

CHAPTER CXXVII.

[S. B. No. 167.]

COMMENCEMENT OF CIVIL ACTIONS IN SUPERIOR COURTS.

AN ACT to provide for the manner of commencing civil actions in the superior courts, and bringing the same to trial.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Civil actions in the several superior courts of this state shall be commenced by the service of a summons, as hereinafter provided.

SEC. 2. The summons must be subscribed by the plaintiff ^{Summons.} or his attorney, and directed to the defendant requiring him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the state therein specified in which there is a postoffice, within twenty days after the service of the summons, exclusive of the day of service.

SEC. 3. The summons shall also contain—(1) The title ^{Contents of summons.} of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant. (2) A direction to the defendants summoning them to appear within twenty days after service of the summons, exclusive of the day of service, and defend the action. (3) A notice that, in case of failure so to do, judgment will be rendered against them, according to the demand of the complaint. It shall be subscribed by the plaintiff, or his attorney, with the addition of his postoffice address, at which the papers in the action may be served on him by mail. There may, at the option of the plaintiff, be added at the foot, when the complaint is not served with the summons, and the only relief sought is the recovery of the money, whether upon tort or contract, a brief notice specifying the sum to be demanded by the complaint.

SEC. 4. Such summons shall be substantially in the following form:

..... COURT, COUNTY.

A B, *Plaintiff*,
vs.
C D, *Defendant*.

Form of summons.

The State of Washington,, to the said, defendant: You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, or a copy of which is herewith served upon you.

E F, *Plaintiff's Attorney*.

P. O. Address, County, Wash.

Service of summons to be accompanied by a copy of complaint, when.

SEC. 5. A copy of the complaint must be served upon the defendant with the summons unless the complaint itself be filed in the office of the clerk of the superior court of the county in which the action is commenced within five days after service of such summons, in which case the service of the copy may be omitted; but the summons in such case must notify the defendant that the complaint will be filed with the clerk of said court; and if the defendant appear within ten days after the service of the summons, the plaintiff must serve a copy of the complaint on the defendant or his attorney within ten days after the notice of such appearance, and the defendant shall have at least ten days thereafter to answer the same; and no judgment shall be entered against him for want of an answer in such case till the expiration of the time.

Who may serve summons.

SEC. 6. In all cases, except when service is made by publication, as hereinafter provided, the summons shall be served by the sheriff of the county wherein the service is made or by his deputy, or by any person over twenty-one years of age, who is competent to be a witness in the action, other than the plaintiff.

On whom summons must be served.

SEC. 7. The summons shall be served by delivering a copy thereof, as follows: (1) If the action be against any county in this state, to the county auditor. (2) If against any town or incorporated city in the state, to the mayor thereof. (3) If against a school district, to the clerk

thereof. (4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state. (5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state. (6) If against an insurance company, to any agent authorized by such company to solicit insurance within this state. (7) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state. (8) If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, secretary, cashier or managing agent thereof. (9) If the suit be against a foreign corporation or non-resident joint stock company or association doing business within this state, to any agent, cashier or secretary thereof. (10) If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be. (11) If against any person for whom a guardian has been appointed for any cause, then to such guardian. (12) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his usual abode with some person of suitable age and discretion then resident therein. Service made in the modes provided in this section shall be taken and held to be personal service.

SEC. 8. Whenever any corporation, created by the laws of this state, or late Territory of Washington, does not have an officer in this state upon whom legal service of process can be made, an action or proceeding against such corporation may be commenced in any county where the cause of action may arise, or said corporation may have property, and service may be made upon such corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of state, which shall be taken, deemed and treated as personal service on such corporation:

Manner of making service on domestic corporation.

Provided, A copy of said summons, writ, or other process, shall be deposited in the postoffice, postage paid, directed to the secretary or other proper officer of such corporation, at the place where the main business of such corporation is transacted, when such place of business is known to the plaintiff, and be published at least once a week for six weeks in some newspaper printed and published at the seat of government of this state, before such service shall be deemed perfect.

SEC. 9. When the defendant can not be found within the state, of which the return of the sheriff of the county in which the action is brought, that the defendant can not be found in the county, is *prima facie* evidence, and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or can not be found therein, and that he has deposited a copy of the summons and complaint in the postoffice, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in either of the following cases: (1) When the defendant is a foreign corporation, and has property within the state. (2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent. (3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action. (4) When the action is for divorce in the cases prescribed by law. (5) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein. (6) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same. (7) When the action is

Service by
publication.

against any corporation, whether private or municipal, organized under the laws of this state and the proper officers on whom to make service do not exist or can not be found.

SEC. 10. The publication shall be made in a newspaper printed and published in the county where the action is brought (and if there be no newspaper in the county, then in a newspaper printed and published in an adjoining county, and if there is no such newspaper in an adjoining county, then a newspaper printed and published at the capital of the state) once each week for six consecutive weeks; and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication as aforesaid. Publication of summons.

SEC. 11. Personal service on the defendant out of the state shall be equivalent to service by publication, and the defendant shall be required to appear and answer within sixty days after such service.

SEC. 12. If the summons is not served personally on the defendant in the cases provided in the last two sections, he or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action and, except in an action for divorce, the defendant or his representative may in like manner be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense is successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs.

SEC. 13. When the action is against two or more defendants and the summons is served on one or more but not on all of them, the plaintiff may proceed as follows: Manner of proceeding in certain cases. (1) If the action is against the defendants jointly indebted upon a contract, he may proceed against the defendants served unless the court otherwise directs; and if he recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served. (2) If the action is against defendants severally liable, he may proceed against the de-

defendants served in the same manner as if they were the only defendants. (3) Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone.

