affect any incorporators which may have went [gone] into effect under said acts.

SEC. 6. Corporations hereafter created by charter, to have benefit of this act. That all religious societies heretofore incorporated under any act of the legislature of this territory shall have all their rights and privileges granted by this act.

SEC. 7. Time of taking effect. This act shall take effect and be in force from and after its passage.

Approved, 7th February, 1844.

CHAPTER 6.

SUPREME COURT.

AN ACT defining the jurisdiction of the supreme court and regulating the practice therein.

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

OF THE JURISDICTION OF THE SUPREME COURT.

[6] **SECTION 1. Supreme Court, appellate jurisdiction of; extent of jurisdiction.** The Supreme Court shall have an appellate jurisdiction over all final and interlocutory orders, judgments and decrees, of the district courts in law and chancery, and over all questions of law that may arise in said courts upon motions for new trials, in arrest of judgments, continuances, and to cases reversed,

SEC. 2. Supervision of inferior tribunals, power to issue writs. They shall have a general supervision over all inferior tribunals; correct and prevent abuses where no other remedy is provided by law; issue writs of error, certiorari, habeas corpus, procedendo, supersedeas, and other writs which may be necessary for the due execution of law, the administration of justice, and the perfect exercise of their jurisdiction.

OF WRITS OF ERROR.

SEC. 3. Writs of error how to issue; to whom directed. Writs of error shall issue as of course, upon any order, decree, or judgment, of any district court, in vacation as well as in term time; and said writs of error shall be directed to the clerk of the district court where the decree or judgment complained of was rendered.

SEC. 4. Said writs when to be sued out. All such writs shall be sued out within three years after the rendition of such judgment, or making such decision.

SEC. 5. Persons laboring under any disability when to sue out same. If any person entitled to a writ of error shall be within the age of twenty-one years, a married woman or of unsound mind, such person may sue out such writ within one year after the removal of the disability.

SEC. 6. District attorneys may sue out same in name of United States. Writs of error may be sued out by any of the district attorneys in the name of the United States, in the same manner as in cases between private individuals.

SEC. 7. Survivor in joint judgment may sue out same. If a judgment or decree shall be rendered against two or [7] more persons, and one of them die, a writ of error may be brought thereon by the survivor.

SEC. 8. Where two or more entitled to writ who to sue out; affidavit of 90 days notice, to whom given, refusal to join. Where two or more persons are entitled to such writ, any one of such persons may sue out the writ, upon filing an affidavit with the clerk that his co-plaintiff in error has had ninety days notice of his intention to sue out and prosecute such writ, and that application has been made to join therein, and that he had neglected or refused to join therein.

SEC. 9. When co-plaintiff may join, by payment of cost. Such co-plaintiff may join at any time before rendition of final judgment upon payment of all costs that have accrued in consequence of his delinquency in joining.

SEC. 10. If co-plaintiff does not join, effect of. If such co-plaintiff in error does not join as aforesaid, after such notice and application, he shall be forever precluded from bringing any writ of error on the same judgment, and judgment in the supreme court shall be rendered as though such person had been named in the writ and proceedings.

SEC. 11. Notice of writ to adverse party; when given, to whom, and effect of not giving notice. The party suing out a writ of error shall cause a notice thereof to be served on the adverse party or his attorney of record, at least fifteen days before the return day of the writ, and if such notice be not served, the judgment of the court below shall be affirmed with costs, unless good cause be shown for such failure.

SEC. 12. May be sued out by or against executors, heirs, etc. Writs of error may be sued out by, or against executors, administrators, or heirs, who were parties upon the record to the proceedings below.

SEC. 13. When party to judgment dies before such writ be sued out against representatives, default of representatives, effect of. When a party in whose favor a judgment was rendered below dies, before writ sued out, a writ of error may issue against his executor, administrator, or heirs, as the case may require; and in all such cases if the executor, administrator or heirs, do not appear, such plaintiff in error shall show affirmatively to the court that he or they are the proper and legal representatives of the deceased party.

SEC. 14. Representative to be joined with survivor. Where there is a survivor of a deceased defendant in error, the executor, administrator or heir, shall be joined with the survivor.

SEC. 15. Writs of error, by whom, when and how returned; penalty on failure of. All writs of error shall be returned by the clerk to whom they are directed, signed by him with the seal of his court affixed, on or before the first day of the term to which they are made returnable; and a failure to do so shall be a contempt of court and punished as such.

OF SUPERSEDING THE JUDGMENT.

SEC. 16. **Supersedeas, recognizance, nature of; to whom and by whom given.** No writ of error shall stay or supersede the execution upon any judgment of the district court, unless the party applying for the same, or his agent, or some responsible person for him, shall enter into recognizance before the clerk of the court where the original judgment was rendered, with sufficient securities, to be by said clerk approved, in twice the amount of the judgment rendered, conditioned that the plaintiff in error will prosecute such writ with effect, and pay the money that may therein be adjudged against him by the supreme court, with all damages that may be awarded, and otherwise abide the judgment of said court.

