

**LAWS OF THE TERRITORY OF IDAHO,  
NINTH SESSION: CONVENED ON THE  
FOURTH DAY OF DECEMBER 1876, AND  
ADJOURNED ON THE TWELFTH' DAY OF  
JANUARY, 1877, AT BOISE CITY**

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Laws of the Territory of Idaho, Ninth Session: Convened on the Fourth Day of December 1876, and Adjourned on the Twelfth' Day of January, 1877, at Boise City by E. J. Curtis

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**E. J. CURTIS**

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OF THE  
TERRITORY OF IDAHO,  
NINTH SESSION:

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JANUARY, 1877,

A T  
BOISE CITY.

CONTAINING ALSO LAWS CONTINUED IN FORCE AND  
NOT PRINTED BEFORE BY THE GOVERNMENT.

— † —

BOISE CITY :  
MILTON KELLY, TERRITORIAL PRINTER,  
1877.

## CERTIFICATE.

TERRITORY OF IDAHO, }  
SECRETARY'S OFFICE.

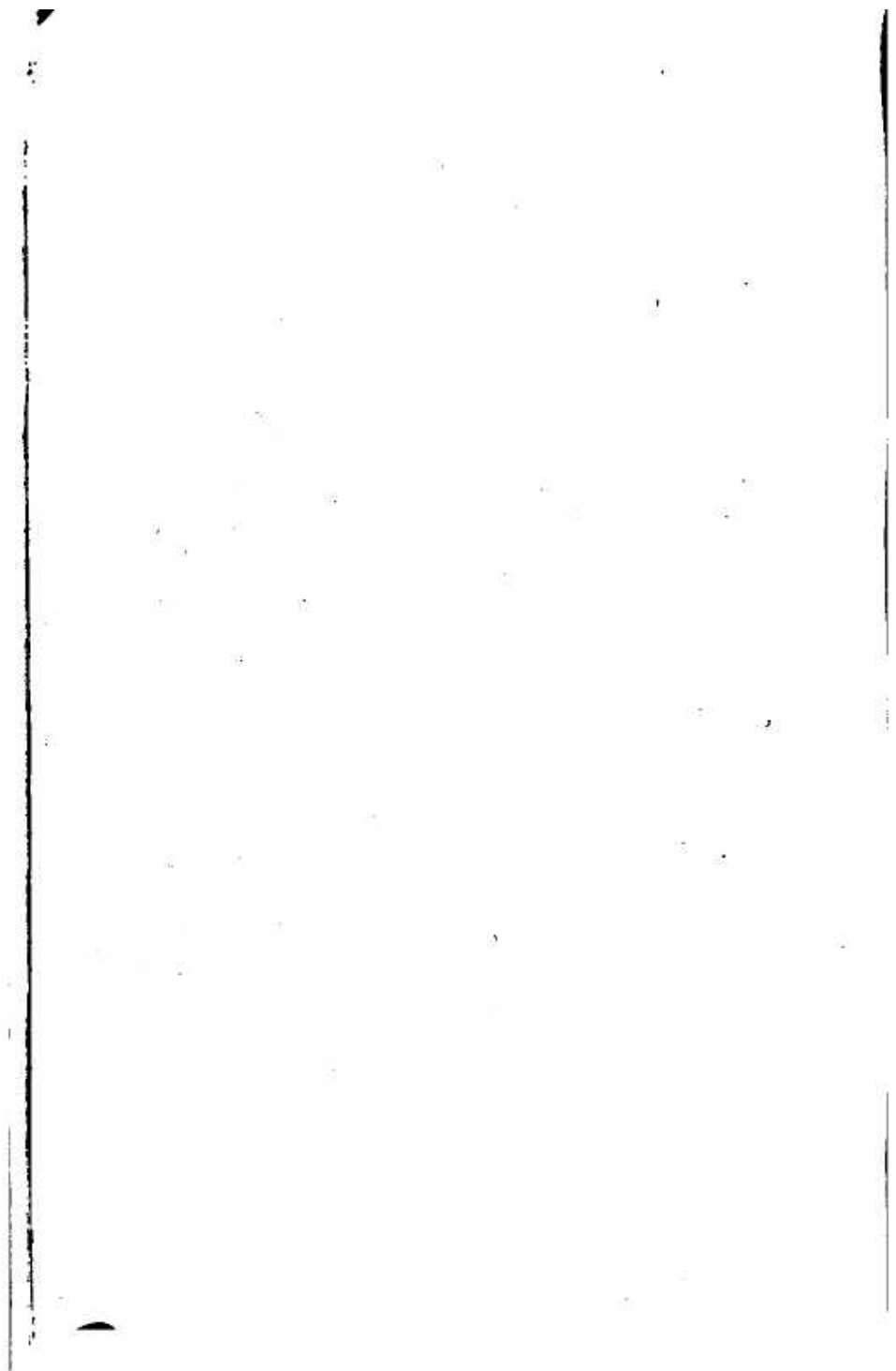
I HEREBY CERTIFY, that the Laws, Acts, Resolutions and Memorials contained in this printed volume are true and literal copies of the Enrolled Laws, Acts, Resolutions and Memorials passed at the Ninth Session of the Legislative Assembly, of the Territory of Idaho, convened on the 4th day of December, A. D. 1876, and from page 105 the Laws previously passed and authorized to be continued in force, and not printed before by the Government.



