

## CHAPTER 89.

[ S. B. 10. ]

## CIVIL PROCEDURE IN JUSTICE COURTS.

AN ACT relating to civil procedure in justice courts; amending section 42, page 230, Laws of 1854, section 54, page 344, Laws of 1873, section 1755, Code 1881 and RCW 12.04.060; amending section 19, page 253, Laws of 1854, section 17, page 370, Laws of 1863, section 16, page 373, Laws of 1873, section 1885, Code 1881 and RCW 12.04.200; amending section 45, page 231, Laws of 1854, section 57, page 344, Laws of 1873, section 1758, Code 1881 and RCW 12.08.030; amending section 56, page 232, Laws of 1854, section 68, page 346, Laws of 1873, section 1769, Code 1881 and RCW 12.12-.010; amending section 83, page 237, Laws of 1854, section 82, page 350, Laws of 1873, section 1783, Code 1881 and RCW 12.20.030; amending section 91, page 238, Laws of 1854, section 90, page 352, Laws of 1873, section 1791, Code 1881 and RCW 12.24.040; amending section 89, page 238, Laws of 1854, section 88, page 351, Laws of 1873, section 1789, Code 1881 and RCW 12.24.050; amending section 90, page 238, Laws of 1854, section 89, page 351, Laws of 1873, section 1790, Code 1881 and RCW 12.24.060; and repealing sections 74 and 75, page 236, Laws of 1854, sections 74 and 75, page 254, Laws of 1860, sections 55 and 56, page 348, Laws of 1863, sections 73 and 74, page 348, Laws of 1873, and sections 1774 and 1775, Code 1881; repealing section 19, page 226, Laws of 1854, section 19, page 242, Laws of 1860, section 13, page 339, Laws of 1863, section 13, page 333, Laws of 1873 and section 1706, Code 1881; repealing sections 32-37, page 229, Laws of 1854, sections 32-37, page 246, Laws of 1860, sections 26-31, page 343, Laws of 1863, sections 45-50, page 342, Laws of 1873, and sections 1746-1751, Code 1881; repealing section 104, page 241, Laws of 1854, section 104, page 259, Laws of 1860, section 85, page 354, Laws of 1863, section 103, page 354, Laws of 1873, and section 1804, Code 1881; repealing section 105, page 241, Laws of 1854, section 105, page 259, Laws of 1860, section 86, page 354, Laws of 1863, section 104, page 354, Laws of 1873, and section 1805, Code 1881; repealing section 1887, Code 1881; and declaring an emergency.

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

RCW 12.04.160  
amended.

SECTION 1. Section 42, page 230, Laws of 1854, section 54, page 344, Laws of 1873, section 1755, Code 1881 and RCW 12.04.160 are each amended to read as follows:

The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial.

Commencement of actions. Time for appearance.

SEC. 2. Section 19, page 253, Laws of 1854, section 17, page 370, Laws of 1863, section 16, page 373, Laws of 1873, section 1885, Code 1881 (heretofore codified as RCW 12.04.200) are each divided and amended to read as set forth in sections 3 through 10 of this act.

Division and amendment.

SEC. 3. (RCW 12.04.200) The forms or equivalent forms as set forth in sections 4 through 10 may be used by justices of the peace, in civil actions and proceedings under this chapter.

RCW 12.04.200 amended. Forms or equivalents prescribed.

SEC. 4. (RCW 12.04.201)

RCW 12.04.201.

FORM OF SUBPOENA

State of Washington, }  
County of....., } ss.  
To.....:

In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the.....day of ....., 19..... at ..... o'clock in the.....noon, at his office in....., to give evidence in a certain cause, then and there to be tried, between A B, plaintiff and C D, defendant, on the part of (the plaintiff, or defendant as the case may be).

Given under my hand this.....day of....., 19.....

J.P., Justice of the Peace.

SEC. 5. (RCW 12.04.203)

FORM OF EXECUTION

State of Washington, }  
County of....., } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D, for the sum of.....dollars, and.....dollars cost of suit, was recovered on the.....day of....., 19....., before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his debt, interest and costs.

Given under my hand this.....day of....., 19.....

J.P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION

State of Washington, }  
County of....., } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D for the sum of.....dollars, and for.....dollars, costs of suit, was recovered on the.....day of....., 19....., before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the.....day of....., 19....., E F became surety to pay said judgment and costs, in

.....month from the date of the judgment afore-  
said, agreeably to law, in the payment of which  
the said C D and E F have failed; these are, there-  
fore, in the name, etc., [as in the common form].

SEC. 6. (RCW 12.04.204)

RCW 12.04.204.