Proof of service.

SEC. 14. Proof of service shall be as follows: (1) If served by the sheriff or his deputy, the return of such sheriff or his deputy indorsed upon or attached to the summons; (2) if by any other person, his affidavit thereof indorsed upon or attached to the summons; or (3) in case of publication, the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or (4) the written admission of the defendant; (5) in case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or a clerk of a court of record. In case of service otherwise than by publication, the return, admission or affidavit must state the time, place and manner of service.

Voluntary appearance equivalent to personal service.

SEC. 15. From the time of the service of the summons in a civil action, the court is deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him.

SEC. 16. A defendant appears in an action when he answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him. Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a special appearance.

Actions affecting title to real property.

SEC. 17. In an action affecting the title to real property the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a writ of attachment of property shall be issued, or at any time afterwards, the plaintiff

or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: *Provided, however,* That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record.

SEC. 18. Notices shall be in writing; and notices and other papers may be served on the party or attorney in the manner prescribed in the next three sections where not otherwise provided by statute.

SEC. 19. The services may be personal or by delivery to the party or attorney on whom service is required to be made, or it may be as follows:

Manner of
making
service.

1. If upon an attorney, it may be made during his absence from his office by leaving the papers with his clerk

therein, or with a person having charge thereof; or, when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place in the office; or, if it is not open to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

2. If upon a party, it may be made by leaving the papers at his residence between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.

SEC. 20. Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places between which there is a regular communication by mail.

Service by mail.

SEC. 21. In case of service by mail, the papers shall be deposited in the postoffice, addressed to the person on whom it is served, at his place of residence, and the postage paid; and in such case the time of service shall be double that required in case of personal service.

Service when no attorney appears.

SEC. 22. Where a plaintiff or defendant who has appeared resides out of the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk for him. But where a party, whether resident or non-resident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. But if the attorney shall have removed from the state, such service may be made upon him personally either within or without the state, or by mail to him at his place of residence, if known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. And if the residence of neither the party or attorney are known, the service may be made upon the clerk for the attorney.

Service upon the attorney.

Service upon attorney's clerk.

Not apply to contempt proceedings.

SEC. 23. The provisions of the four preceding sections do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

Validity of notice not affected by defect in title or omission thereof.

SEC. 24. A notice or other paper is valid and effectual though the title of the action in which it is made is omitted, or it is defective either in respect to the court or parties, if it intelligently refers to such action or proceed-

ings; and in furtherance of justice upon proper terms, any other defect or error in any notice or other paper or proceeding may be amended by the court, and any mischance, omission or defect relieved within one year thereafter; and the court may enlarge or extend the time, for good cause shown, within which by statute any act is to be done, proceeding had or taken, notice of paper filed or served, or may, on such terms as are just, permit the same to be done or supplied after the time therefor has expired, except that the time for bringing a writ of error or appeal shall in no case be enlarged, or a party permitted to bring such writ of error or appeal after the time therefor has expired.

Time within which court may allow amendment.

Time may be extended.

SEC. 25. A defendant who has appeared may, without answering, demand in writing an assessment of damages, of the amount which the plaintiff is entitled to recover, and thereupon such assessment shall be had or any such amount ascertained in such manner as the court on application may direct, and judgment entered by the clerk for the amount so assessed or ascertained.

Defendant may demand an assessment of damages.

SEC. 26. The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day falls on a Sunday it shall be excluded.

Defining the time in which act to be done.

SEC. 27. The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published.

SEC. 28. Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other, they are of two kinds—First, of law; and second, of fact.

Issues arise upon pleadings, when.

SEC. 29. An issue of law arises upon a demurrer to the complaint, answer or reply.

SEC. 30. An issue of fact arises—*First*, Upon a material allegation in the complaint controverted by the answer; or, *second*, upon new matter in the answer, controverted by the reply; or, *third*, upon new matter in the reply, except when an issue of law is joined thereon; issues

When issue of fact arises.

both of law and of fact may arise upon different and distinct parts of the pleadings in the same action.

Trial.

SEC. 31. A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact.

Issue of law.

SEC. 32. An issue of law shall be tried by the court, unless it is referred as provided by the statutes relating to referees.

Jury trial in certain cases, of issue of fact.

SEC. 33. An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees.

All other issues of fact tried by court.

SEC. 34. Every other issue of fact shall be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or referred.

Notice of trial of issue of fact.

SEC. 35. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least three days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least three days before the day of setting such causes for trial file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue. In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least three days before the day set apart by the court under its rules

Notice of trial of issue of law.

for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with

a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court. When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part.

Cause once docketed remains from day to day.

SEC. 36. Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and, in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

Either party, after notice, may bring issue to trial.

SEC. 37. All pleadings in any civil action shall be filed with the clerk of the court, on or before the day when the case is called for trial, or the day when any application is made to the court for an order therein, and in case the moving party shall fail, or neglect to cause the pleadings to be filed with the clerk of the court as above required, the adverse party may apply to the court, without notice, for an order on such moving party to file such pleadings forthwith, and for a failure to comply with such order the court may order the cause dismissed unless good cause is shown for granting an extension of time within which to file such pleadings.

Filing of pleadings.

SEC. 38. All acts and parts of acts inconsistent with this act are hereby repealed.

Repeal.

Approved March 15, 1893.