IN WITNESS WHEREOF  
I have hereunto set my  
hand and affixed the  
Seal of the Territory.

Done at Boise City,  
this 5th day of April,  
A. D. 1877.

E. J. CURTIS,  
Secretary of Idaho.



L A W S  
OF THE  
TERRITORY OF IDAHO.

NINTH SESSION.

AN ACT

To amend An Act entitled "An Act to regulate proceedings in Civil Cases in the Courts of Justice in Idaho Territory," Approved, January 15th, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That Chapter One of the act entitled, "An Act to regulate proceedings in civil cases in the courts of justice in Idaho Territory," approved January 15th, 1875, be amended by adding thereto the following:

When an action is brought against a defendant or defendants, on a written contract, it shall be sufficient to sue such defendant or defendants by the name signed to the contract; and when the name of a defendant or defendants cannot be discovered by the plaintiff after due diligence, such defendant or defendants may be sued by any name or names: *Provided,* That service shall be had upon the real party or parties, who is the defendant or are defendants in interest, and the description of the person or persons defendant and the cause of action are sufficient to apprise the party served with process that he, she or they, is or are the party intended to be sued.

SEC. 2. That section 214 of said act be amended by striking out the same, and substituting the following section 214:

That any judge who has presided at the original trial of



any action, shall have jurisdiction at chambers at any place within the Territory of Idaho to settle the statement and hear and determine a motion for new trial therein; and in case such judge shall not be in office, any other district judge. That the notice that a motion will be made for a new trial, or the settlement of a statement therefor shall be settled, need not state the time and place of the hearing; but such notice shall, after service on the opposite party, be immediately presented to the judge who presided at the original trial, whereupon the said judge shall immediately set a time and place where the statement shall be settled and motion heard, by order, and the moving party, within ten days after he receives said order, shall serve said order upon the opposite party, which service shall give the court jurisdiction of the parties at the time and place specified in the order; *Provided*, That for good cause shown the judge may extend the time and change the place of hearing by order, which shall be served on the respective parties. That the above proceedings shall apply to all cases wherein notice of motion for new trial shall have been made since January, 1875, where the judge presiding at the original trial was presiding out of his district, in which cases either party may apply to said judge, and the judge may by order fix the time and place of hearing, which shall be served upon the opposite party; whereupon the said judge shall have jurisdiction of both the parties and subject matter at chambers, at the time and place fixed in said order, and may change the time and place of hearing, for good cause, as in other cases. The judge, after determining the said statement and motion, shall immediately transmit his decision to the clerk of the court wherein the cause was tried, and the same shall be immediately entered on the records of said court, and for purposes of appeal to the supreme court of the Territory only; the final judgment in the cause shall be deemed to have been rendered on the date of such entry on the record. No notice of motion or motion for new trial shall stay proceedings on the original judgment in civil cases; *Provided*, Upon application the judge who tried the action may stay such proceedings on such terms as he may deem just.

