

[CONTINUED FROM FIRST PAGE.]

out of the county, and has no agent in the suit therein, the service of such notice may be by filing a copy thereof with the justice before whom the suit is pending.

§ 63. The deposition shall be taken and certified according to the statute of this territory regulating the taking of depositions, and shall be sealed up and returned so sealed to the justice, before whom the suit, in which it is taken, is pending, and when such deposition is taken out of this territory, the official character of the officer by whom it is taken, shall be certified under the seal of the state or county where such is taken, or under the seal of some court therein.

§ 64. The justice shall allow every deposition taken and returned, according to the provisions of this act, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appear to the justice that the witness whose deposition is offered—*first*, is dead or resides out of the county; or, *second*, is unable to, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity; or, *third*, has gone out of the county, without the consent or collusion of the party offering the deposition.

ARTICLE VI.

Of judgments on non-suits, and by default, and of trials.

§ 65. When a defendant, who has been duly served with process, and when a defendant who has once appeared to a suit, the trial of which has been adjourned, shall neglect to appear within one hour after the return time of the process or the adjourned time, the justice shall proceed in the cause in the following manner:

First.—If the suit be founded on an instrument of writing, and purporting to have been executed by the other party, and the demand of the plaintiff is liquidated by such instrument, the justice shall, whether the plaintiff appear or not, render judgment against the defendant by default, for the amount which shall appear by such instrument to be due to the plaintiff, after allowing all proper discounts for all payments endorsed thereon, with costs.

Second.—If the suit be not founded on an instrument of writing, as is declared in the preceding clause of this section, and the plaintiff appears in person or by his agent, the justice shall proceed to hear allegations and proofs, and shall determine as the very right thereof shall appear from the testimony; and if it appear from such testimony that the plaintiff is entitled to recover, judgment shall be rendered by default against the defendant for so much as the testimony shows the plaintiff entitled to recover, together with the costs. If it do not appear that the plaintiff ought to recover, judgment shall be given for the defendant as upon a verdict against the plaintiff with costs.

Third.—If the plaintiff fail to appear, except when the suit is founded upon an instrument of writing as is declared in the first clause of this section, the justice shall render judgment of non-suit against the plaintiff with costs.

§ 66. In all cases not otherwise specially provided for, if the plaintiff fail to appear in person or by agent, within an hour after the time appointed for the trial of the cause, the justice shall render judgment of non-suit against him with costs.

§ 67. Every justice of peace shall have power, on the application of the aggrieved or his agent, and for good cause shown, to set aside judgment of non-suit and by default, upon such terms as shall be just. Every such application shall be made within six days after rendering of the judgment; and if, in the mean time, any execution has been issued, the justice may revoke the same in the manner hereinafter provided for revoking an execution, after an appeal has been allowed, and with like effect. The justice shall, in all cases, make an entry in his docket of every such application, and of the day on which it was made, together with his orders thereon.

§ 68. If any judgment be set aside, and a new trial granted, the justice shall fix a time for such trial, and make out, under his hand, a notice to the opposite party, stating the fact that such judgment has been set aside, and specifying therein the time and place fixed for the trial. The notice shall be served on the party or his agent six days before the trial, and shall be executed and

returned in like manner as a summons, and the same fees allowed therefor.

§ 69. Every suit instituted by summons or warrant, shall be determined on the return of the process duly served, unless the cause be adjourned.

§ 70. When both parties appear before the justice in person, or by agent, at the time appointed for the trial of the cause, the justice shall proceed to hear the allegations and proofs of the parties, and to determine suit, as the very right of the case shall appear.

§ 71. Before the justice shall commence an investigation of the merits of the cause, by an examination of witnesses or hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by a jury.

§ 72. The jury shall consist of six persons, but the parties may agree upon any number of jurors less than six to try the cause, and in that case the jury shall consist of such number, not exceeding six, as the parties may agree upon.

§ 73. The justice shall issue a summons directed to any sheriff or constable of the county wherein the cause is to be tried, commanding him to summon six (or such less number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors, in the county court of the same county, who shall be no-wise of kin to either party, nor interested in the suit, to appear before said justice at a time and place to be named therein, to make a jury for the trial of the action between the parties named therein.

§ 74. The sheriff or constable shall execute such jury summons fairly and impartially, and shall not summon any persons whom he has reason to believe are biased or prejudiced, for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons, which he shall certify and annex to the summons and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the constable shall immediately summon others to serve in their place.

§ 75. To each juror the justice shall administer an oath well and truly to try the matter in difference between ———, plaintiff, and ———, defendant; and unless discharged, (by the justice,) a true verdict give according to the law and evidences.

§ 76. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence.

§ 77. If a witness, on being produced, shall be objected to as being incompetent, such objection shall be tried and determined by the justice. Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn or affirmed, that the evidence he shall give relating to the matter in issue between ———, plaintiff, and ———, defendant, shall be the truth, the whole truth, and nothing but the truth.

§ 78. If there shall be no evidence given to establish any demand founded upon contract, or to establish any set-off, or if the evidence given be insufficient for that purpose, the justice may, upon the application of the party offering such demand or set-off, order the opposite party to be sworn in relation thereto; if the party thus required refuse to testify, the justice shall allow the party offering such demand or set-off to be sworn and examined in relation to the same matter. After an examination of either party, no further evidences shall be given in relation to such demand or set-off.

