

1877

An act regulating the power of granting and dissolving injunctions and restraining orders and the mode of obtaining mandatory writs of injunction, and the practice under each, in case of disobedience, and to repeal chapter 43 of the Revised Statutes, and section 2 of "an act concerning mines," approved February 13, 1874, and the act amendatory thereof, entitled "an act to amend an act entitled an act concerning mines," approved February 13, 1874, and approved February 11, 1876.

Colorado General Assembly

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may proceed against said homestead as in ordinary cases, and if the said homestead shall sell for more than two thousand dollars and costs, the excess shall be applied to the payment of the demand of such creditor; but in all such cases the sum of two thousand dollars, free of charge or expense, shall be paid to the owner of the homestead; and in case the said homestead shall not sell for more than two thousand dollars and costs, the person instituting the proceeding shall pay all costs of such proceeding, and the said proceeding cease and not affect or impair the rights of the owner of the homestead.

Exemption of homestead acquired from proceeds of sale of former homestead.

1850. SEC. 8. That in case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof shall also be exempt from execution or attachment, nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a *bona fide* purchaser for a valuable consideration.

## CHAPTER XLVII.

### IMPRISONMENT FOR DEBT.

[Revised Statutes, Chapter XLII.]

No imprisonment or arrest for debt.

1351. There shall be no imprisonment or arrest for debt in this state, in any case, upon any contract, expressed or implied.

## CHAPTER XLVIII.

### INJUNCTIONS.

AN ACT REGULATING THE POWER OF GRANTING AND DISSOLVING INJUNCTIONS AND RESTRAINING ORDERS, AND THE MODE OF OBTAINING MANDATORY WRITS OF INJUNCTION, AND THE PRACTICE UNDER EACH, IN CASE OF DISOBEDIENCE, AND TO REPEAL CHAPTER 43 OF THE REVISED STATUTES, AND SECTION 2 OF "AN ACT CONCERNING MINES," APPROVED FEBRUARY 13, 1874, AND THE ACT AMENDATORY THEREOF, ENTITLED "AN ACT TO AMEND AN ACT ENTITLED AN ACT CONCERNING MINES," APPROVED FEBRUARY 13, 1874, AND APPROVED FEBRUARY 11, 1875.

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

1352. SECTION 1. The district court, in term time, and any judge thereof in vacation, shall have power to grant and to dissolve writs of injunction, except as hereinafter

limited. In case of a vacancy in the office of any district judge, or in case of his absence from his district, or in case such judge has an interest in the subject matter of litigation, or if from sickness or any other cause, he is unable to discharge the duties of his office, then the district judge of any other district may grant and dissolve such writs; or upon the happening of either of the events above enumerated, or in case of the absence of the district judge from any county of his district, then a master in chancery of such county, in causes of action arising therein, may grant such writs, except that a master in chancery shall not have power to grant any such writ against the working of any mining claims.

Who may grant or dissolve writs of injunction.

1353. SEC. 2. When any injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained or the suit is pending, or the writ of subpoena may be sent in the first instance into any other county in this state, where the defendant resides. No writ of injunction shall be granted to stay proceedings under a judgment obtained before a justice of the peace, for a sum not exceeding twenty dollars, exclusive of costs.

Injunctions to stay a suit or judgment at law.

1354. SEC. 3. No injunction shall be granted to stay judgment at law for a greater sum than the complainant shall show himself equitably not bound to pay, and so much as shall be sufficient to cover costs. Every injunction, when granted, shall operate as a release of all errors in the proceedings at law that are prayed to be enjoined. No injunction shall be issued in such cases, unless the complainant, or some person in his, her or their behalf, shall have previously executed a bond, with sufficient surety to the defendant, approved by the court, judge or master, or the clerk, where the court, judge or master granting such injunction so orders, and filed with the clerk, in double the sum directed to be enjoined, conditioned for the payment of all money and costs due, or to be due, to the plaintiff in the action of law, and also all such costs and damages as shall be awarded against the complainant in case the injunction shall be dissolved. If the injunction be dissolved, in whole or in part, the complainant shall pay, exclusive of

Injunctions to stay judgment at law; to operate as a release of errors.