SEC. 3. That section 226 of said act be amended by adding thereto: *Provided*, That if execution has issued or shall be issued within five years after the entry of judgment in cases wherein the judgment is for the restitution of real estate, and in cases wherein the writ of restitution has been executed and afterwards the person restored to possession has been

forcibly dispossessed, an alias execution may issue at any time within five years after said execution first issued, or after such forcible dispossession has taken place, by application to the clerk of the court wherein the judgment was rendered.

Sec. 4. Section 354 of said Act be amended by adding thereto the following:

*Provided*, That when service is made by publication the time specified in the summons need not be as provided above in this section, but may specify any date for appearance not less than ten days after the service shall have become complete, and the court shall have jurisdiction of the defendant and to try the cause at the time specified in such summons.

Sec. 5. That section 462 of said act be amended by striking from the third line thereof the words, "of the judgment," and substituting in lieu thereof the words, "in controversy."

Sec. 6. That section 515 and 516, of said act are hereby repealed, and in place thereof it is enacted as follows: Section 515. That when the Territory or a county is a party to a civil action, or the action is prosecuted or defended in the interest thereof, or is for the recovery of money or a penalty belonging, when recovered, to a school, road or public fund, all the officers of the court shall perform their services for said Territory, county or fund, without the prepayment of costs, and the said costs shall be taxed against said Territory, county or fund, at the same rates and in the same manner that costs are taxed against individuals in civil actions. Section 516. In case of taxation of costs, as is provided in the last section, a bill of the items thereof shall be presented to the court wherein the action is tried for an allowance, and the court shall allow such portion thereof as is legal, and no more, and endorse thereon his allowance, and upon the presentation of such bill and endorsement to the territorial controller in cases wherein the Territory is interested, he shall draw his warrant therefor upon and against the territorial general fund, and on presentation of such bill and endorsement to the county auditor, in cases wherein the county or any particular fund thereof is interested, the county auditor shall draw a warrant for the amount thereof on the fund for the benefit of which the action is prosecuted or defended, or upon the fund of the county from which its current expenses are drawn, which shall be paid as other warrants of like character; *Provided*, That this and the next preceding section shall not apply to cases wherein the Territory is only a nominal party.

SEC. 7. That section 485 of said act be amended by adding thereto the following proviso, to-wit:

*Provided*, That when there is a vacancy in the office of district judge, or the judge is absent from the Territory, motions may be made and orders granted by any other district judge.

SEC. 8. Words used in this act in the present tense shall be deemed to include the future, as well as the present. Words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed papers; oaths to include affirmations.

SEC. 9. A copy of any record, document or paper in the custody of a public officer of this Territory, or of the United States, within this Territory, certified under the official seal or verified by the oath of such officer to be a true, full and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this Territory, in the like manner and with the like effect, as the original could be if produced; *Provided*, That no such copy of a private instrument in writing shall be received in evidence without the loss or impossibility of the production of the original instrument be first proved.

SEC. 10. All decisions given upon an appeal in any appellate court in this Territory shall be given in writing, with the reasons therefor, and filed with the clerk of the court; but this section shall not apply to actions tried with a jury anew in the district court on an appeal from a justice's court.

SEC. 11. A defendant, against whom an action is pending upon a contract or for specific personal property, at any time before answer upon affidavit that a person not a party to the action, and without any collusion with him, makes a demand against him upon the same contract or for the same property upon due notice to such person, and the adverse party may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount claimed on the contract, or delivering the property or its value to such person as the court may direct, and the court may in its discretion make the order.

SEC. 12. Any person shall be entitled to intervene in an action who has an interest in the matter in litigation in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is