§ 79. Either party, in any suit founded on contract, may cause the opposite party to be subpoenaed as a witness in the cause, in the same manner and with like effect as any other person. If the party, after being duly subpoenaed, fail to attend the trial personally, and such failure be not accounted for, the justice may allow the other party to be sworn and examined as a witness in all cases, and with like effect as if the subpoenaed party had been personally present, and had refused to testify.

§ 80. If any suit or set-off be founded upon an instrument of writing, purporting to have been executed by the opposite party, such instrument shall be received in evidence upon the trial, unless the party (before the jury be sworn or the trial submitted to the justice) charged to have executed the same, shall deny the execution thereof, on oath taken before such justice, or by an affidavit filed with the justice, and taken be-

fore any court or officer authorized to administer oaths.

§ 81. The preceding section shall not be construed to authorize any instrument of writing to be received in evidence, without proof of its execution against an executor or administrator, or any other person, representing the person charged to have executed such instrument.

§ 82. When the jurors have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

§ 83. Whenever a justice shall be satisfied that a jury sworn, in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new jury summons, unless the parties consent that the justice may render judgment on the evidence before him; which, in such case, he may do, unless they consent that the trial upon a new hearing of the evidence shall be by the justice.

§ 84. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to the same fine, to be prosecuted for and collected with costs, in the same manner, and applied to the same use, as hereinbefore provided in respect to a person subpoenaed as a witness and not appearing.

ARTICLE VII.

Of judgments and filing transcripts thereof.

§ 85. A justice of the peace may enter judgment by confession of the defendant, in any case where the amount confessed does not exceed one hundred and fifty dollars.

§ 86. No confession shall be taken or judgment rendered thereon, unless the following requisites be complied with:

First.—The defendant must personally appear before the justice.

Second.—The confession must be in writing, signed by the defendant, or by some person by him thereto lawfully authorized, and filed with the justice.

§ 87. If there be mutual justices' judgments between the same parties, one may be set-off against the other by the justice before whom the judgment against which the off-set is proposed may be.

§ 88. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that there is no appeal, and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such shall be stayed.

§ 89. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

§ 90. If, upon the appearance of the parties on the return of process in any case, (except when the defendant is arrested by warrant,) the defendant shall, before the jury is sworn, or the trial submitted to the justice, make affidavit that the justice before whom the same is pending is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, or that he is of near akin to the plaintiff, stating therein in what degree, or that he believes he cannot obtain justice before such justice, the cause shall be transferred to the next nearest justice of the proper county.

§ 91. In cases where a plaintiff shall be non-suited or withdraw his action, and where judgment shall have been confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and enter the same in his docket. In all other cases he shall render judgment, and enter the same in his docket within three days after the cause shall have been submitted to him for his decision.

§ 92. If any sum be found in favor of a party, either by a verdict of a jury or upon

hearing of the cause before a justice, exceeding the sum for which a justice is authorized to give judgment, such party may remit and release the excess, and take judgment for the residue.

§ 93. Every justice, on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment, and the clerk of the county court of the same county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the county court judgments and decrees, and shall note therein the time of filing such transcript.

§ 94. Every such judgment, from the time of such filing of the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the county court of the same county, shall be equally under the control of the county court, and shall be carried into execution in the same manner and with like effect, as the judgments of such county court; but no execution shall be issued thereon out of the county court, until an execution shall have been issued by a justice and returned, that the defendant has no goods or chattels whereon to levy the same.

ARTICLE VIII.

Of executions and proceedings thereon.

§ 95. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed, at any time upon demand, and no stay upon execution shall be permitted or allowed, except by the consent of the party in whose favor the execution has been issued, nor for any time other than the time agreed upon by the parties.

§ 96. The execution shall be directed (except where it is otherwise specially provided) to any sheriff or constable of the county where the justice resides—shall be dated on the day it was issued, and be made returnable within thirty days from the date. It shall be against the goods and chattels of the person against whom the same was issued.

§ 97. If any execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice issuing the same; an endorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall renew the execution in full force in all respects for thirty days and no longer, and an entry of such renewal shall be made in the docket of the justice.

§ 98. The sheriff or constable, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements put up at three public places in the county, of the time and place when and where they will be exposed to sale. Such notice shall describe the goods and chattels taken, and shall be put up at least fifteen days before the day of sale.

§ 99. At the time appointed, if the goods and chattels be present for the inspection of bidders, the officer shall expose them to sale at public vendue; but shall not sell the same at less than two-thirds of its value, as provided in the law regulating executions; said officer, at the time of making his return to the justice, shall pay over all monies arising from such sale for the use and benefit of the persons respectively entitled thereto.

§ 100. No sheriff or constable, or other officer, shall, directly or indirectly, purchase any goods or chattels at any sale made by him upon execution, but every such sale shall be absolutely void.

§ 101. If the goods and chattels so levied are not sufficient to satisfy such execution, the sheriff or constable shall, upon the demand of the plaintiff, summon, in writing, as garnishees, such debtors of the defendant in execution, as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be exhibited against them, touching their indebtedness to such defendant; and the like proceedings shall be had therein before the justice to final judgment and execution, as in suits instituted by attachment in a justice's court.

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