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sheriff to serve such summons or capias ten days before the return day thereof, he may execute the same at any time before or on the return day, but in such case the defendant or defendants, shall be entitled to a continuance, and shall not be compelled to plead before the next succeeding term.

§ 18. Whenever it shall appear by the return of the sheriff that the defendant or defendants, are not found, the clerk shall, at the request of the plaintiff, issue another summons or capias, (as the case may be,) and so on, until service be had, and the defendant or defendants be summoned, or brought into court; and if such summons or capias be served on any one or more, but not on all of the defendants, the plaintiff or plaintiffs, shall be at liberty to proceed to trial and judgment in the same manner as if the defendants were in court, and any judgment so obtained, shall be valid against the defendant or defendants on whom the process had been served, and the plaintiff or plaintiffs may, at any time afterwards, have a summons in the nature of *scire facias* against the defendant or defendants, not served with the first process as aforesaid, to cause him, her, or them, to appear in the said court and show cause why he, she, or they, should not be made a party to such judgment, and the court shall thereon proceed to hear and determine the matter in the same manner as if such defendant or defendants had been originally summoned and brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered, and the judgment of the court against the defendant or defendants in such case shall be, that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendant in the former judgment, the amount of his debt, or damages, as the case may be.

§ 19. If any sheriff, to whom any summons or capias shall be delivered, shall neglect or refuse to make return of the same before or on the return day of such process, the plaintiff may enter a rule requiring said sheriff to make return of such process, on a day to be fixed by the court, or to show cause, on that day, why he should not be attached for a contempt of court; and the plaintiff shall thereupon cause a written notice of such rule to be served on such sheriff, and if good and sufficient cause be not shown to excuse such officer, the court shall adjudge him guilty of contempt, and shall proceed to punish such officer as in other cases of contempt.

§ 20. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing, or account on which the action is brought, in case the same be brought on a written instrument or account, ten days before the court at which the summons or capias is made returnable, the court on motion of the defendant shall continue the cause, at the cost of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without costs, unless the parties shall agree to have a trial, and if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of non-suit.

§ 21. The clerks of the county courts in this territory shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the names of the plaintiff's attorney, and he shall furnish the judge and the bar at each term with a copy of the same; in which all indictments and causes to which Oregon territory may be a party, shall be first set down; after which shall be set down, all cases in law, in order, according to the date of their commencement, and lastly, the suits in chancery; and the clerk shall also set and apportion the causes for as many days of the term as he may think necessary, or be directed by the judge, and all subpœnas for witnesses shall be made returnable on the day on which the cause in which the witnesses are to be called, is set for trial.

§ 22. The clerk shall, from time to time, issue subpœnas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend is set for trial, and every clerk who shall refuse to do so, shall be fined at the discretion of the court in any sum not exceeding one hundred dollars.

§ 23. In all cases pending in any county court of this territory, if both parties shall agree, both matters of law and fact may be tried by the court.

§ 24. The several county courts shall have power in any action pending before them, upon motion, and good and sufficient cause shown, and reasonable notice thereof given, to require the parties, or either of them, to produce books or writing in their possession or power, which contain evidence pertinent to the issue; and it shall be the duty of the defendant or defendants, in all cases where he, she, or they intend to prove on trial any accounts or demands against the plaintiff or plaintiffs, to file with his plea a bill of particular items of such accounts or demands, and no other accounts or demands shall be suffered to be proved to the jury, or court, on that trial.

§ 25. On the appearance of the defendant or defendants, the court may allow such time to plead as may be deemed reasonable and necessary, and for want of appearance may give judgment by default on calling the cause, except in cases where the process has not been served, or declaration filed, ten days before the term of the court, but all the causes shall be tried, or otherwise disposed of, in the order they are placed on the docket, unless the court, for good and sufficient cause, shall otherwise direct. And whenever either party shall apply for the continuance of a cause on account of the absence of testimony, the motion shall be grounded on the affidavit of the party so applying, or his, her, or their authorized agent, showing that due diligence has been used to obtain it, and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses, and should the court be satisfied that such evidence would not be material on the trial of the cause, or if the opposite party will admit the fact or facts stated in the affidavit, the cause shall not be continued.

