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An act to provide for and regulate the holding of the district courts in the several judicial districts in this state, and the manner of commencing and providing for transfer of causes therein, and for continuing causes, actions and proceedings therein in case of adjournment, and to repeal all other acts in relation thereto.

Colorado General Assembly

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CHAPTER XXVIII.

DISTRICT COURTS.

AN ACT TO PROVIDE FOR AND REGULATE THE HOLDING OF THE DISTRICT COURTS IN THE SEVERAL JUDICIAL DISTRICTS IN THIS STATE, AND THE MANNER OF COMMENCING AND ADJOURNING THE SAME, AND RETURN OF PROCESS, AND PROVIDING FOR TRANSFER OF CAUSES THEREIN, AND FOR CONTINUING CAUSES, ACTIONS AND PROCEEDINGS THEREIN IN CASE OF ADJOURNMENT, AND TO REPEAL ALL OTHER ACTS IN RELATION THERETO.

Be it enacted by the General Assembly of the State of Colorado:

900. SECTION 1. Terms of the district court in the respective judicial districts in this state, shall, after the year 1876, be held in said districts, at the county seats of the several counties therein, as the county seats now are, or may hereafter be established, commencing on the days following in each and every year. That is to say:—

IN THE FIRST DISTRICT:

In the county of Boulder on the first Tuesday in February, and on the first Tuesday in October. First District.

In the county of Jefferson on the second Tuesday in April, and on the second Tuesday in November.

In the county of Gilpin on the first Tuesday in March, and on the first Tuesday in September.

In the county of Clear Creek on the first Tuesday in June, and on the first Tuesday in January.

In the county of Grand on the first Tuesday in July.

In the county of Summit on the fourth Tuesday in July.

IN THE SECOND DISTRICT:

In the county of Arapahoe on the first Tuesday in January, on the third Tuesday in April, and on the first Tuesday in September; *provided, however*, that for the year A. D. 1877, the January term in said Arapahoe county shall begin on the second Tuesday in January. Second District.

In the county of Elbert on the first Tuesday in March.

In the county of Weld on the third Tuesday in November.

In the county of Larimer on the fourth Tuesday in October.

In the county of Douglas on the second Tuesday in December.

IN THE THIRD DISTRICT:

Third District. In the county of Las Animas on the first Monday in March, and on the first Monday in September.

In the county of Huerfano on the third Monday in January, and on the third Monday in August.

In the county of El Paso on the second Monday in February, and on the second Monday in October.

In the county of Fremont on the second Monday in April, and on the first Monday in November.

In the county of Bent on the third Monday in March, and on the third Monday in September.

In the county of Pueblo on the fourth Monday in April, and on the third Monday in December.

In the county of Park on the third Monday in June, and on the fourth Monday in November.

IN THE FOURTH DISTRICT:

Fourth District. In the county of Costilla on the first Monday in March, and on the first Monday in September.

In the county of Conejos on the second Monday in March, and on the second Monday in September.

In the county of Rio Grande on the third Monday in March, and on the last Monday in September.

In the county of Saguache on the second Monday in November.

In the county of Lake on the second Monday in August.

In the county of Hinsdale on the third Monday in June, and on the fourth Monday in October.

In the county of Ouray on the first Monday in July.

In the county of San Juan on the second Wednesday after the first Monday in July, and on the second Monday in October.

In the county of La Plata on the fourth Monday in July.

In what manner
causes pending
to be proceeded
with.

901. SEC. 2. All causes, issues and proceedings, civil or criminal, now pending in the district court of any of the counties above named, either upon change of venue or otherwise, in which there has been service of process, pub-

lication or appearance by the several parties to any former term, shall be deemed and held to be pending at the first term of such court as fixed by this act, and may be regularly proceeded with at such term, in the same manner as though pending at the next regular term of such court as fixed by law before the passage of this act.

