

building against which the claim is filed; and upon the return of service and failure of the defendant to appear, the court shall render judgment as in case of summons; but if they or either of them appear, they may plead and make defence, and the like proceedings shall be had as in personal action for the recovery of debts: *Provided*, that no judgment rendered in such *scire facias* shall warrant the issuing an execution except against the building or buildings upon which the lien existed as aforesaid.

§ 11. The act of the Revised Statutes entitled "An act concerning the lien of mechanics and others for the costs of repairs and improvements on real estate," is hereby repealed. Act repealed.

APPROVED, February 14, 1842.

AN ACT to amend the act of the Revised Statutes entitled "An act concerning the writ of attachment."

Be it enacted by the Council and House of Representatives of the Territory of Wisconsin, as follows:

§ 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.

§ 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 springing in contract, or upon the judgment or decree of some court of law or chancery. Cause of action, on what founded.

§ 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. Oath or affidavit of some person.

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.

Affidavit may be traversed.

§ 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.

Plea in abatement.

What to attach.

§ 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:

What exempt.

Provided, that the same property which would be exempt by law from execution shall be exempt from attachment.

Service how made.

§ 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 appraisalment of all the property attached, and the fact whether the defendant was summoned or not.

Personal service—Defendant not called.

§ 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.

Real estate.

§ 8. If real estate is attached by virtue of any writ of attachment, the officer, on service thereof, shall make a certified copy of said writ, and of his return thereon, which shall be filed and recorded in the book of mortgages, in the register's office of the county in which such real estate is situated; and from the time of filing as aforesaid, the same shall be and continue a lien on all real

Record, return of officer.

lien.

estate mentioned or described in the return of the officer in such county, until the same shall be discharged. And when said lien shall be discharged by the order of said court, or by satisfaction of the judgment rendered in the suit, it shall be the duty of the said register, when requested, to record the satisfaction piece or transcript of the record of such order, in the book of mortgages, and to enter on the margin of the page or pages where the said writ and return are so recorded, a minute of such discharge or satisfaction.

Duty of register.

§ 9. The first and second sections of the act of which this act is amendatory are hereby repealed.

Sections repealed.

APPROVED, February 15, 1843.

AN ACT to provide for preserving in the Library the Acts and Journals of the Legislative Assembly.

Be it enacted by the Council and House of Representatives of the Territory of Wisconsin:

§ 1. That the librarian be and he is hereby required to procure to be bound and lettered, twenty copies of the acts and journals of each session of the Legislative Assembly since the organization of the Territory; and also a like number of the acts and journals of the present and each succeeding session of the Legislative Assembly, and to preserve the same in the Territorial library.

Acts and Journals—20 copies.

Of present session.

§ 2. That the librarian be further instructed to transmit to the executive of each of the states and territories of the United States, a copy of the pamphlet laws of the past sessions, after reserving fifty copies of each for the use of the Territory, and annually a copy of the laws that may hereafter be passed by the Legislative Assembly of this Territory.

Librarian to transmit copies to each state.

APPROVED, February 15, 1843.