

BY AUTHORITY.

AN ACT to establish Courts, and prescribe their powers and duties.

§ 1. Be it enacted by the House of Representatives of Oregon Territory, That the judicial power shall be vested in a supreme court, criminal court, county courts, probate courts, and in justices courts. The supreme, criminal, and county courts, shall be courts of record.

§ 2. All judicial officers shall be elected by the house of representatives, and commissioned by the governor; and before entering upon the duties of their offices, shall, within thirty days after receiving their commissions, take the oath prescribed in the articles of compact, a certificate of which shall be endorsed on their commissions: *Provided*, That it shall be the duty of the judges of election, at the several precincts in this territory, to open a poll at the first annual election, to take the sense of the people, whether in future the judges of the county courts shall be elected by the house of representatives, or by the people.

§ 3. The courts of record shall each procure and keep a seal with such emblem and devices as the courts shall think proper.

§ 4. The courts of record shall, with the advice and consent of the house of representatives, appoint their own clerks, whose tenure of office shall be the same as that of the judge of the court of which they are clerk, who, before entering upon the duties of their offices, shall enter into bond to the territory, with good and sufficient security, in a penalty sufficient to cover all responsibilities, conditioned for the faithful performance of their duties.

§ 5. The bonds of clerks, sheriffs, and other officers belonging to a court shall be approved by the president of the court to which they respectively belong.

§ 6. The courts established by this act, shall have power to punish, as for criminal contempt, persons guilty of either of the following acts, and for no others:

First.—Disorderly, contemptuous or insolent behavior committed during its sitting, imminently to its view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

Second.—Any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings.

Third.—Willful disobedience of any process or order lawfully issued or made by it.

Fourth.—Resistance lawfully offered by any person to the lawful order of process of the court.

Fifth.—The wilful and unlawful refusal of any person to be sworn as a witness, and when so sworn, the like refusal to answer any legal or proper interrogatory; and all other acts denominated "attempts of courts" in the laws of Oregon territory, shall be deemed, tried, and punished as crimes or misdemeanors.

§ 7. Punishments for contempt may be by fine or imprisonment, or both; the fine not to exceed fifty dollars, and the imprisonment not to exceed ten days. Persons punished for contempt, may also be indicted and punished according to law, if the offence be indictable.

§ 8. The impression of the seal of any court of record, by stamp, shall be sufficient sealing in all cases where sealing is required; and where no official seal is provided, the private seal of the clerk may be used, and the fact stated in the certificate of the clerk.

§ 9. The several judges and justices of the peace, shall be conservators of the peace throughout this territory, and be exempt from military duty during their continuance in office, except in case of invasion or insurrection.

§ 10. A negro, mulatto, or Indian, shall not be a witness in any court, or in any case against a white man.

§ 11. Interpreters may be sworn truly to interpret when necessary.

§ 12. No process or proceeding shall be deemed void or invalid, on account of non-compliance with any directory statute on the part of some public officer, unless positively declared so by law: *Provided*, That the process or proceeding can be so amended, as not to oppress or surprise the party moving to quash or set them aside.

§ 13. Where a person required to enter into recognizance in criminal cases for his appearance or good behavior, shall fail to comply, the court or magistrate having cognizance of the case, shall commit the de-

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linquent to jail until he comply, or until the expiration of the time for which such recognizance would have been in force.

§ 14. The person thus committed may be discharged by the court or magistrate so committing him, or by any justice of the peace of the county, upon his entering into recognizance in the manner required.

§ 15. When a person is committed for want of bail, the mittimus shall state that fact, and also the amount of bail required.

§ 16. Where there is a reasonable presumption that a capital crime has been committed, the offender can only be admitted to bail by a judge of the supreme court. In all other cases a justice of the peace shall have power to let to bail.

§ 17. Where a person committed to jail shall be brought up on *habeas corpus*, the judge or court before whom he may be brought, shall have power to recommit, discharge, let to bail, or mitigate the bail already required.