§ 26. The defendant may plead as many matters of fact in several pleas as he may deem necessary for his defence, or may plead the general issue, and give notice in writing under the same, of the special matters intended to be relisd on for a defence on the trial, under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been especially pleaded, and issue taken thereon; but no person shall be permitted to deny on trial the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up, by way of defence or set-off, unless the person so denying the same shall, if defendant verify his plea by affidavit, and if plaintiff shall file his or her affidavit denying the execution of such instrument: *Provided*, If the party making such denial be prosecuting, or sued as executor or administrator, it shall be sufficient to state in such affidavit the belief of the party making the same, according to his or her best knowledge, that such instrument was not executed by the testator or intestate.

§ 27. Whenever judgment shall be given against the defendant or defendants by default in any action brought on any instrument of writing for the payment of money only, the court may direct the clerk to assess the damages by computing the interest and principal, and report the same to the court, upon which final judgment shall be given; and in all other actions, when judgment shall go by default, the plaintiff may have his damages assessed by the jury in court.

§ 28. The court may, in its discretion, before final judgment, set aside any default upon good and sufficient cause, upon affidavit, upon such terms and conditions as shall be deemed reasonable: *Provided*, That no judgment by default shall be set aside, unless the motion is made at the term said judgment was rendered.

§ 29. All affidavits made in court during the progress of any cause and relating thereto, shall be filed and preserved by the clerk.

§ 30. In actions brought on penal bonds, conditioned for the performance of covenants, the plaintiff may assign in his declaration as many breaches as he may think fit, and the jury, whether on the trial of the issue, or of inquiry, shall assess the damages for so many breaches as the plaintiff shall prove, and the judgment for the penalty shall stand as a security for such other breaches as may afterwards happen; and the plaintiff may, at any time afterwards, sue out a writ of inquiry to assess damages for the breach of any covenant or covenants, contained in such bond subsequent to such trial or inquiry; and whenever execution shall be issued on such judgment, the clerk shall endorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff shall only collect the amount so endorsed: *Provided*, That in all cases where a writ of inquiry of damages shall be issued for any such breaches subsequent to the first trial or inquiry, the defendant or his agent or attorney, shall have at least ten days notice in writing of the time of executing the same.

§ 31. The defendant or defendants, in any action brought upon any contract or agreement, either express or implied, having claims or demands against the plaintiff in such actions, may plead the same or give notice thereof under the general issue, as is provided in the twenty-sixth section in this article, or under the plea of payment, and the same or such part thereof as the defendant shall prove on trial, shall be set off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due; and if it shall appear that the plaintiff be indebted to the defendant the jury shall find a verdict for the defendant, and certify to the court the amount so found, and the court shall give judgment in favor of such defendant for the amount so certified, with costs of his defence, and execution shall be issued on such judgment, as in other cases.

§ 32. In all civil actions each party shall be entitled to a challenge of three jurors without showing cause for such challenge, and when the jury retire to consider of their verdict, they shall be permitted to take any papers that may have been used as evidence on the trial. And no plaintiff shall suffer a nonsuit on the trial, unless he do so before the jury retire from the bar.

§ 33. If, during the progress of the trial in any civil cause, either party shall alledge an exception to the opinions of the court, and reduce the same to writing, it shall be the duty of the judge to allow the said exceptions, and to sign and seal the same, and the said bill of exceptions shall thereupon become a part of the record of such cause; and if any judge of county court shall refuse to allow or sign such bill of exceptions tendered, and the same is signed by three or more disinterested by-standers, or attorneys of said court, the judge shall then permit the said bill to be filed and become a part of the record; if the judge refuse, the supreme court of this territory may, when such cause is brought before said court, by writ of error or appeal, upon proper affidavit of such refusal, admit such bill of exceptions as a part of the record.

§ 34. It shall be sufficient for the jury to pronounce their verdict in open court, without reducing the same to writing, and the clerk shall enter the same in form under the direction of the court, and if either party may wish to except to the verdict, or for other causes to move a new trial, or in arrest of judgment, he shall, before final judgment be entered, give, by himself or counsel, to the opposite party or his counsel, the points in writing, particularly specifying the grounds of such motion, and shall also furnish the judge with a copy of the same, and final judgment shall thereupon be stayed until such motion can be heard by the court; but no more than two new trials shall be granted to the same party in the same cause, nor shall any verdict or judgment be set aside for irregularity only, unless cause be shown for the same during the sitting of the court, at the term such judgment or verdict shall be given.