Amount and condition of bond for.

Payment of  
damages by  
complainant in  
case of dissolu-  
tion of writ.

legal interest and costs, such damages as the court shall award, not exceeding ten per cent. on such part as may be released from the injunction; and the clerk shall issue execution for the same, when he issues on such judgment.

Injunctions  
other than those  
to stay suit or  
judgment

1855. SEC. 4. In case of granting a writ of injunction other than those to stay a suit or judgment at law, the court, judge or master in chancery granting the writ, shall make an order fixing the amount of the bond, which shall be in a reasonable sum; and no injunction shall be issued until complainant or complainants, or some one for him, her or them, shall have previously executed a bond with sufficient surety, payable to the defendant or defendants, approved by the court, judge or master in chancery granting the writ, or the clerk of the court out of which the writ is to issue when the order so directs, and filed with the clerk; which bond shall be conditioned to pay all such costs and damages as shall be awarded against the complainant or complainants, in case the injunction shall be modified or dissolved in whole or in part.

Amount and  
condition of  
bond for.

Notice to be  
given opposite  
party, of time  
and place of  
making applica-  
tion for.

1856. SEC. 5. Whenever application shall be made for a writ of injunction, the party intending to make such application, except as hereinafter provided, shall give notice to the opposite party of the time and place of making such application prior to making the same; *provided*, that if such application shall be made to the court in term time, in a cause pending in such court, in which the defendant or defendants shall have been served with process ten days prior to the term at which such application shall be made, or if the complainant shall file an affidavit showing that irreparable mischief or injury will result to him if notice be given, or that the case is too urgent to admit of delay incident to giving notice, or where it appears from the bill of complaint that the defendant or defendants may commit the acts concerning which injunctive relief is sought before the motion can be heard, no such notice shall be required, but the court or judge shall proceed to hear the application *ex parte*; and *provided further*, that any writ of injunction issued against the working and mining of a lode or mining claim without notice to the opposite party, shall be void. The notice to be given shall be in proportion to the

In what cases  
*ex parte* hearing  
to be had.

urgency of the case. If the party against whom the writ is to run, desires further time to prepare his defense, the court, or judge, may grant such time as may seem proper, not exceeding in any case five days; and may in the mean time issue a temporary injunction until the determination of said application; and the court, or judge, may require complainant or complainants, to give bond during the existence of such temporary injunction, conditioned as in section 4 of this act. No motion to dissolve an injunction shall be heard in vacation when granted upon mining claims after answer filed.

What notice to be given.

Temporary injunction.

Hearing of motion to dissolve in certain cases.

1357. SEC. 6. If any person against whom a writ of injunction or temporary injunction shall be issued, shall, after the service thereof, be guilty of disobedience to, and breach of the injunction or temporary injunction, it shall be lawful for the judge granting the same, or for the judge of the district in which the writ or order issued, or if the same were granted in open court, then for any judge in vacation to issue an attachment against said person or persons for a contempt. Upon his or their being brought before the said judge, unless he or they shall disprove or purge the said contempt, the said judge may in his discretion commit him or them to jail until the sitting of the court in which the said injunction is pending, or take bail for his appearance at the said court at the next term thereof to answer for the said contempt, and to abide the order of the court thereon.

Disobedience of writ; attachment therefor.

1358. SEC. 7. In all causes in which writs of injunction may be issued without notice, defendant or defendants may at any time after filing a demurrer, plea or answer to the bill of complaint, and whether in term time or in vacation, move the court, or if application shall be made in vacation, the judge thereof to dissolve the injunction. If the defendant or defendants shall have filed a plea or answer to the bill, it shall be lawful for the parties respectively, upon the hearing of such motion, to introduce testimony in support of the bill and plea or answer, and the court or judge shall decide such motion upon the weight of testimony without being bound to regard the plea or answer as absolutely true. If at or before the time designated for the

When motion to dissolve injunction may be heard. Testimony may be introduced.

