

[No. 22.] Joint Resolution Disapproving certain laws enacted by the legislative assembly of the Territory of New Mexico.

May 13, 1908.  
[S. J. R. 37.]

[Pub. Res., No. 22.]

New Mexico.  
Preamble.

Whereas on the eleventh day of March, nineteen hundred and three, the legislative assembly of the Territory of New Mexico passed an act known as chapter thirty-three of the acts of the thirty-fifth legislative assembly of New Mexico entitled "An act establishing the law and procedure in certain cases," as follows:

"LAWS OF NEW MEXICO. THIRTY-FIFTH LEGISLATIVE ASSEMBLY, 1903.

Legislative act on civil procedure.

"CHAPTER 33.

"AN ACT ESTABLISHING THE LAW AND PROCEDURE IN CERTAIN CASES.

"H. B. No. 155. Passed over veto March 11, 1903.

"CONTENTS.

- "Sec. 1. Civil procedure in personal injury cases. Person injured to file affidavit when. Case to be dismissed when. Proviso.
- "Sec. 2. On petition district court may issue summons for person injured to appear in court and file complaint. Procedure when person summoned fails to answer.
- "Sec. 3. Unlawful to begin action in any other State or Territory. Procedure in case such action has been begun.
- "Sec. 4. When action begun in any other State or Territory district court may issue injunction.
- "Sec. 5. Provisions of this chapter not to apply in case process can not be served in this Territory.
- "Sec. 6. Claim for damages may be compromised.

"Whereas it has become customary for persons claiming damages for personal injuries received in this Territory to institute and maintain suits for the recovery thereof in other States and Territories, to the increased cost and annoyance and manifest injury and oppression of the business interests of this Territory and the derogation of the dignity of the courts thereof; therefore

*"Be it enacted by the legislative assembly of the Territory of New Mexico:*

"SECTION 1. Hereafter there shall be no civil liability under either the common law or any statute of this Territory on the part of any person or corporation for any personal injuries inflicted or death caused by such person or corporation in this Territory, unless the person claiming damages therefor shall within ninety days after such injuries shall have been inflicted make and serve upon the person or corporation against whom the same is claimed, and at least thirty days before commencing suit to recover judgment therefor, an affidavit which shall be made before some officer within this Territory who is authorized to administer oaths, in which the affiant shall state his name and address, the name of the person receiving such injuries, if such person be other than the affiant, the character and extent of such injuries in so far as the same may be known to affiant, the way or manner in which such injuries were caused in so far as the affiant has any knowledge thereof, and the names and addresses of all witnesses to the happening of the facts or any part thereof causing such injuries as may at such time be known to affiant, and unless the person so claiming such damages shall also commence an action to recover the same within one year after such injuries occur, in the district court of this Territory in and for the county in which such injuries occur, or in and for the county of this Territory where the claimant or person against whom such claim is asserted resides, or in event such claim is asserted against a corporation, in the county in this Territory where such corporation has its

Act of New Mexico annulled.

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principal place of business; and said suit after having been commenced shall not be dismissed by plaintiff unless by written consent of the defendant filed in the case, or for good cause shown to the court; it being hereby expressly provided and understood that such right of action is given only on the understanding that the foregoing conditions precedent are made a part of the law under which right to recover can exist for such injuries, except as herein otherwise provided.

“SEC. 2. Whenever any person or corporation shall file a petition in the district court of this Territory for the county in which said petitioner lives, or, if a corporation, in the district court for the county in which such corporation has its principal place of business, stating in effect that such petitioner is informed and believes that some party named in said petition claims that he is entitled to damages from said petitioner for personal injuries inflicted in this Territory upon the party named in said petition, or for personal injuries inflicted upon or death caused to some other person for which such party claims to have a cause of action against said petitioner, and stating as near as may be the general character of such injuries, and the manner and the date said party claims they were inflicted, and the place where he claims they were inflicted, as near as petitioner knows or is informed as to such facts, and praying that the said party may be required to appear in said court and file therein a statement of his cause of action in the form of a complaint against said petitioner, summons shall issue out of said court and be served and returnable as other process, commanding and requiring the said party named in said petition to appear in said court and file such statement in the form of a complaint against said petitioner, if he has to make, and upon such complaint being filed by such party as required, the defendant named therein may demur to or answer the same and such further pleading had as the parties may be entitled to, or as may be meet and proper as in other cases of a similar character, and from thence forward such further proceedings shall be had in such cause as in other cases, and the same shall be determined upon its merits and final judgment, subject, however, to appeal or writ of error, shall be rendered therein either for the petitioner named in said complaint or for the adverse party, and if the court finds the petitioner guilty of any of the wrongs, injuries, or trespasses complained of against him in said statement such damages shall be assessed against the said petitioner as the law and the facts may require, in the same manner as though said cause had been instituted by the filing of said statement as a complaint.