FORM OF ORDER IN REPLEVIN

State of Washington, }  
                                  } ss.  
County of....., }

To the sheriff or any constable of said county:

In the name of the state of Washington, you are  
hereby commanded to take the personal property  
mentioned and described in the within affidavit,  
and deliver the same to the plaintiff, upon receiv-  
ing a proper undertaking, unless before such delivery,  
the defendant enter into a sufficient undertaking for  
the delivery thereof to the plaintiff, if delivery be  
adjudged.

Given under my hand this.....day of.....,  
19.....

J.P., Justice of the Peace.

SEC. 7. (RCW 12.04.205)

RCW 12.04.205.

FORM OF A WRIT OF ATTACHMENT

State of Washington, }  
                                  } ss.  
County of ....., }

To the sheriff or any constable of said county:

In the name of the state of Washington, you are  
commanded to attach, and safely keep, the goods  
and chattels, moneys, effects and credits of C D,  
(excepting such as the law exempts), or so much  
thereof as shall satisfy the sum of.....dollars,  
with interest and cost of suit, in whosoever hands  
or possession the same may be found in your county,  
and to provide that the goods and chattels so  
attached may be subject to further proceeding there-

on, as the law requires; and of this writ make legal service and due return.

Given under my hand this.....day of....., 19.....

J.P., Justice of the Peace.

RCW 12.04.206.

SEC. 8. (RCW 12.04.206)

FORM OF UNDERTAKING IN REPLEVIN

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for.....county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit: [here set forth the property claimed]. Now, therefore, we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of.....dollars for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the.....day of....., 19.....

A B, E F, G H.

RCW 12.04.207.

SEC. 9. (RCW 12.04.207)

FORM OF UNDERTAKING IN ATTACHMENT

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for.....county, for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of.....dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment and not exceeding the sum of .....dollars.

Dated the.....day of....., 19.....

AB, E F.

FORM OF UNDERTAKING TO DISCHARGE  
ATTACHMENT

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for .....county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now, therefore, we C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of ..... dollars, [double the value of the property], engaging to deliver the property attached, to wit: [here set forth a list of articles attached], or pay the value thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this ..... day of .....19.....  
C D, E F, G H.

SEC. 10. (RCW 12.04.208)

RCW 12.04.208.

FORM OF UNDERTAKING TO INDEMNIFY  
CONSTABLE ON CLAIM OF PROPERTY  
BY A THIRD PERSON

Whereas, L M, claims to be owner of, and have the right to possession of certain personal property, to wit: [here describe it] which has been taken by J K, constable in.....county, upon an execution by J P, justice of the peace in and for the county of ....., upon a judgment obtained by A B, plaintiff, against CD, defendant; Now, therefore, we, A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of .....dollars, to indemnify the said J K against such claim.

A B, E F, G H.

SEC. 11. Section 45, page 231, Laws of 1854, section 57, page 344, Laws of 1873, section 1758, Code 1881 and RCW 12.08.030 are each amended to read as follows:

RCW 12.08.030  
enacted  
without  
amendment.

The pleadings in justices' courts may be oral or in writing.

RCW 12.12.010  
amended.

SEC. 12. Section 56, page 232, Laws of 1854, section 68, page 346, Laws of 1873, section 1769, Code 1881 and RCW 12.12.010 are each amended to read as follows:

Trial. Continuances limited.

When the pleadings of the party shall have taken place, the justice shall, upon the application of either party, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuance in the superior court.

RCW 12.20.030  
amended.

SEC. 13. Section 83, page 237, Laws of 1854, section 82, page 350, Laws of 1873, section 1783, Code 1881 and RCW 12.20.030 are each amended to read as follows:

Judgments. Judgment on merits.

Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered within three days after the close of the trial.

RCW 12.24.040  
amended.

SEC. 14. Section 91, page 238, Laws of 1854, section 90, page 352, Laws of 1873, section 1791, Code 1881 and RCW 12.24.040 are each amended to read as follows:

Execution of judgments. Stay of judgment revokes execution.

If judgment be stayed in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect as he is hereinafter directed to revoke an execution, after an appeal has been allowed.

RCW 12.24.050  
amended.

SEC. 15. Section 89, page 238, Laws of 1854, section 88, page 351, Laws of 1873, section 1789, Code

1881 and RCW 12.24.050 are each amended to read as follows:

If at the expiration of such stay, the judgment be not paid, the execution shall issue against both the principal and surety. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the surety, and in his return shall state what amount of money, collected by him on the execution, was collected from the surety, and the time when the same was received.

Levy of execution if judgment is not paid.

SEC. 16. Section 90, page 238, Laws of 1854, section 89, page 351, Laws of 1873, section 1790, Code 1881 and RCW 12.24.060 are each amended to read as follows:

RCW 12.24.060 amended.

After the return of such execution, the surety shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with the interest at the rate of twelve percent per annum.

Subrogation of surety.

