

CHAP. LXVIII.—An Act concerning the writ of Attachment.

Advertisement,
how to be publish-
ed.

SEC. 1. Upon the return of said writ, the clerk who issued the same, shall make out an advertisement, stating the names of the parties, the time when, from what court, and for what sum the writ was issued, and deliver the same to the plaintiff or his attorney, on demand, who shall cause the same, within thirty days, to be inserted in one of the newspapers printed in this Territory, and nearest the place where such attachment issued, for six weeks successively; and if any plaintiff shall neglect to have such notice published, the attachment shall be dismissed, with costs.

Property attach-
ed to remain in
hands of officer.

SEC. 2. The property attached shall remain in the hands of such officer, unless the person in whose possession it may be found shall give bond to the officer with two sufficient sureties, freeholders of the county, in double the appraised value thereof, with condition that the the same property, or its appraised value in money, shall be forthcoming to answer the judgment of the court: *Provided*, That if it shall appear to the court that any part of said property shall have been lost or destroyed by unavoidable accident, they shall remit the value thereof to the person so bound.

When person
summoned as gar-
nishee.

SEC. 3. If the plaintiff or other credible person shall make oath, that he has good reason to, and verily does believe, that any person (naming him) has property (describing the same) in his possession belonging to the defendant, and if the officer cannot come at such property, he shall leave with such person, at his usual place of residence, a copy of the writ of attachment and affidavit, with a written notice that he appear in court at the return of such writ, and the said garnishee shall attend accordingly, and answer under oath, all questions put to him touching the property and credits of the defendant in his possession, or within his knowledge; and from the day of such service, such garnishee shall stand liable to such plaintiff in attachment, to the amount of the property, moneys and credits in his hands, or due from him to said defendant; and if such garnishee do not appear in court as required, the court may proceed against him by attachment, or if the plaintiff or other credible person shall make oath and file the same, that he has good reason to, and does verily believe, that the said garnishee will abscond before judgment and execution can be had against him, or that any other person (naming him) hath any property, moneys or credits of the defendant in his possession, or is indebted to said defendant, and that he is in fear such other person will abscond as aforesaid, it shall be lawful for the plaintiff to institute a suit by *capias ad respondendum* against such garnishee or other person, who shall be held to special bail, in which suit the plaintiff may declare for the property, moneys and credits aforesaid, as of his own proper moneys, property and credits, in trover and conversion; or if the garnishee be indebted to the defendant for money had and received, or if the garnishee shall have property, moneys or credits of the defendant in his possession, and shall also be indebted to said defendant, the plaintiff may declare in trover, adding thereto a count for money had and received, and give the special matter in evidence; and if verdict and judgment be had for the said plaintiff, execution shall thereupon be had as in other cases.

To appear and
answer.

To be held to
bail in certain ca-
ses.

Costs in certain
cases how paid.

SEC. 4. The suit so instituted shall be continued until the action against the defendant in attachment shall be determined; and if in

such action, judgment shall be rendered for the defendant, the garnishee shall recover costs, and if the plaintiff shall recover against the said defendant in attachment, and if the said garnishee shall deliver to the officer executing such writ, all the property in his possession, belonging to the defendant, and pay all moneys from him due at the time of service of process on such garnishee, then the costs which have accrued in such suit against such garnishee, shall be paid out of the effects in the hands of such officer.

SEC. 5. The first and second term after the issuing of the writ of attachment, the defendant shall be called, and his default entered; at or before which second term the said plaintiff, and every other creditor of the defendant, may file their declarations setting forth in a proper manner their cause of action; and it shall be competent for said defendant at any time to release his goods from such attachment, by executing and delivering to the plaintiff a bond in the penal sum of double the amount of the appraised value of the goods so attached, or of the claims filed against him, with two sufficient sureties, to be approved by the plaintiff, or who shall justify before some district judge or supreme court commissioner, that they are severally worth the amount specified in said bond, over and above all just debts against them; said bond to be conditioned, that if judgment in the suit should be given against the defendant, then that the same property, or the appraised value thereof in money, shall be forthcoming to answer any judgment that may be recovered by the plaintiff, or other creditor against the defendant in attachment, or that they will pay the same, with all interest, damages and costs, and that execution may issue thereon immediately against the goods and chattels, lands and tenements of such sureties; and the defendant may plead to any or all of the declarations which may be filed against him; but if the said defendant shall not plead as aforesaid, the court at the said second term, shall proceed at the suit of all the said plaintiffs, as in other cases by default, and the said defendant or any other on his behalf, may appear and introduce evidence before the court or jury, as in other cases of default, and shall have the same right to appeal, move in arrest of judgment, or set aside the proceedings for irregularity: *Provided*, That no judgment shall be rendered under the provisions of this act, excepting for causes arising out of, founded upon, or sounding in contract, or upon the judgment or decree of some court of law or chancery: *And provided further*, That in case judgment shall be rendered against the original plaintiff in attachment, or if he shall otherwise fail to prosecute his suit to effect, the proceedings in favor of such creditors as may have filed declarations, shall in no wise be affected thereby, but may be prosecuted to final judgment, and the property attached shall remain in the hands of the officer to satisfy the same.

SEC. 6. When any judgment shall be entered against a defendant in attachment, a scire facias shall issue against the garnishee, (except as herein before provided,) to appear at the next term and show cause why the plaintiff should not have execution of the money due by him to the defendant, or of the goods and chattels of the defendant in the possession of the garnishee; and if the said garnishee shall appear upon the return of the said scire facias, and on oath or otherwise to the satisfaction of the said plaintiff, confess the amount of such debt, or the value of such goods and chattels, and deliver the same to the officer serving said attach-

Declaration when to be filed.