“In event said party complained of in said petition, after being duly served with such summons, shall fail or refuse to appear or file his said statement as required herein, judgment shall be rendered by default against him and in favor of the petitioner as in other cases, and thereupon the court shall try and determine the issues raised by such petition, including the question as to whether or not the petitioner is liable to said party on account of any of the matters or things stated in said petition in any sum of money whatsoever, and, if so, in what amount, and final judgment shall be rendered in accordance with the facts and the law, and such judgment as the court may render shall be final and conclusive upon the question of the liability or nonliability of said petitioner to said party, and of the amount of the liability.

“SEC. 3. It shall be unlawful for any person to institute, carry on, or maintain any suit for the recovery of any such damages in any other State or Territory, and upon it being made to appear to the court in which any proceeding has been instituted in this Territory, as herein provided, that any such suit has also been commenced, or is being maintained in any other State or Territory contrary to the intent of this act, it shall be the duty of the court to set down for hearing and try and determine the proceeding so pending in this Territory as

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expeditiously as possible upon such short notice to the other party thereto or his attorneys as the court may direct; and for the purpose of trying the same said court shall have the power to compel the parties thereto to plead or answer on such short day as it may determine; and in event the same is triable by jury it shall be the duty of the court, upon motion, to change the venue thereof to such county in said district as in the opinion of the court will afford an opportunity for the most speedy hearing; but in event such action is not triable by jury, then the court shall immediately proceed to try and determine the same, giving such reasonable notice as it may determine, to the parties or their attorneys, at any place in the Territory which the court may designate, and witnesses may be compelled by subpoena to attend such place personally, from any part of the Territory, and testify, as at present, at such time and place. The institution of any such suit in any other State or Territory shall be construed by the court as a waiver upon the part of the party so instituting the same of the right of trial by jury in the case pending in the courts of this Territory.

“SEC. 4. Whenever it shall be made to appear to the district court of this Territory for the county in which petitioner or plaintiff lives, by any petition filed under section three hereof, or by a supplemental petition, or by an original complaint filed for that purpose, that petitioner or plaintiff fears or has good reason to fear that any other person is threatening or contemplating instituting suit in some other State or Territory to recover damages against petitioner or plaintiff for personal injuries inflicted or death caused in this Territory, or that he has already instituted and is then maintaining such a suit, it shall be the duty of the court upon such bond as the court may require being given, to issue its injunction pendente lite restraining such party from instituting or maintaining such suit in any court sitting in any other State or Territory, and, at the final hearing, if such facts are found by the court to be true, the court shall make such injunction perpetual; and at the final hearing in all cases instituted under the provisions of section three hereof, the party complained of in the petition shall be perpetually enjoined from further instituting or maintaining any suit or action to recover damages by reason of any of the matters or things set up in said petition.

“SEC. 5. This act shall not apply to cases in which the person or corporation against whom damages for personal injuries are claimed can not be duly served with process in this Territory.

“SEC. 6. Nothing herein contained shall be construed as in any way preventing anyone in this Territory claiming to have a right of action for any such damages, from compromising such claim.

“SEC. 7. All acts and parts of acts and laws in conflict with this act are hereby repealed, and this act shall be in effect from and after its passage.”

Therefore be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That said law of the Territory of New Mexico, as aforesaid, be, and the same is hereby, disapproved and declared null and of no effect.

Approved, May 13, 1908.

Disapproval of Con-  
gress.

[No. 23.] Joint Resolution Authorizing the widening of the channel of Michigan City Harbor.

May 13, 1908.  
[S. J. R. 79.]

[Pub. Res., No. 23.]

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of War be, and he is hereby, authorized, in his discretion, to use any unexpended balance of money heretofore appropriated or that may be

Michigan City Har-  
bor, Ind.  
Widening channel.  
Use of unexpended  
balances authorized.