902. SEC. 3. In any county wherein no term of the district court has heretofore been held, wherein the court has not heretofore been organized, it shall be the duty of the judge of the district wherein such county is situate, without delay to appoint a clerk of the district court within and for such county, and the said clerk shall at once procure an office and a seal for said court, and such record books, furniture and supplies as may be necessary to the proper transaction of business, the expense of which shall be allowed as a claim against such county by the county commissioners, and be paid out of the county treasury as other bills against such county. The county commissioners shall also furnish a suitable room in which to hold said court from time to time.

Organization of courts in counties where none have heretofore been held.

903. SEC. 4. Whenever in any civil cause, now pending and undetermined in the district court of any county to which another county has heretofore been attached for judicial purposes, and if it shall be made to appear by the affidavit of any one of the parties thereto, or the affidavit of the agent, or attorney of any such party, to be filed with the papers in the cause, that the party defendant in the said cause, at the time of commencement of the suit, was a resident of the county so attached for judicial purposes, or that the cause of action arose within the county so attached to the other for judicial purposes, the said cause shall at once be transferred to the district court of the county so heretofore attached, and the clerk of the court wherein said cause is now pending, shall certify and transmit without delay all the papers in said cause to the clerk of the district court of the other county, together with certified copies of all orders therein, as in case of changes of venue in civil cases under existing laws, and his fees therefor shall abide the result of said suit; and any cause so transferred may be disposed of at the next term of said dis-

Transfer of causes to district courts of counties heretofore attached to others for judicial purposes

strict court in the county to which the same is so transferred; *provided*, that notice of the said transfer shall have been given in writing to the party or parties who did not unite in said affidavit, or to the attorney or attorneys of such party or parties, at least ten days before the first day of such term, and this fact shall be made to appear to the court in a proper manner by affidavit.

Transfer of
criminal causes
in counties
heretofore
attached to
others for
judicial purposes

904. SEC. 5. Any criminal cause or proceeding now pending and undetermined in the district court of any county to which another has been attached for judicial purposes, in which the defendant or defendants, at the time of the commencement of the prosecution, were liable to prosecution in the county so attached for judicial purposes, then the said cause shall be at once certified and sent by the clerk of the said court wherein the same is pending, to the clerk of the court in the county theretofore so attached, in the same manner as is provided by this act in civil cases; *provided*, that an affidavit of the defendant, or one of them, be first made and filed in the cause, showing the existence of the fact necessary to authorize the said change; and such cause when transmitted shall be deemed pending in the district court of the county to which it has been so transferred, at the term next after said change, and may be proceeded with in every way as though originally begun in said court; *provided*, the defendant or defendants not joining in said application for the transfer, and the district attorney, shall have notice of the said change at least ten days before the first day of said term to which it is so transferred.

At what term
causes com-
menced prior
to this act deemed
to be pending,
and when pro-
cess returnable.

905. SEC. 6. All causes, issues or proceedings, civil or criminal, instituted, pending or brought in the district court of any of the counties above named, in which process has been issued prior to the passage of this act, returnable to any term of court, as provided by existing laws, shall be deemed and held to be pending in such court; at the term in this act next succeeding the term to which such process shall have been made returnable, and such process shall be deemed and held returnable to the term of such court provided in this act next succeeding the term to which such process has been made returnable; *provided*, that in all

cases in which a term of court shall by this act be required to be held prior to the time at which process shall have been made returnable, according to existing laws or by order or proclamation of the judge of any of the judicial districts in this state, it shall be lawful for the plaintiff or complainants in the action in which such process shall have been issued, to sue out of the office of the clerk of the court in which such cause is pending, another process returnable to the term of the court fixed by this act, and thereafter the suit, action or proceeding shall proceed the same as if it had originally been brought to the term of such court fixed by this act: *And provided, further,* that in suits commenced by attachment when the writ shall have been made returnable prior to the time fixed by this act as aforesaid, a new writ of attachment may be issued returnable to the next term of the court out of which the same shall have been issued as fixed by this act, and may be levied on the property of defendants the same as though no other writ had been issued; but if the writ of attachment first issued shall have been levied upon the property of defendant or defendants prior to the taking effect of this act, every such levy shall (if otherwise regular and proper) be deemed and held to have become a good and valid lien on whatever interest defendant had in the property levied upon, the same as though the terms of court had not been changed; and if the said new writ shall not be served upon defendant or defendants named therein, such defendant or defendants shall be notified by publication to appear and answer at the next term of said court as fixed by this act, in the way and manner as provided by existing laws; and thereupon the court shall proceed in the same manner as in other suits of the same nature instituted to such term.