SEC. 17. The following acts or parts of acts are each repealed:

Repeal.

(1) Section 1706, Code 1881, section 13, page 333, Laws of 1873, section 13, page 339, Laws of 1863, section 19, page 242, Laws of 1860, section 19, page 226, Laws of 1854;

(2) Sections 1746-1751, Code 1881, sections 45-50, page 342, Laws of 1873, sections 26-31, page 343, Laws of 1863, sections 32-37, page 246, Laws of 1860, sections 32-37, page 229, Laws of 1854;

(3) Sections 1774-1775, Code 1881, sections 73, 74, page 348, Laws of 1873, sections 55, 56, page 348, Laws of 1863, sections 74, 75, page 254, Laws of 1860, sections 74, 75, page 236, Laws of 1854;



Repeal.

(4) Section 1804, Code 1881, section 103, page 354, Laws of 1873, section 85, page 354, Laws of 1863, section 104, page 259, Laws of 1860, section 104, page 241, Laws of 1854;

(5) Section 1805, Code 1881, section 104, page 354, Laws of 1873, section 86, page 354, Laws of 1863, section 105, page 259, Laws of 1860, section 105, page 241, Laws of 1854;

(6) Section 1887, Code 1881.

Emergency.

SEC. 18. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate January 24, 1957.

Passed the House February 28, 1957.

Approved by the Governor March 13, 1957.

Explanatory  
note.

## EXPLANATORY NOTE

Section 1. The bracketed words "[summons or]" were added by the reviser to make the law conform to existing practice. Justice court law presently provides such a procedure, i.e., RCW 12.04.020, 12.04.040, 12.04.070, 12.04.080, 12.04.100, etc. Throughout the justice court law summons is contemplated as a mode of commencing an action therein. The instant section (RCW 12.04.160) presumably is the only section which provides a time limitation for appearance in justice court; hence, such time limitation probably applies equally to an action commenced by summons or by complaint and notice. This section has been amended to add such words.

Sections 2 through 10: The session law from which this RCW section is derived (12.04.200) was enacted by the territorial legislature; since the section is of great length we have divided the forms into separate sections for ease of reference and ease of future amendment.

Section 5. The "Form of Venire for a Jury" has been omitted from all compilations since Ballinger's code. The form is apparently superseded by RCW 12.12.060 derived from 1888 p 119 which amended Code 1881 § 1773 which contained no such form. However, the form of a venire for a jury was expressed in 1881 § 1885, deleted by this bill. But Code 1881 § 1773 was amended in 1888 (referred to hereinabove), and included therein a summons for the juror. The 1888 law contained provisions for number and selection of jury, see for example RCW 12.12.030 through 12.12.060. Thus, the old form for a venire for a jury is obsolete. See also RCW 2.36.050 which draws a distinction between a petit jury and the J P jury in that "a petit jury is a body of men twelve in number in the superior court and six in number in courts of justices of the peace; drawn in the superior court by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact; but in a justice's court the jury is drawn according to the mode specially provided for such court."

In addition to the deletion of the form for a venire of a jury, several other forms have been omitted as follows:

Explanatory  
note.

(1) The Form of a Warrant, the Form of Execution Against the Body, and the Form of Undertaking for Arrest. These forms relate to civil arrests in civil actions and were enacted prior to the adoption of the state Constitution. Since the advent of the state Constitution, civil arrest, except in the case of an absconding debtor, has been abolished. The civil arrest statutes were repealed by 1927 c 162 § 4, introduced as 1927 Senate Bill 61 by the joint committee on the revision of laws. Thus these forms are obsolete. See state Constitution Art. 1. § 17; *Hamilton v. Pacific Drug Co.*, 78 Wash. 689; *Hayes v. Hutchinson and Shields*, 81 Wash. 394; *Bronson v. Syverson*, 88 Wash. 264.

Other forms which have been omitted are: Form of Summons in Forcible Entry and Detainer, and Form of Writ of Restitution in Forcible Entry and Detainer. These forms are obsolete since the advent of the state Constitution and have been omitted from all former compilations as well. The state Constitution, Art. 4 § 6 (Amendment 28) reads in part: "The superior court shall have original jurisdiction in . . . all cases at law which involve the title or possession of real property . . . ; of actions of forcible entry and detainer; . . ."

Art. 4 § 10 (Amendment 28) reads in part: "The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: *Provided*, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, . . .". See also RCW 2.08.010 and chapter 59.12.