Granting of continuances for the purpose of enabling parties to procure testimony.

Consideration of affidavits and depositions.

When motions to dissolve not to be heard in vacation.

Continuance or dissolution of injunctions by judge in vacation.

Not necessary to granting of writ that bill should be first filed.

hearing of such motion, either party or some credible person for him shall make and file in the court an affidavit showing that such party hath a witness or witnesses by whom he can disprove the bill, plea or answer (as the case may be) or some material part thereof, giving the name or names of such witness or witnesses, his or their place of abode, and the particular facts which the party will prove by him or them, and that such party has had no opportunity to procure the testimony of such witness since the coming in of the plea or answer, the court or judge, if satisfied that the testimony of such witness or witnesses will be material upon the hearing of such motion, shall grant a continuance of the hearing for such reasonable time as may be necessary, to enable the party to procure the testimony of such witnesses. Affidavits filed with the bill or answer and the deposition of witnesses in writing, taken and certified as in other cases in chancery proceedings, may be heard and shall be considered by the court or judge upon the hearing of such motion, and depositions taken for the purpose of being read at such hearing may be read on final hearing of the cause in which they have been taken. *Provided*, that in any cause where any injunction shall have been awarded after notice, as provided by section 5 of this act, no motion for the dissolution of such injunction shall be heard or made in vacation.

1359. SEC. 8. In all cases in which an application to dissolve an injunction shall be made to the judge of any district court in vacation, as provided in this act, it shall be lawful for such judge to continue such injunction or to dissolve the same in the same manner, and with like effect as if application was made to the court in term time.

1360. SEC. 9. It shall not be necessary to the granting of an injunction, that the complainant's bill be first filed in the court out of which such writ is prayed; but the order of the judge or any court to whom any bill is presented praying such injunction, may direct the same to issue, upon the filing of the complainant's bill with the bond required by the third or fifth sections (as the case may be.)

1361. SEC. 10. The said district court of the state, or any judge thereof sitting in chancery, shall have, in addi-

tion to the power already possessed, power to issue writs of injunction, for affirmative relief, having the force and effect of a writ of restitution, restoring any person or persons to the possession of any mining property, or premises from which he or they may have been ousted by fraud, force or violence, or from which he or they are kept out of possession by threats, or by words, or actions, which have a natural tendency to excite fear or apprehension of danger, or whenever such possession was taken from him or them by entry of the adverse party on Sunday, or a legal holiday, or while the party in possession was temporarily absent therefrom. The granting of such writ to extend only to the right of possession under the facts of the case in respect to the manner in which the possession was obtained; leaving the parties to their legal rights on all other questions as though no such writ had issued. *Provided*, that no such writ shall issue except upon notice in writing to the adverse party of at least five days, of the time and place of making such application, if made in vacation, and if made in term time, not before defendant or defendants have been duly served with process, and required to appear and answer by virtue of such service. And if the defendant or defendants shall file an answer to the bill upon which such application is founded, denying under oath the material averments in said bill contained, the said court or judge thereof shall cause the said application to be referred to a master in chancery, to take proofs in support of said bill and answer, and shall direct the said master to report the proofs to the said court or judge within a reasonable time, allowing to the complainant and defendant a reasonable time in which to take proofs; and the time so allowed by said court or judge for the purpose of taking testimony, shall be equally divided between said complainant and defendant; and it shall be the duty of the complainant or complainants, to take his, her or their testimony first, and the defendant or defendants shall proceed to take his, her or their proof within the last half of said time so allowed, and the said court or judge shall adjourn the hearing of the said application until some day within a reasonable time after the time of taking and completing said proofs, and

Writs of injunction for affirmative relief, having the force and effect of a writ of restitution.