Property how released from attachment.

Limitation.

Scire facias when to issue against garnishee.

Garnishee how discharged.

When garnishee does not appear.

Property when and how sold.

Proceeds of sale how disposed of.

Property in another county how attached.

Writ to issue against joint or separate estate.

ment, or shall pay the value thereof, with all moneys from him owing to the said defendant, into court, he shall be discharged from all further liability on account of the goods so delivered, and the money so paid, and the costs thereof shall be paid out of the effects so attached; if on said scire facias, returned served on two writs returned "nihil," the said garnishee shall not appear and confess as herein before provided, judgment shall be entered against him by default, and the court shall proceed to assess the amount thereof, and award execution therefor, as in other cases; if the said garnishee shall appear at the return of the said writ or writs, and plead thereto, the issue shall be tried and the damages assessed by a jury as in other cases, and judgment shall be entered for the plaintiff in attachment against the garnishee for the amount found due from him to the defendant in attachment, and for the value of the goods belonging to the said defendant in his possession at the time of serving said writ, with costs: *Provided*, No judgment against the garnishee shall exceed the whole amount of the plaintiff's demand, as ascertained by the court, and execution shall be awarded therefor; but if the said jury find in favor of said garnishee, he shall recover costs, and have execution for the same.

SEC. 7. After judgment for the plaintiff in attachment, all the property remaining in the hands of the officer, with the lands and tenements, if any, whether held by legal or equitable title, shall be sold by order of the court, under the same restrictions and regulations, as if the same had been levied upon by execution, and the money arising therefrom, with the amount that may be recovered from the garnishee, after discharging the judgment of the first attaching creditors, (if the two first creditors attached the property at the same time,) together with all the costs, shall be divided among the other creditors in proportion to the amount of their respective judgments; and if there be not sufficient to satisfy the whole, the said judgments so recovered shall stand, and execution may issue thereon for the residue in all respects as in other cases: *Provided*, That animals and property of a perishable nature, may be sold by order of the court, at any time after the return of the writ.

SEC. 8. In all cases of attachment by virtue of this act, if the plaintiff, his agent or attorney, shall make and file with the clerk, an affidavit, setting forth that he verily believes that the defendant in attachment hath lands, tenements and real estate, goods, or chattels, situate in any other county (naming such county) in this Territory, the clerk shall, on application of the plaintiff or his attorney, make out and seal another writ of attachment, directed to the sheriff or coroner of the county in which such other property shall be, who shall serve and return the same, in the same manner, and for neglect, shall be liable to the same penalty, as if such writ had issued and was returnable in his own county, and on such writ executed, there shall be the same proceedings as are herein before directed.

SEC. 9. When two or more are jointly bound or indebted, either as joint obligors, partners or otherwise, the writ of attachment provided for by this act, may be issued against the separate or joint estates, or both of such joint debtors, or any of them, in the same manner and under the same restrictions as are provided for by this act in other cases.

SEC. 10. If any defendant shall die after a writ of attachment

shall have issued against him, it shall not thereby abate, but the same shall be carried on to judgment, sale and distribution, as if such death had not happened.

Not abated by death.

CHAP. LXIX.—An Act to amend "An Act concerning the writ of Attachment."

SEC. 1. A writ of attachment may be issued as the first process in personal actions, in the cases following, and no others: First, when the defendant is not a resident of the Territory; Second, when the defendant has departed, or is about to depart from the Territory, with intent to abscond; and Third, when the defendant is about fraudulently to remove, convey or dispose of his property, so as to hinder or delay the creditor or creditors suing out such writ.

When writ may issue.

SEC. 2. To authorize the issuing an attachment in any case, the defendant must be indebted to the plaintiff in a cause of action arising out of, founded upon or sounding in contract, or upon the judgment or decree of some court of law or chancery.

Cause of action, on what founded.

SEC. 3. The facts necessary to entitle a party to a writ of attachment shall be proven to the satisfaction of a district judge, or of a supreme court commissioner of the proper county, by the affidavit of the plaintiff or some credible witness, stating therein the nature and amount of the plaintiff's demand, and the circumstances upon which the belief of such facts is founded; and such officer shall endorse the fact of his satisfaction on the affidavit, which shall be filed with the clerk of the court before the writ shall issue.

Oath or affidavit of some person.

SEC. 4. It shall be competent for the defendant to traverse the affidavit, and to prove by testimony taken in pursuance of the rules of court, the falsity of the allegations upon which the writ issued. And if the court shall find that the said allegations are false, the property attached shall be released: *Provided*, That nothing herein shall impair any right of a plea in abatement of the writ, which the party may have, and of the trial by jury of the facts stated in such plea, according to the course of the common law.

Affidavit may be traversed.

Plea in abatement.

SEC. 5. The writ of attachment shall command the officer to attach the goods and chattels, lands and tenements, moneys, rights and credits, of the debtor; and also to summon the defendant, if to be found in his county, to answer the plaintiff in the action: *Provided*, That the same property which would be exempt by law from execution, shall be exempt from attachment.

What to attach.

What exempt.

SEC. 6. The service of such writ shall be made by attaching the property of the defendant, and by delivering to him, if to be found, a copy of the writ; and the officer serving the same shall return a true inventory and appraisal of all the property attached, and the fact whether the defendant was summoned or not.

Service how made.

SEC. 7. In case of personal service of the writ upon the defendant, it shall not be necessary to call the defendant and have his default entered, but the suit shall proceed as in ordinary case of summons, and no notice shall be required to be published, as provided by the third section of the act of which this is amendatory. In every other case the suit shall be proceeded in according to the several provisions of said act.

Personal service, defendant not called.

SEC. 8. If real estate is attached by virtue of any writ of at-

Real estate.