SEC. 17. **Effect of recognizance.** Such recognizance shall have the effect of a judgment confessed for the amount of the penalty, and shall be a lien upon the real estate of the recognizees in the county where the same is executed and filed, as other ordinary judgments.

SEC. 18. **No execution to issue upon filing.** No execution shall issue after entering into such recognizance.

SEC. 19. **When execution issued, how to obtain supersedeas; effect of, so obtained.** When an execution has issued before entering into such recognizance, the clerk of the district court shall certify upon the back of the writ of error that it is to operate as a supersedeas; and upon exhibiting such writ and certificate to the officer having the execution, he shall proceed no further thereon, but shall return it with his reasons endorsed thereon.

OF APPEALS IN CHANCERY.

SEC. 20. **Appeals in chancery.** Appeals and writs of error shall be allowed in all cases from the decrees of any of the district courts sitting as courts of chancery.

SEC. 21. **Decree, how stayed; rules to apply in chancery cases.** The decree of the court in chancery can be stayed in the same manner as judgments at law can be; and all the rules prescribed by this act for suing out writs of error, filing transcripts, bringing in and joining co-parties, and giving notice to adverse parties, are made applicable to appeals in chancery.

PRACTICE IN SUPREME COURT.

SEC. 22. **Practice in supreme court; errors, by whom and when assigned; default, effect of.** The appellant, or plaintiff in error, shall assign errors on or before the third day of the term to which an appeal or writ of error is made returnable; and in default thereof the writ of error or appeal shall be dismissed, or the judgment or decree affirmed, unless good cause for such failure be shown.

SEC. 23. **Joinders, when filed.** Joinders in error shall be filed within three days thereafter.

SEC. 24. **When one of either party dies before assignment of error death suggested, and trial to proceed.** If one of two or more appellants or plaintiffs in error die before errors assigned, the deaths shall be suggested and errors assigned by the survivor: So where one or more defendants in error dies, the survivor shall suggest the death and plead to the assignment.

SEC. 25. **If one of either party dies after assignment, proceeding not to abate.** If there be more than one appellant or plaintiff in error, or one or more appellee or defendant in error, and one of either party dies after assignment of error, such appeal or writ of error shall not abate, but such death shall be suggested, and the suit proceed by or against the survivor.

SEC. 26. **When no survivor, scire facias against representative.** Where there is no survivor, either party may make the legal representative of the

deceased party a party to the suit, by *scire facias*, and then such suit shall not abate.

SEC. 27. Brief furnished court, contents of; written argument. Each party shall, before the argument of any cause, make out and furnish to the court a clear and concise statement of the case, and the points and authorities intended to be insisted upon in the argument, and no other written argument or statement of points or authorities shall be required; but any party may submit his cause upon a written argument.

SEC. 28. Argument, who to open and close. The appellant or plaintiff in error shall in all cases open and close the argument.

[9] **SEC. 29. Limitation of exceptions.** No exception shall be taken upon any writ of error or appeal to any proceeding in the district court except such as shall have been decided by such court, or such as shall appear from the record.

SEC. 30. Defect of form not to vitiate, when amendable in court below; how amended in supreme court. No judgment or decree of the court below shall be impaired or affected for any defect of form contained in the record, process, pleadings, entries, returns, or other proceedings therein, which by law might be amended by the court in which such judgment or decree was rendered; but such defects and imperfections shall be supplied and amended by the supreme court, or shall be deemed to be supplied or amended by the court below.

SEC. 31. New trial, reversal or affirmance of judgment below, nature of judgment. In all appeals and writs of error the supreme court shall examine the record, and award a new trial, reverse or affirm the judgment on decision of the district court, or give such judgment as such court ought to have given, and as may seem most agreeable to law.

SEC. 32. Special verdict or agreed case may be remanded for new finding. When the facts in a special verdict, reserved or agreed case, or upon which an application for a new trial or continuance are based, are insufficiently found, the court may remand the cause and order a new trial, or another or additional statement of facts.

SEC. 33. Damages, how and when awarded; limitation of. Upon the affirmance of any judgment or decree, or upon the dismissal of any writ of error or appeal, the court may award to the appellee or defendant in error such damages as may be proper and just, not exceeding twelve per cent. upon the amount of the judgment or decree complained of.

SEC. 34. Process to carry decision into effect. Upon the determination of any appeal or writ of error, the court may award such process to carry into effect its judgment or decree, as may be deemed fit and proper, or may remand the record with the decision of the court thereon, and order such decision to be carried into effect.

SEC. 35. Criminal cases, proceedings in. In all criminal cases where a writ of error and supersedeas shall be allowed, and the judgment of the district court shall be affirmed, the said supreme court shall have power and authority to render such judgment, and pass such sentence as the court below ought or could render or pass, and to pass sentence anew.

SEC. 36. Remedy when judgment reversed after being carried into effect; nature of action. When any judgment or appeal shall be reversed, and such judgment or decision may have been carried into effect before the reversal thereof, the defendant may recover from the plaintiff in such judgment the amount, with interest and costs, in an action of debt for money had and received.

MEETING AND ADJOURNMENT OF COURT.

