

L A W S

OF THE

REPUBLIC OF TEXAS

PASSED AT THE

SESSION OF THE FIFTH CONGRESS

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HOUSTON.
1841

30—VOL. II.

AN ACT

Regulating the time of holding the District Courts of the Seventh Judicial District.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the district courts for the seventh judicial district, shall be holden in the county of Harrison, on the first Mondays in March and September, and may continue two weeks; in the county of Bowie, on the third Mondays in March and September, and may continue two weeks; in the county of Red River, on the fourth Mondays after the first Mondays in March and September, and may continue two weeks; in the county of Lamar, on the seventh Mondays after the first Mondays in March and September, and may continue one week; in the county of Fannin, on the eighth Mondays after the first Mondays in March and September, and may continue until the business is disposed of.

Sec. 2. Be it further enacted, That this act shall be in force from and after its passage.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
ANSON JONES,
President pro tem. of the Senate.

Approved January 18th, 1841.

DAVID G. BURNET.

AN ACT

To regulate the Granting and Trial of Injunctions, and to empower the Judges of the District Courts to submit issues of fact to a Jury in Chancery cases.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That all petitions for and answers to writs of injunction, shall be upon oath or affirmation; and any injunction may be dissolved at the first term after they were granted, on good cause shown.

Sec. 2. Be it further enacted, That upon the dissolution of any injunction staying an execution of a judgment, the court shall add damages at the rate of ten per cent. to the amount of the judgment: provided, if be satisfied that the injunction was obtained merely for delay.

Sec. 3. Be it further enacted, That upon the dissolution of an injunction upon an interlocutory order of the court, and after such interlocutory order of dissolution, the bill of petition shall be continued over for hearing as an original bill, it shall be the duty of the court before whom such case is pending, to require of the defendant or defendants to such petition or bill of injunction, bond and security, payable to the complainant or complainants, in double the amount of the sum enjoined on the judgment, conditioned to refund the money, interests and costs, to the complainant or complainants, in the event of such injunction being made perpetual on the final hearing.

Sec. 4. Be it further enacted, That the bond and security taken as aforesaid, in the event of said injunction being perpetuated on the final hearing, shall have the force and effect of a judgment, and execution may issue thereon against the principal and security; and the decree making the injunction perpetual, shall be conclusive evidence of a forfeiture of any such bond: and every bond executed for the purpose of obtaining an injunction, shall, on the dissolution of said injunction, have the force and effect of a judgment: and the party or parties whose judgment may have been enjoined, may take out execution against all the obligators in the bond, for the amount of the judgment enjoined, together with interest thereon, and also for the costs incurred by the injunction.

Sec. 5. Be it further enacted, That no injunction commanding the stay of an execution obtained in any court of this republic, except on judgments in actions of detinue, shall be granted for any other or greater sum than what the complainant or complainants shall on oath declare to be just; and not until such complainant or complainants shall have entered into bond, with sufficient security, as before directed, before the clerk of the court whence the injunction issues, for the payment into court of the sum complained of, and all costs upon the dissolution of the injunction.

Sec. 6. Be it further enacted, That no injunction to stay an execution shall issue but within four months after the judgment is obtained, unless it shall appear from the oath of the complainant or complainants, to the judge applied to, that such application has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment practised, or made at the time of, or after obtaining the judgment, or unless it shall appear on oath that the complainant or complainants was or were out of the republic at the time of entering up judgment, so that application could not be made within the time aforesaid.

Sec. 7. Be it further enacted, That on all claims or de-

mands belonging to chancery jurisdiction as understood and practised in England, the judge of the district court before whom such case is pending, besides trying the same according to the principles of equity, may order issues of fact to be made up and submitted to a jury, empaneled for that purpose, for his information and aid in making such decree therein, as shall be just and equitable.

Sec. 8. Be it further enacted, That no writ of quia timet, attachment, or any other original writ or process, whereby the property of any citizen of this republic shall be ordered to be seized or taken into custody, shall be issued by any civil officer of this republic, or by order of any judge of the same, unless the party applying for such writ or process shall first make affidavit in writing of the truth of the matter set forth in his or her petition, and shall file in the clerk's office of the court, where the same is to be sued out and entered, a bond, with good security, in a sum at least double the value of the property to be seized and taken, or of the debts or damage claimed to be due; conditioned to pay all cost and damages which the party against whom such suit or process may be sued out, shall sustain, by reason of the wrongfully and unjustly suing out the same: provided that this section shall not be construed to prevent the issuing of attachments by justices of the peace, under the provisions of any statute authorizing such attachments: and provided also, that it shall not be so construed as to prevent the issuing of any writ or process to compel the attendance of defaulting witnesses or jurors in any court or tribunal to which they may have been legally summoned, or to any writ or process authorized by law in criminal cases.

Sec. 9. Be it further enacted, That the rule adopted by the supreme court, authorizing the granting of a peremptory mandamus upon an ex parte hearing, is contrary to law; and the several judges of this republic, in issuing writs of mandamus, are hereby directed to observe the rules which govern writs of mandamus at common law, as modified by the statutes of this republic; and that all writs of mandamus sued out against the heads of any of the departments or bureaus of the government shall be made returnable before the district court at the seat of government: and any peremptory mandamus granted without notice, shall be deemed and considered as void; and the officer against whom it issues shall not be bound to obey the same.

Sec. 10. Be it further enacted, That it shall not be lawful for the judge of any district court of this republic, to make any decree or order which shall be final in its character, or which shall operate to divest any citizen of this republic of his property

or rights, until such citizen shall have been duly served with process notifying him that an application for such decree or order will be made, and he shall have had an opportunity of appearing in person, or by attorney, and of being heard in opposition to such decree or order.

Sec. 11. Be it further enacted, That any judge of a district court against whom any aggrieved party may wish to institute a suit, or for any other cause when the amount claimed is beyond the jurisdiction of a justice of the peace, may be sued before any district court of this republic, other than the court of the district in which he presides as judge; and all original and misse process sued out in such case, shall be directed by the clerk of the court issuing the same to the sheriff of the county in which such judge resides, and shall be executed by said sheriff, and returned to the office from whence it issued, with the service endorsed thereon, either by mail, or in such other way as the said sheriff shall find most convenient.

Sec. 12. Be it further enacted, That an appeal may be taken from a final decision made by any county court to the district court of the county in which such decision was made; and that an appeal may be taken from the final decision of any district court, to the supreme court of the republic, when the amount in controversy shall be one hundred dollars or upwards.

Sec. 13. Be it further enacted, That causes may be taken up from any inferior to a superior court, by writ of error, as well as by appeal; but no writ of error shall, in any case, issue, except upon the order of the chief justice of the supreme court, or one of the district judges; and no writ of error shall operate as a supersedeas, unless the party suing out the same shall give bond and security as fully as would be required on appeal.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

ANSON JONES,
President pro tem. of the Senate.

Approved January 25th, 1841.

DAVID G. BURNET.

AN ACT

For the Relief of certain Free persons of Color.

Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That William Ashworth, Abner Ashworth, David Ashworth, Aaron Ashworth, Elisha Thomas, and all free persons of color, together