

BY AUTHORITY.

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

(CONTINUED FROM OUR LAST.)

§ 21. In all cases not otherwise specially provided for, the process in all suits shall be a summons; and every summons shall be directed to any sheriff or constable of the county in which the justice who granted the same resides, except when it is otherwise specially provided; and shall command him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in the summons, not less than seven nor more than twenty-one days from the date thereof, to answer the complaint of the plaintiff.

§ 22. Every summons shall be served at least five days before the return day thereof.

§ 23. A justice of the peace shall issue a warrant in every case, where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is about to remove from the county, or to abscond from his usual place of residence, or that the plaintiff will be in danger of losing his debt or demand, unless such warrant be granted.

§ 24. A warrant shall be served by arresting the defendant and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, or if it be made appear to the justice, by the affidavit of the defendant, that said justice is a material witness for the defendant, or is near of kin to the plaintiff in suit, stating therein the degree, the sheriff or constable shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause and proceed thereon, as if the warrant had been issued by himself.

§ 25. When a defendant is brought before a justice on a warrant, he shall, in no case, be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

§ 26. Every justice issuing any process, authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an endorsement on the process, to the following effect: "At the risk and request of the plaintiff, I authorize — to execute and return this writ. A. B., Justice of the Peace." And the person so empowered shall thereupon possess all the authority of a sheriff or constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

§ 27. If, at any time after the commencement of a suit, the defendant pay to the sheriff or constable, or the justice of the peace who issued the process, the full amount of the claim and the costs which may then have accrued, the suit shall be discontinued; or if it be further prosecuted, the plaintiff shall pay all costs that may accrue after such payment, and the justice before whom the suit is brought shall endorse the amount upon the summons or warrant for which suit is commenced, including interest and costs.

§ 28. Every sheriff or constable serving any process authorized by this act, shall return thereon in writing (endorsed on the back) the time and manner of service, and shall sign his name to such return.

§ 29. If any sheriff or constable fail to execute any process to him delivered, and to make due return thereof, unless for good cause, or make false return, such sheriff or constable, for every such offence, shall pay to the injured party ten dollars, and all damages such party may have sustained by reason thereof, to be recovered by an action of debt founded upon this statute, and be liable to indictment for misdemeanor.

ARTICLE IV.

Of the appearance and pleadings of the parties and of adjournments.

§ 30. Any plaintiff in any suit, except persons under twenty-one years of age, may appear and conduct his suit, either by agent or in person.

§ 31. No suit shall be instituted by an infant plaintiff, until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some

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suitable person who will consent thereto, in writing, to be named by such plaintiff, to act as his next friend in such suit, and such infant shall be responsible for the costs therein as fully as if he were of lawful age; and in all such cases it shall be discretionary with the justice to dismiss such suit, when satisfied that the same has been commenced in-advisedly or vexatiously; or the justice may require of such infant to give security for costs, as if of full age, and for like reasons.

§ 32. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age.

§ 33. After the service and return of process against an infant defendant, the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person who will consent thereto, in writing, to be the guardian of the defendant in defence of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian, and the consent of such guardian or next friend, shall be filed with the justice, and the guardian for the defendant shall not be liable for any costs in the suit.

§ 34. A party authorized to appear by agent, may appoint any person to act as such agent, and the authority of the agent may be either written or verbal, and shall, in all cases, when the justice requires proof, be proven either by the agent himself, or by other competent testimony, unless admitted by the opposite party.

§ 35. Upon the return of a summons duly served, the justice shall wait one hour after the time specified in such writ, for the appearance of parties, unless they sooner appear.

§ 36. When both parties first appear before the justice, either upon the return of process, or upon their voluntary appearance without process, the justice shall, on the application of the defendant, and may, without such application, require of the plaintiff a brief verbal statement of the nature of his demand.

§ 37. A defendant may set-off any demand which he may have against the plaintiff in all cases, where such set-off is allowed by the statutes of this territory regulating set-off, except in the two following cases:

First.—When the demand to be set-off exceeds the jurisdiction of a justice's court; or, *Second.*—When it is founded upon an instrument of writing, executed by the plaintiff and assigned to the defendant, and it shall not appear on the trial of the cause that the assignment was made to the defendant previous to the commencement of the suit.

§ 38. To entitle defendant to set-off any demand, he must give notice thereof in court, either verbal or written, before the jury is sworn or the trial submitted to the justice, and when the set-off is founded upon an instrument of writing, executed by the plaintiff or by his testator or intestate, or upon an account, he must, at the time of giving notice, file with the justice such instrument or a bill of the items of such account.

§ 39. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the defendant to file with the justice an affidavit similar to that required of a plaintiff upon instituting a suit in a justice's court, on a lost or destroyed instrument of writing.

§ 40. If the amount of the set-off, duly established, be equal to the plaintiff's debt, judgment shall be entered for the defendant, with costs of suit; if it be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only, with costs; and if it be more than the plaintiff's debt, the defendant shall have judgment for the excess, with costs, and execution shall be awarded accordingly.