Section 11. This section is set forth as it appears in RCW and as it appeared in all former compilations. In 1881, prior to the adoption of the state Constitution, this section required written pleadings when the action was for (1) a forcible or unlawful entry or detainer, or (2) the possession of a mining claim. Since the advent of the state Constitution, such actions are without the jurisdiction of justices' courts, see state Constitution Art. 4 §§ 6, 10 (Amendment 28). See also: Chapter 10, Laws of 1927, which repealed the provisions for the recovery of the occupancy of possession of mining claims; chapter 65, Laws of 1927, which repealed the territorial provisions relating to actions for forcible entry and detainer in justice courts; and chapters 59.12 and 59.16 relating to forcible and unlawful entry and detainer. See also that part of the note to sections 2 through 10, *supra*, relating to the omission of forms relating to forcible entry and detainer. Thus, the language relating to such subject matter is here omitted.

Section 12. The language "if the defendant be not under arrest" referred to arrests in civil action. The application of such language is obsolete in view of the state Constitution Art. 1 § 17 stating "There shall be no imprisonment, except in cases of absconding debtors" and in view of the repeal of the general statutes on civil arrest by chapter 162, Laws of 1927. See note to sections 2 through 10, *supra*.

Section 13. The language which requires the entry of judgment to be made immediately after the close of the trial if the defendant has been arrested and is still in custody has been omitted as obsolete. See notes to section 12, *supra*.

Section 14. The language which states "and if the defendant have been committed, shall order him to be discharged from custody" has been omitted as obsolete. See notes to section 12, *supra*.

Sections 15 and 16. The bracketed word "[bail]" and the new matter "*surety*" were added by the reviser to conform to existing practice. The word "bail" refers to bail on arrest in civil actions. Under present practice the qualification and justification of sureties appears to be governed generally by chapter 19.72 as to personal sureties and by chapter 48.28 as to corporate sureties. The statutes relating to

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bail upon arrest in civil actions were repealed by 1927 c 162 § 4 which was introduced by the joint committee on the revision of laws in Senate Bill 61 in 1927. Appended to the printed bill was an analysis stating that the law would simply be repealed were it not for the fact that other statutes referred to the bail upon arrest provisions in defining the qualifications and justification of sureties. As indicated in the analysis, it was necessary, as part of such act, to enact original provisions relating to personal securities, codified as RCW 19.72.020-19.72.050. See also corporate sureties, Insurance, chapter 48.28. This section has been amended to substitute "surety" for "bail".

Section 17.

Subdivision (1): Code 1881 § 1702 provides:

"The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute."

Almost identical provisions are contained in RCW 3.20.050 and 3.20.090 which were last amended in 1941. The provisions of Code 1881 appear to be redundant and the section is accordingly recommended for repeal.

Subdivision (2): Code 1881 §§ 1746-1751 are repealed herein since they concern civil bail and arrest in justice court. As noted heretofore, since the advent of the Constitution there is no longer any civil arrest except in the case of absconding debtors. Also the general civil arrest statutes were repealed by 1927 c 162 § 4. See notes to sections 12, and 2 through 10, *supra*.

Subdivision (3): Code 1881 §§ 1774, 1775 have been omitted from all compilations for sixty years as obsolete and superseded by 1887 c 67 (page 118) particularly section 3 thereof. The 1887 law is codified as RCW 12.12.030 through 12.12.060. Reference is here made to 1891 c 48 § 4 codified as RCW 2.36.050 which distinguishes between superior court and justice court juries. Thus, these sections are repealed as the procedure for challenging jurors in the justice courts has been abandoned since the enactment of the 1887 law.

Subdivision (4): This section relates to civil arrest and is repealed, see notes to sections 15, 16, 12, and 2 through 10, *supra*.

Subdivision (5): Code 1881 § 1805 is repealed on the ground that it is superseded by 1909 c 160 codified as chapter 12.32. *State ex rel. Spokane, etc., Branch v. Justice Court* (1937), 189 Wash. 87, held: That the section proposed for repeal had always been a part of the chapter on executions and proceedings thereon in a justice court and not a section under garnishment provisions therein; that the provisions relating to garnishment by justices of the peace are contained in 1909 c 160 as amended; that while the garnishment act in justice courts cannot be said to cover the entire field of executions from such courts, it can be said that the garnishment act forms a complete code covering by inclusion "the subject involved in § 1886 [the section proposed for repeal]"; and that "Whatever may be accomplished under § 1886 is equally attainable under the garnishment act. The blanket spread by the later act completely envelops the earlier . . . We are impelled to conclude that § 1886 has been impliedly repealed by the garnishment act."

Subdivision (6): Code 1881 § 1887 relates to the crime of provoking an assault. Code 1881 § 1887 was actually superseded by 1886 p 79 § 1. In 1909 c 249 § 165, the 1886 law was repealed. Clearly the 1886 law is repealed by the 1909 law, and apparently it was an oversight that Code 1881 § 1887 was not repealed in that criminal code. Since it appears that the 1909 law is the effective one, Code 1881 § 1887 is recommended for repeal.