

duties by this act enjoined upon and to be discharged by the treasurer of said county, so far as the collection of the public revenue is concerned, for and during the space of one year from and after the first Monday in August, A. D. 1844: provided, said Cameron shall duly qualify as required by the provisions of this act: provided, that said Cameron shall pay the money so collected into the county treasury monthly, and shall receive for his salary four per cent. for his services.

**SEC. 70. Commissioners of Scott and Cedar to levy additional tax; limitation; persons who paid in 1843, credited for 1844 upon the production of evidence to collector.** That the respective boards of county commissioners of the counties of Scott and Cedar be and they are hereby authorized, in addition to the tax for county purposes for the year 1844 by this act authorized to be levied, to levy a tax for county purposes not to exceed five mills to the dollar. That any person in either of said counties who shall have paid his county tax, or any part thereof, for the year 1843, shall be credited therefor by the collector for the year 1844, upon such collector being satisfied of such payment either by the return or receipt of the collector for the year 1843.

**SEC. 71. Repealing clause; saving clause.** That an act entitled "An act to provide for assessing and collecting county and territorial revenue," approved 13th February, 1843, be and the same shall be repealed from and after the first day of April next: provided, however, that by such repeal no right, interest or claim, acquired under the act so repealed, shall abate, make void, or in anywise affect, nor shall such repeal interfere with the collection of taxes now due under the act repealed, but the same shall be proceeded with and collected under said law.

**SEC. 72. Time of taking effect.** This act to take effect from and after the first day of April, 1844.

Approved, 15th February, 1844.

## [40] CHAPTER 22.

### JUSTICES OF THE PEACE.

AN ACT amendatory of an act entitled "An Act to provide for the election of justices of the peace, to prescribe their powers and duties, and to regulate their proceedings," approved February 9, 1843.

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

**SECTION 1. Limitation of civil actions to township where defendant resides; when no justice in such township then justice of adjoining township to have jurisdiction.** That the jurisdiction of all justices of the peace, who have been or may hereafter be elected in this territory, shall be limited as follows: Every action cognizable before a justice of the peace, instituted by summons, shall be brought before some justice of the peace of the township or precinct where the defendant resides: provided, that in case from any cause there should be no legal justice of the peace in any township or precinct where the defendant resides, then the justice of any adjoining township or precinct, in the same county may have jurisdiction in said township or precinct.

**SEC. 2. Where suit to be instituted against defendants living in different townships.** If there are several persons jointly liable to a suit residing in different townships or precincts, in the same county, the suit may be brought in either against all such persons.

**SEC. 3. Process by attachment not limited to townships.** In every action instituted by attachment, the constable, or officer to whom the same is directed, may serve the same in any [41] township or precinct of the county in which such action shall have been instituted.

**SEC. 4. Executions how issued and served: limited to township, when sufficient property can be found; if property not sufficient, may then be levied in any township in county.** Executions shall be issued and served as now provided for by law, but shall be limited to the township or precinct in which the judgment upon which it was issued was rendered, except where the defendant has not property sufficient to satisfy the judgment in such township or precinct, subject to levy; and in such case execution may issue to any township or precinct in the county.

**SEC. 5. When warrant is issued defendant may deny facts of affidavit; issue how tried, effect of issue found for defendant.** When a suit shall be commenced before a justice of the peace by warrant, upon the return thereof, the defendant may deny that the plaintiff had any good and sufficient reasons to believe the facts and allegations stated in the affidavit upon which said warrant issued; which issue shall be tried as other issues before justices are tried. If any of the essential allegations so put in issue be found for the defendant, said plaintiff shall be adjudged to pay all costs of suit; provided, that if, on the said trial, it shall be found that anything is due said plaintiff from said defendant, said plaintiff shall have judgment therefor without his costs.

**SEC. 6. Jurisdiction of constables as conservators of peace co-extensive with that of justices.** The jurisdiction of constables, as conservators of the peace and executive officers, shall be co-extensive with the jurisdiction of the justices of the peace of the respective townships or precincts in and for which they may have been or shall hereafter be elected or appointed.

**SEC. 7. In suit of trespass, if defendant justify by title, how justice to proceed; case, how removed to district court.** If, in a suit of trespass upon any lands or tenements, the defendant shall justify the trespass by plea of title, and enter into recognizance as required in cases of appeal, then the justice of the peace before whom such suit is tried shall immediately stop all further proceedings in said trial, make an entry on his docket of the same, and certify and return to the district court of the county a transcript of all the entries made in his docket, together with all the process and other papers relating to the case, which shall be filed therein in the same manner, within the same time, and there to be determined as cases upon an appeal.

