

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED January 21, 1846.

**AN ACT** to amend the several acts of this Territory concerning the Supreme and District Courts.

BE IT ENACTED by the Council and House of Representatives of the Territory of Wisconsin:

SECTION 1. If from any cause, only two of the Judges of the Supreme Court shall be present at the argument of a cause, and they cannot agree in their opinion, the cause shall be re-argued before a full court; but if one of the Judges cannot sit in the cause, and the court shall be divided in opinion, the judgment of the court below shall be affirmed.

When judges cannot agree.

SEC. 2. In all cases where the judgment of the court below has been superceded by a writ of error, and the judgment shall be affirmed by the Supreme Court, the Supreme Court shall award ten per cent. damages upon the amount of the judgment below, exclusive of interest and costs, and execution shall be issued therefor in favor of the defendant in error.

Court to award damages.

SEC. 3. No discontinuance, non-suit, dismissal, or quashal of a writ of error in the Supreme Court, shall preclude the party from suing out another writ of error in the same cause within the time limited by law.

SEC. 4. The District Courts of the Territory shall have original jurisdiction in all cases of mandamus and quo warranto, and in all such cases the final judgment of the District Courts may be re-examined in the Supreme Court upon writ of error duly sued out and prosecuted as in other cases.

Jurisdiction of District Courts.

SEC. 5. Proceedings in quo warranto shall be by information; and the writ of quo warranto is hereby abolished. A rule to show

Proceedings in quo warranto.

cause why an information should not be filed, or why a mandamus should not issue, may be awarded by any judge of a District Court in vacation, upon good cause being shown; but no hearing shall be had upon any such rule, or upon the merits, except in term time; and the respondent to any information in the nature of quo warranto may plead or demur to such information, and if an issue of fact be made up by the pleadings, such issue shall be tried by a jury.

SEC. 6. Whenever a judgment at law shall be enjoined before any writ of injunction shall be issued the complainant shall give a bond to the defendant in a penalty of double the amount of the judgment at law to be enjoined, with good and sufficient security conditioned as required by law, and particularly to pay to the defendant the amount of such judgment in case the injunction shall be dissolved; and in all cases when a judgment at law has been enjoined and the injunction shall be dissolved, the court shall award upon the dissolution of such injunction, ten per cent. damages to the defendant upon the sum enjoined exclusive of interest and costs. No injunction shall be granted to stay any proceedings at law, until the complainant shall release all errors at law in the proceedings prayed to be enjoined; and in all cases a confession of judgment shall amount to a release of errors.

SEC. 7. In all cases when the books of a party shall be read as evidence under the provisions of sections 77, 78, 79, and 80, of an act entitled "an act concerning testimony and depositions," such book or books shall be deemed and taken to be only *prima facie* evidence of the facts contained in any such book or books, and the party offering any such book or books as evidence under the said sections and who may be sworn according to their provisions, shall be subject to all the rules of cross examination by the opposite party as would be applicable by the rules of law to any other witness in relation to the said book or books and all things therein contained.

APPROVED February 3rd, 1846.