Writ not to issue except on notice in writing, if in vacation, or service of notice if in term time.

Reference to master in chancery.

In what cases  
not to issue writ for  
restoration of  
mining property.

Appeals; how  
to affect opera-  
tion of writ.

Temporary  
injunction to  
issue on filing of  
bill.

Writ for affirma-  
tion relief, etc.,  
not valid if issued  
without notice.

Suit on bonds for  
injunction.

Repeal.

at such time, upon the hearing of said master's report, shall grant or refuse said writ, as the pleadings and evidence in said cause or proceedings may warrant or require: *And provided further*, that no such writ shall issue in favor of any person or persons, to restore to such person or persons possession of any mining property, if the said person or persons shall have obtained or procured possession of said property by violence, or by fraud, or by taking possession of the same while the adverse party in possession was temporarily absent therefrom: *And provided further*, that appeal, as in other cases in chancery, shall be allowed from any final order or decree granting an injunction under the provisions of this section; but such appeal shall not have the effect to suspend the operation of said writ after an order or decree is made by the court or judge granting the same, nor to continue one in force after an order or decree is made dissolving any injunction pending the appeal. When application is made for such an injunction for affirmative relief as contemplated in this section, the court or judge shall immediately, on the filing of the complainant's bill of complaint, issue a temporary injunction, as provided for in section 5 of this act.

1362. SEC. 11. No writ of injunction for affirmative relief, having the force and effect of a writ of restitution, shall be valid or have any force whatsoever, if issued without notice and without complying with the provisions and conditions of the preceding section.

1363. SEC. 12. That in suing on any bond provided for in this act, it shall not be necessary to bring suit in the first instance against the principal on such bond to ascertain the amount of damages sustained or awarded by the court, but the principal and surety may be sued together, and at the trial damages may be assessed and awarded against the principal and surety in the action.

1364. SEC. 13. That chapter 43 of the revised statutes, entitled "injunctions," be and the same is hereby repealed. Also, section 2 of an act concerning mines, approved February 13, 1874. Also, an act to amend an act entitled an act concerning mines, approved February 13, 1874, approved February 11, 1876, be and the same are hereby



repealed, and all other acts repugnant to or inconsistent with the provisions of this act, be and the same are hereby repealed. But the repeal of said statutes shall in no wise abate or affect any writ issued under any of said statutes or any action or proceeding instituted or pending under any of the provisions of the statutes so repealed, or deny, abridge, divest or impair any right accrued or arising while the same remained in force, or to divest or impair any remedy given thereby to enforce any order, judgment or decree of the court under any such statute so repealed, or to punish any person or persons for the violation of any such writ issued under or pending at the time of the repeal of said statutes, but as to all rights and titles accrued, and all acts done and completed while same remained force, in all such acts and parts of acts heretofore repealed shall be construed to be and remain in force, notwithstanding such repeal.

Not to abate or affect any writ issued under former statutes, nor to abridge, impair etc., accrued rights or enforcement of a decree.

1365. SEC. 14. Inasmuch as there are grave doubts whether any law now exists whereby writs of injunction can be granted by any of the judges in vacation, and whereas it is necessary that such power shall be vested in them, in the opinion of the general assembly this is such a case as is contemplated in section 19 of article 5 of the constitution; therefore this act shall take effect and be in force from and after its passage.

Emergency.

Approved, March 1, 1877.

## CHAPTER XLIX.

### INTEREST.

#### AN ACT CONCERNING INTEREST.

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

1366. SECTION 1. The legal rate of interest on the forbearance or loan of any money, when there is no agreement between the parties, as specified in section three of this act, shall be at the rate of ten per centum per annum.

Legal rate of interest.

1367. SEC. 2. Creditors shall be allowed to receive interest, when there is no agreement as to the rate thereof,