§ 18. Recognizances in open court need not be reduced to writing at full length, but merely a minute thereof entered upon the record of the court. In other cases they shall be written out and subscribed by the parties to be bound thereby.

§ 19. The governor may affix what conditions, limitations, or restrictions he may think proper to any pardon he shall grant, leaving the convict the privilege of accepting or refusing the pardon upon these terms.

§ 20. Upon a breach of any of the essential conditions of a recognizance, the county court of the proper county may institute a suit thereon in the county court, for the whole penalty specified in such recognizance, and the amount, when recovered, shall be appropriated to the use of the county. But judgment shall not be against the defendant, or any of his sureties, for non-appearance at any court, if the jury, before whom the case is tried, shall find that there is sufficient excuse therefor.

§ 21. In cases of bail, the securities may surrender their principal to the sheriff in exoneration of themselves, at any time before a breach of the conditions of the recognizance.

§ 22. Persons injured by the commission of any crime, may maintain a civil action for that injury, notwithstanding the offender may have been convicted for the same in a criminal prosecution.

§ 23. For this purpose, where the offender is sentenced to imprisonment for more than six months, or when he cannot be found, the action may be commenced by attachment, and conducted as in other cases. If found, he may be arrested on *capias*, and held to bail at any time after conviction in the criminal trial.

§ 24. In serving any process, the officer shall read the same to the person on whom it is to be served, or inform him of its contents, and, if required, furnish him with a copy thereof, after having informed him of his right in this particular.

§ 25. Where several defendants are tried jointly, any one or more of them may bring a writ of *certiorari*, or of error, or move in arrest of judgment, for a new trial. But those of their co-defendants who refuse to join in such motions, shall reap no benefit therefrom.

§ 26. The power and practice of the courts in criminal matters, (except so far as modified in the criminal law,) shall, as far as practicable, be made to coincide with the corresponding practice in civil cases.

JUSTICES COURTS.

ARTICLE I.

§ 1. The judges of the county courts shall be ex officio justices of the peace, within their several counties, and shall hold courts monthly, at their several offices or residences, for the trial of all cases within their jurisdiction.

§ 2. The official certificate of any justice

of the peace, living in any state in the United States, certifying any judgment by such justice rendered, with a certificate thereon, sealed by the clerk of the county, with the county seal, where such justice shall reside, certifying that he whose signature appears on such exemplifications, was, at the date of such judgment, a justice of the peace, and qualified to act as such, shall be good and legal evidence, in any court in Oregon territory, to prove the facts contained in such exemplifications, and nothing more.

§ 3. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

First.—Jointly and severally to cause to be kept all laws made for the preservation of the peace.

Second.—To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail, or bail them as the case may require.

Third.—To arrest and cause to come before them, persons who attempt to break the peace, or who are not of good fame, and compel them to give security for their good behavior, to keep the peace, or both.

§ 4. If such persons refuse or neglect to give security, they shall be committed until they find the same.

§ 5. Every recognizance so taken for the keeping of the peace, or for good behavior, or for both, shall be certified to the next county court of the proper county.

§ 6. In the following cases, and no others, a justice of the peace may punish, for contempt, persons guilty of the following acts: Disorderly, contemptuous, insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which shall tend to interrupt such proceeding or to impair the respect due to his authority.

§ 7. Justices of the peace are empowered to grant subpoenas for witnesses, in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for taking depositions.

§ 8. Whenever a justice of the peace shall resign, move out of the county, or be otherwise disqualified, he shall immediately thereafter deliver to the next nearest justice in the same county, all dockets, records, books, papers and documents, appertaining to his office, or relating to any suit committed to him in his official capacity, he taking a receipt therefor.

ARTICLE II.

Of the Jurisdiction of Justices of the Peace, and authorizing them to hold a Court.