§ 35. Whenever an entire verdict shall be given on several counts, the same shall not be set aside or reversed if any one or more of the counts be good.

§ 36. In cases of attachment against absent or absconding debtors, the attaching creditor shall, within ten days after the issuing such writ of attachment, and before the return day thereof, file a declaration in the office of the clerk of the court of the proper county, with a copy of the instrument, or account, on which the attachment was issued, as in other cases; after which the cause shall proceed as in other cases, and if no declaration shall be filed, the defendant, on entering his appearance, shall have a judgment against the attaching creditor for costs.

§ 37. Any person for a debt bona fide due, may confess judgment by himself, or attorney duly authorized, without process, and every confession of judgment, whether with or without process, shall operate as a release of errors on the entering up of the judgment or making record thereof; and in no case, except when the title of land shall come in question, shall it be necessary for the clerk to make a complete record, unless especially requested by one of the parties, who shall pay the costs of such record.

§ 38. Where judgment shall be arrested for any defect in the record of proceedings, after the first process, the plaintiff shall not be compelled to commence his action anew, but the court shall order new pleadings to commence with the error that caused the arrest.

[*To be continued.*

Election Notice.

To Sheriffs, Clerks, and Judges of Election.

At the general election, to be held in Oregon on the first Monday in June, 1846, the following territorial and county officers are to be elected:

TERRITORIAL OFFICERS.—One Colonel, one Lieut. Colonel, and one Major.

COUNTY OFFICERS.—For each county, one Treasurer, one Sheriff, and one Assessor.

REPRESENTATIVES.—For the county of Clatsop *one;* for the county of Lewis *one*, for the county of Vancouver *one;* for the county of Clackamas *three;* for the county of Champoeg *four;* for the county of Tualaty *three;* for the county of Yam Hill *two;* for the county of Polk *two.*

The judges of election at the several precincts, are required to open a poll, to take the sense of the people whether the judges of county courts shall in future be elected by the house of representatives or by the people.

The following proposed amendments to the land law, published in the first number of the "Spectator," are to be read publicly at the polls, viz: "Strike out in the fourth section of said law, the words "or more."

Also, to "permit claimants to hold six hundred acres in the prairie, and forty acres in the timber, though said tracts do not join."

The clerks of the several county courts are required to make out and deliver to the sheriffs of their respective counties, three copies for each precinct, of the following notice, which it is the duty of the sheriffs to post up; one at the house where the election is to be held, and the two others at suitable places in the neighborhood.

NOTICE is hereby given, that on the first Monday, the —— day of June next, 1846, at the house of ——, in the county of ——, an election will be held for territorial and county officers, (naming the officers,) which election will be opened at nine o'clock in the morning, and continue open until six o'clock in the afternoon of the same day. Dated at ——, this —— day of ——, A. D., 1846. (Signed) A. B.
Clerk of Court.

The judges of election appointed in 1845, will hold their offices, and perform the duties of the same, until others are appointed. Vacancies occasioned by any judge refusing to act, can be filled by any justice in the county, or by the other judge or judges of election; and if there be no judge present at the place of voting, then the voters present can elect their judges, and the judges can appoint their clerks, and both clerks and judges, before voting commences, must take the following oath:

I, A. B., do solemnly swear, or affirm, (as the case may be,) that I will perform the duties of judge, (or clerk,) of the election according to law, and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.

Which oath the judges and clerks may administer to each other, in case there is no person present authorized to administer oaths.

The judges may, if necessary, postpone the closing of the polls until 9 o'clock at night.

The clerks of county courts are required to provide two poll books for each precinct in their respective counties; and at the close of the polls, one of them is to be sent sealed to the clerk of the county court of the proper county; the other to be deposited with one of the judges of election.

On the seventh day after the close of the election, or sooner if all the returns be received, the county clerk, taking to his assistance two justices of the peace of his county, shall proceed to open the returns; make a correct abstract therefrom, and give a certificate to persons having the highest number of votes for members of the house of representatives, and county officers respectively, and forward a copy of said abstract immediately to the secretary of the territory.

J. E. LONG,
Secretary.

Dated SECRETARY'S OFFICE, April 17, 1846.