**SEC. 8. When defendant in attachment cannot be summoned, how plaintiff to proceed; notice required and how proved.** That hereafter, when the defendant in suits of attachment cannot be summoned, and his property or effects shall be attached, the plaintiff shall set up the notices required by the eighth section of the eleventh article of the act to which this is amendatory, at least twenty days before judgment, and the setting up thereof may be proved by the affidavit of the party himself, or any other competent person.

**SEC. 9. Bloomington township to have three justices; Burlington and Fort Madison two each; one additional to Linn township, Cedar county; where to reside.** The sixth section of the first article of the act of which this is amendatory is hereby modified and amended so as to allow the township of Bloomington, in Muscatine county, three justices of the peace only, and the township of Burlington, in Des Moines county, and Fort Madison, in Lee county, shall elect two justices of the peace each, instead of four, as now allowed by law; and that an additional justice of the peace shall be elected annually at the April election in Linn township, Cedar county, who shall reside on the west side of Cedar river, in said county.

**SEC. 10. Justices and constables, their duties; to pay over money; to whom to be paid; when to be paid and penalty for failure, how collected.** It shall be the duty of every justice of the peace and constable, to pay over all moneys that may come to their hands in con-[42]-sequence of fines and penalties for violations of law, to their township treasurer, or in counties not organized into townships to their county treasurer, within thirty days of the time such fines and penalties shall come to their hands; and upon failure so to do, it shall be the duty of any township or county officer to sue for and recover the same in the name of the township or county, in an action of debt, before any justice of the peace in the same or an adjoining township or precinct.

**SEC. 11. If justice or constable fail to pay over, any person may commence suit; citation to appear and show cause why office should not be forfeited; effect of judgment; new election to fill such vacancy.** If such justice of the peace or constable shall fail to pay over as aforesaid, it shall be lawful for any person cognizant thereof to file a complaint, in the nature of an information, with the clerk of the district court, setting out the fact of such delinquency and failure, and the clerk shall thereupon issue a citation to such justice or constable, returnable to the next term of his district court, to show cause why the term of his said office shall not cease; and if, upon an investigation of the facts, it shall be found that such officer has failed to pay over moneys as aforesaid, it shall be the duty of the said court to declare such office forfeited and vacant, and a new election shall take place as is provided for by law in cases of vacancy.

**SEC. 12. Any person aggrieved may file complaint against justice or constable for non-payment in civil cases.** That whenever any person shall feel himself aggrieved by the failure of any justice of the peace to pay over money collected in any civil suit, or which has come to his hands as justice of the peace, after due demand thereof, [he] may file his complaint in the same manner, and the same proceedings be had, as is provided for in section twelve of this act.

**SEC. 13. Vacancy in the office of justice of peace, how filled; election, by whom ordered; notice how given, election, how conducted; repealing clause.** That hereafter, when any vacancy shall happen in the office of a justice of the peace, in this territory, by death, resignation, or otherwise, such vacancy shall be filled by election; and the clerk of the board of county commissioners, on being notified of the fact of such vacancy, shall order an election to be held to fill such vacancy, by giving ten days notice of the same by advertising in three of the most public places in said township or precinct; which election shall be held and conducted in the same manner that other elections for justices of the peace are. The twelfth section of first article of an act providing for the election of justices of the peace, to prescribe their powers and duties, and to regulate their proceedings, are [is] hereby repealed.

**SEC. 14. Specific repeal of certain sections of previous law.** The thirty-first, thirty-second, and thirty-third sections of the first article; the fourth and eighteenth sections of the second article; the twelfth section of the third article; section nine in article eleven, and all other portions of the act to which this is amendatory which come in conflict with this act, are hereby repealed.

**SEC. 15. This act not to interfere with suits now pending.** Nothing in this act shall be construed to affect in any manner suits instituted previous to the taking effect of this act before justices of the peace under the act to which this is amendatory; but all suits so instituted shall be prosecuted to final determination in the same manner as if this act had not been passed.

**SEC. 16. Time of taking effect.** That this act shall take effect and be in force from and after the twentieth day of March, 1844.

Approved, 14th February, 1844.