§ 9. Every justice of the peace is authorized to hold a court for the trial of all actions, in the following section enumerated, and to hear, try and examine according to law and equity.

§ 10. *First*.—Of all actions of debt, covenant and assumpsit, and all other actions founded on contract, where the debt or balance due, or damages claimed, exclusive of interest, shall not exceed one hundred and fifty dollars.

Second.—Actions of trespass and trespass on the case, for injuries to persons, or to real or personal property, wherein the damage claimed shall not exceed one hundred and fifty dollars.

Third.—Actions of detinue and replevin, when the thing demanded or claimed does not exceed in value one hundred and fifty dollars.

Fourth.—Actions commenced by attachment of property, as hereinafter provided, as well as for any penalty given by any statute of this territory, when the amount shall not exceed one hundred and fifty dollars; and

Fifth.—To take and enter judgment on the confession of a defendant, when the amount confessed shall not exceed the amount for which a justice is authorized to render judgment in action.

§ 11. *First*.—No justice of the peace shall have cognizance against an executor or ad-

ministrators, for any debt or demand due from the testator or intestate; nor

Second.—Of any action of slander, malicious prosecution, or false imprisonment; nor

Third.—Of any action where the title to lands and tenements shall come in question.

§ 12. Every justice of the peace shall have jurisdiction co-extensive with the county for which he is appointed.

§ 13. Every action cognizable before a justice, instituted by summons or warrant, shall be brought before some justice of the county; either

First.—Wherein the defendant resides, or

Second.—Wherein the plaintiff resides and the defendant may be found; but if the defendant in any action is a non-resident of the county, or has absconded from the usual place of abode, the action may be brought before some justice of any county where he may be found.

§ 14. Every action instituted by attachment shall be brought before some justice of the county, wherein the property of the defendant may be found.

ARTICLE III.

Of the commencement of suits, and the services and return of process.

§ 15. Every justice of the peace shall keep a docket, in which he shall enter,

First.—The titles of all causes commenced before him.

Second.—The time when first process was issued against the defendant, and the particular nature thereof.

Third.—The time when the parties appeared before him, either without process or upon the return of process.

Fourth.—A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off was pleaded, a similar statement of the set-off and the amount claimed.

Fifth.—Every adjournment, stating at whose request and at what time.

Sixth.—The time when the trial was had, stating whether the same was by jury or by the justice.

Seventh.—The verdict of the jury and when rendered.

Eighth.—The judgment rendered by the justice, and the time of rendering the same.

Ninth.—The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, as the same was endorsed on the back of execution.

Tenth.—The fact of an appeal having been made and allowed, and when made and allowed.

§ 16. The several items in the preceding section enumerated, together with all other entries specially required by this act to be made in the docket, shall be entered under or opposite to the title of each cause to which they respectively relate; and in addition thereto, the justice may enter any other proceedings had before him in the cause, which he shall think it useful to enter in each docket.

§ 17. Suits may be instituted before a justice, either by the voluntary appearance and agreement of the parties, or by process; and the process for the institution of a suit, before a justice, shall be either a summons, a warrant against the person, or attachment against the property of the defendant.

§ 18. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs, before the institution of the suit; and whenever a suit has been commenced by any person, whether a resident of the county or not, the justice shall, on the application of the defendant, order the plaintiff to give security for the costs; and if the plaintiff refuse to comply with the order, the justice shall dismiss the suit.

§ 19. If any suit or set-off be founded upon any lost or destroyed instrument of writing, the party relying upon such lost instrument, shall be required, upon the trial or hearing of the cause, to prove such destruction, either by his own oath, or by other competent testimony; and if, upon such trial or hearing, it appears that the same was intentionally put away or destroyed, the demand or set-off founded upon such instrument shall be rejected.

§ 20. All process issued by justices of the peace shall run "In the name of the territory of Oregon," be dated on the day it is issued, and shall be signed by the justice granting the same, and may be sealed with his private seal or scroll.

[TO BE CONTINUED.]