In what cases
further process
may be had.

Writ of attachment,
levied
prior to this
act, held to be
good and valid
lien.

908. SEC. 7. At any regular term of the district court as provided by this act, within any county, such court may by an order to be entered of record, appoint a special term of the district court within and for such county, to be held at any future time, when by law the judge of such district court is not required to attend upon and hold a term of the district court in any other county within such district, and the court may in such order specify and direct whether a

Special Terms.

grand jury or petit jury, or both, or neither, shall be summoned to attend such term, and that such term shall be a term for the return of original or *mesne* process, to be issued in causes to be thereafter commenced therein, or that the same shall be for trial of causes and issues then pending only; in case a grand or petit jury is required to attend any such special term of court, the same shall be chosen and summoned as is now or may hereafter be provided by law in the case of the regular terms of such district courts. And any district judge may in vacation call a special term of court within and for any county in the manner aforesaid, by an order to be entered of record on the journal of the court within such county, under such general rules previously adopted therefor for the government of such matters in his district: *Provided*, public notice of the holding of such term be given at least thirty days before the commencement thereof, in such manner as may have been provided by such general rules.

Inability of judge
to hold term.

907. SEC. 8. Whenever it shall happen that the judge shall be unable by reason of sickness, absence from the state or any other cause, to hold any term of the district court in his district, it shall be lawful for the governor to assign any other district judge to hold such term. And if no one of the other district judges is able to fill such appointment, then the governor shall appoint one of the judges of the supreme court to hold said term, which appointment in every instance shall be in writing. And all proceedings, orders, judgments and decrees, had, made and pronounced, at the term so held by the judge so especially appointed, shall have the same force and validity as if the said court were held by the judge elected in said district.

Adjournment of
court in case
judge fails to
reach place
appointed in
proper time.

908. SEC. 9. Whenever it shall happen that the judge shall fail to reach the place appointed for holding any term of the district court by two o'clock in the afternoon of the first day of said term, it shall be the duty of the clerk of such court to adjourn said court until two o'clock of the day following; and in case the judge shall fail to arrive at the expiration of said adjournment, it shall be the duty of said clerk to adjourn the court until Monday of the ensuing week at ten o'clock a. m. of that day. And whenever

it shall happen during any term of court that the judge shall fail to appear to open court in pursuance of any adjournment made at that term, it shall be the duty of the clerk to adjourn the court until the hour of ten o'clock a. m. of the following day, and in case the judge does not appear at the hour of ten o'clock a. m. of that day, the clerk shall adjourn the court for the period of one week from that day to the hour of ten o'clock a. m., and shall immediately notify the governor of the failure of the judge to appear, and it shall be the duty of the governor to forthwith appoint in writing, one of the judges of the supreme court to hold the remainder of said term, unless the governor be satisfied that no real necessity exists requiring him so to do.

909. SEC. 10. In case of any adjournment by the clerk as provided for in the foregoing section, he shall discharge the jurors, witnesses and recognized persons in attendance, until the expiration of the adjournment; and all proceedings, actions, motions and orders, shall be deemed to be continued over until the day to which the court stands adjourned. And all jurors, witnesses and recognized persons shall be under the same obligation to appear at the court at such adjourned day, as they were to appear upon the day first appointed. And all proceedings, orders, judgments and decrees, had, made and pronounced by the court after any such adjournment, by whatever judge the court may be held, shall be in all respects valid and binding, the same as if no such adjournment had been necessitated.

Discharge of jurors, etc., and continuance of proceedings to day of adjournment.