SEC. 37. **Supreme court, when and where held.** The supreme court shall be held at the seat of government of the territory on the first Monday of January in each year.

SEC. 38. **Failure of judges to meet, entry of by clerk, adjournment.** If all the judges shall fail to attend on the first day of the term, the clerk shall enter the fact upon the record, and the court shall stand adjourned to the next day, and so on from day to day for four days; and if none of the judges appear within such four days, the clerk shall enter upon his record that the court stands adjourned to the next annual term thereafter.

[10] SEC. 39. **If one judge appears, how adjournment made.** If one of the judges appears within four days, he may adjourn the court to any day he may see fit prior to the next annual term, and enter the same upon record; and if only one judge appears by the fourth day he may adjourn court as the clerk might if no judge was present.

SEC. 40. **Quorum, two judges.** Any two judges shall be a quorum, and shall proceed to business without the presence of their associate.

SEC. 41. **Failure to hold court not to abate proceedings.** No process, proceeding or writ, shall abate, be discontinued, or in any way affected, by the occurrence of any vacancy in the office of judges, adjournment of court, or failure to hold court.

OF THE OPINIONS OF THE JUDGES.

SEC. 42. **Opinion of court, to be reduced to writing and delivered to clerk.** It shall be the duty of the judges of the supreme court to reduce their opinions to writing in all cases submitted to them, and deliver the same to the clerk of the court.

SEC. 43. **Dissent from opinion of majority; how delivered.** When any judge shall dissent from the decision of the majority, he shall reduce his reasons for dissenting to writing, and deliver the same to the court.

SEC. 44. **Opinions of court, when and where filed.** All such opinions shall be reduced to writing, and filed with the clerk at the term of the court at which the causes were argued, or within sixty days thereafter.

OF THE DUTIES OF THE CLERK.

SEC. 45. **Duties of clerk; blank writs, to whom sent.** The clerk of the supreme court shall issue blank writs of error to any attorney of the court, signed and sealed with his official seal, to be filled up as circumstances may require.

SEC. 46. **Docket, how made up; precedence of U. S. cases.** He shall make out his docket, numbering the causes as they shall be returned to his office, except such causes as the United States may be a party, which shall be placed first on the docket in the order returned.

SEC. 47. **Record, what to contain; compensation to clerk for keeping of.** He shall keep a complete record of all the proceedings, judgments, decrees, orders and decisions of said court, for which he shall be allowed the fees provided for by law, which record shall at all times be open to the inspection of any one desiring to examine it.

SEC. 48. **No paper to be taken from office of, except by member of court.** He shall allow no paper or record to be taken from his office which has been filed in and belongs properly to it, except by an attorney, judge, or officer of court.

SEC. 49. **No paper to be kept out of court more than three days.** No attorney or officer of court shall be allowed to keep any record, paper, argument, opinion or process, more than three days, at any one time.

SEC. 50. **Time of taking effect, 20th of Feb., 1844. Repealing clause; repeal not to affect pending proceedings.** This act shall take effect and be in force from and after the twentieth day of February, 1844, from and after which day the first, second, third, fourth, fifth, sixth, seventh and eighth sections of an act entitled, "An act defining the jurisdiction of the supreme and district courts," approved 3d February, 1843, be and is hereby repealed; but by such repeal no process, pleading or proceeding, now commenced before said court, shall abate or be in anywise affected; but the same shall be proceeded in according to the provisions of the law now in force.

Approved, 8th February, 1844.

[11] CHAPTER 7.

SHEEP.

AN ACT for the improvement of sheep.

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

SECTION 1. **No ram to run at large between last June and first of Nov. If found at large may be taken up—owner may reclaim within two weeks upon payment of one dollar; if he refuses to pay, ram to be forfeited to the person taking up.** That if any ram shall be found running at large between the last day of June and the first day of November, it shall be lawful for any person to take up such ram, and if the owner be known to him, to forthwith give notice to such owner of the taking up of said ram; and if the owner wishes to reclaim said ram, he shall pay, within two weeks, to the person taking up the same, the sum of one dollar; and if he refuses so to do within the time specified above, then such ram shall be forfeited to the person taking up the same.

SEC. 2. **If owner of ram is unknown, person taking up same to give notice—particulars of advertisement; compensation for taking up in case ram is claimed within 15 days; if not claimed within such time additional compensation—if not claimed within three months to be forfeited to the person taking up same.** If the owner of such ram be not known to the person taking up the same, it shall be his duty forthwith to give notice by advertisement posted up in three of the most public places in his neighborhood, describing therein the natural and artificial marks of such ram. Within fifteen days of the time of such taking up, he shall pay the sum of one dollar and fifty cents, to the person taking up and advertising the same; and if the owner shall appear and reclaim such ram after fifteen days, he shall pay to the person taking up the same, in addition to the sum of one dollar and fifty cents as aforesaid, ten cents per week for the keeping such ram; but if the owner shall not appear within three months of the time of the taking up thereof the same shall be forfeited to such person.

SEC. 3. **Time of taking effect.** This act to be in force from and after its passage.

Approved, 8th February, 1844.