§ 41. Whenever a set-off is established in a suit brought by the executors or administrators, exceeding the amount of the plaintiff's demand, the judgment shall be against them in their representative character, and shall be evidence of a debt established, but no execution shall issue thereon.

§ 42. If, in a suit of trespass upon any lands or tenements, the defendant shall justify the trespass by a plea of title, the justice shall immediately make an entry of it in his docket—shall cease all further proceedings in the case, and certify and return to the county court of the proper county, a transcript of all the entries made in his docket, relating to the case, together with all the process and other papers relating to the suit, and filed therein in the same manner, and within the same time, as upon an appeal.

§ 43. Upon the filing of the proceedings and papers in the office of the clerk, the court shall become possessed of the cause and proceed therein to final judgment as upon an appeal; but on the trial, in such court, the plaintiff shall only be required to prove himself entitled to, or in possession of, the lands or tenements on which the trespass is alleged to have been committed, and no other bar to the action shall be pleaded by the defendant, except the plea of title.

§ 44. A justice of the peace, without the application or consent of either party, may, if it be necessary, adjourn a cause, not exceeding three days for any one adjournment, but a justice shall, in no case, adjourn a cause commenced by warrant, upon his own motion.

§ 45. A justice of the peace, upon the application of either party, with good cause shown, may adjourn a cause, not exceeding sixty days for any one adjournment, and may adjourn for a longer period, with the consent of both parties.

§ 46. No adjournment shall be allowed upon the application of a party, unless such party satisfy the justice by his own oath, or affidavit of some other person, that he cannot safely proceed to trial for want of some material testimony or witness—that he used due diligence to obtain the same, and that he cannot prove the fact by any other person, and if an adjournment be allowed, he will be able to procure such testimony or witness in time to be used upon the trial.

§ 47. Every such adjournment shall be for such reasonable time as will enable the party to procure such testimony or witness, not to exceed sixty days, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

§ 48. If a cause commenced by summons be adjourned on application of the defendant, he shall, if the plaintiff should request it, enter into a recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit, and execution be issued against him, that he or his security will pay the judgment so recovered; and if the cause be adjourned on application of the plaintiff, he shall, if the defendant should request it, enter into a similar recognizance, in a sufficient penalty, and under like condition.

§ 49. If a cause commenced by warrant be adjourned on the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody; but the cause shall not be discontinued by such discharge, and at the adjourned day the same proceedings shall be had as on the return of a summons duly served.

§ 50. But if such cause be adjourned upon the application of the defendant, he shall continue, during the time of the adjournment, in custody, unless he shall enter into recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs; conditioned that if judgment be given against him in the suit, and execution be is-

sued against him, that he or his security will pay the judgment so recovered.

§ 51. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any new recognizance upon a subsequent adjournment, unless such recognizance be required by the justice or the bail of the defendant in such prior recognizance.

§ 52. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover unless he show an execution upon the judgment obtained in the suit, in which such adjournment was had, duly listed within six days after the time when the same could have been issued against the property of the defendant, and a return thereon that no property of the defendant can be found.

ARTICLE V.

Of witnesses and depositions.

§ 53. A subpoena issued by a justice of the peace, shall be valid to compel the attendance in a justice's court of a witness, being in the same county where the cause is to be tried, or being in an adjoining county, and within fifty miles of the place of trial.

§ 54. A subpoena may be served either by a sheriff, or any other person duly authorized, and it shall be served by reading it to the witness, or by delivering to him, or leaving a copy at his place of abode.

§ 55. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpoenaed to appear before him in a suit, shall have failed, without just cause, to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided,* That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance, if previously demanded by such witness, from the person serving such subpoena.

§ 56. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant, and the fees of the officers for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice for his omission to attend, in which case the party requiring such attachment, shall pay all costs of such attachment.

§ 57. Every person duly subpoenaed as a witness who shall not appear, or who, when he shall appear, shall refuse to give testimony, shall forfeit for the use of the county in which he is subpoenaed to appear, unless some reasonable excuse shall be shown, (on his oath or the oath of some other person,) a fine not exceeding ten dollars; and the justice shall make an entry of the conviction in his docket, and of the cause thereof. At the expiration of thirty days from the entry of such conviction, it shall be deemed a judgment, in all respects, at the suit of such county, and execution shall be issued thereon as upon other judgments in a justice's court, and the sheriff or constable shall pay the fine to the treasurer of the county.

§ 58. The person upon whom such fine shall be imposed may, at any time, before the expiration of thirty days, appear before the justice and show cause against the imposition thereof, and upon the hearing of such cause, the justice may remit or mitigate such fine.

§ 59. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for damages which such party may have sustained by his non-appearance.

§ 60. Either party, in any civil suit depending before a justice, may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace of any county in this territory, where the said witness may be.

§ 61. No such deposition shall be taken, unless notice in writing, of the time and place of taking the same, shall have been served on the other party three days before the taking thereof, with one additional day for every twenty-five miles of distance from the place of such service to the place of taking.

§ 62. Such notice may be served in like manner as an original summons, and the service may be on the party or his agent in the suit, and when such party is

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