910. SEC. 11. Whenever the judge has been of counsel or is interested in any suit or proceeding pending in any district court, he may request the judge of some other district to sit and try such suit or proceeding, and in case the judge or judges so requested fail, neglect or refuse to sit and try such suit or proceeding, the judge is authorized to order a change of venue in such suit or proceeding, and shall send the same to the nearest county in some other district wherein no such disability exists on behalf of the judge to hear and try the same. Thereupon the clerk shall enter such order of record and make out certified copies of all orders made in the case, and at once transmit all the

In case judge has been of counsel or is interested in any suit.

papers in the suit and proceedings, to the clerk of the court to which the change is ordered, the same as changes of venue under existing laws.

Former acts
repealed and
proclamation of
judges void.

911. SEC. 12. All acts and parts of acts repugnant to or inconsistent with this act are hereby repealed, and all orders and proclamations of any of the judges of the respective district courts in this state, appointing and fixing the terms of the district courts in any of the counties of this state in conflict with or inconsistent with the provisions of this act are hereby declared to be null and void after this act takes effect.

Emergency.

912. SEC. 13. Inasmuch as it is necessary to have the terms of the district court at once fixed by statute, and many of the provisions of the act being necessary for the proper protection of the rights of the people of this state, in the opinion of this general assembly it is an act contemplated by section 19 of article 5 of the constitution, which should take effect immediately upon its enactment; therefore this act shall take effect and be in force from and after its passage.

Approved, December 18, 1876.

Section one of this act was amended, and sections two and six were re-enacted by H. B. No. 177, approved, January 26, 1877.

AN ACT TO AUTHORIZE THE DISTRICT COURTS TO ALLOW FEES TO COUNSEL ASSIGNED TO PRISONERS IN CERTAIN CASES.

Be it enacted by the General Assembly of the State of Colorado:

Counsel assigned defendant who is unable to employ, to be allowed a fee by the court.

913. SECTION 1. That in all indictments for crimes or misdemeanors in any of the district courts of this state, where by reason of the inability of the defendant or defendants to employ counsel, the court may assign him or them counsel for his or their defense, it shall be the duty of the court so assigning counsel to allow him a fee, to be paid out of the county treasury of the county wherein such indictment may be found; *provided*, that but one fee shall be allowed to counsel in any one case.

914. SEC. 2. No fee allowed to counsel appointed as above provided for, shall exceed twenty dollars in any case

where the defendant is indicted for a misdemeanor. In all cases of indictment for the commission of a felony, the punishment for which is imprisonment in the penitentiary, the amount of the fee to be allowed to counsel so to be assigned, shall not exceed thirty dollars. In all cases of indictment for felony, the punishment for which is death, the amount of said fee shall not exceed fifty dollars.

Limit of fees to be allowed.

915. SEC. 3. In no case shall counsel be assigned to such defendant or defendants, unless the court be satisfied that he or they are unable, by reason of his or their poverty, to employ counsel, and no defendant possessed of any property sufficient to pay a reasonable attorney's fee, shall be entitled to any of the benefits or privileges of this act.

Counsel not to be assigned unless court is satisfied of poverty of defendant.

916. SEC. 4. Whenever an attorney, appointed by any court to defend prisoners, shall have tried the case or shall have quashed any indictment therein, the clerk of said court shall give him a certified copy of the order of the court, so assigning him as counsel, and the judge of said court shall indorse upon such order the sum to be allowed as a fee in the case, and upon the presentation of such order, with such indorsement, the county commissioners of the county shall order a warrant to be drawn on the county treasury in payment of such fee.

In what manner fee allowed is certified to county commissioners.

Approved, March 7, 1877.

CHAPTER XXIX.

DIVORCE AND ALIMONY.

[Revised Statutes, Chapter XXVI.]

917. SECTION 1. In any case in which a marriage has been or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided, that either party at the time of the marriage was and continued to be impotent naturally, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequent to the marriage, or has wilfully de-

Causes for divorce; not to affect legitimacy of children, except marriage declared void.