

ture and object of the loan shall be stated and a day fixed for the electors of the city to express their wishes. The like notice shall be given as in cases of an election. The loan shall not be made, unless a majority of the votes given shall be in the affirmative.

SECTION 20. *And be it enacted*, That before any of the provisions of this act shall take effect, the inhabitants of the town of Burlington shall meet at some public place, in said town, ten days previous notice of such meeting having been given by advertisement in the Burlington Gazette, and posting up notices thereof in at least five public places of said town, of the time and place of such meeting, at which time and place the polls shall be opened, and a vote taken for or against a city charter, by the inhabitants aforesaid, and if the majority of the votes polled shall be in favor of a charter, then this act shall take effect and be in force, otherwise be void and of no effect: *provided, however*, that nothing in this act contained shall be so construed as to allow the corporation aforesaid to have any cognizance of the rights of ferriage within the limits aforesaid.

Electors to determine whether to accept this charter.

SECTION 21. *And be it enacted*, That any future legislature may alter, amend, or repeal this act.

Approved January 19, 1838.

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## No. 85.

**AN ACT** to amend an act concerning judgments and executions.

SECTION 1. *Be it enacted by the council and house of representatives of Wisconsin territory*, That a stay of execution can be had upon all judgments hereafter to be obtained, against any defendant in suit, in any court of record in this territory, for the space of one year, counting from the time of the issuing of the original process, upon the defendant giving security to the satisfaction of the court, for the payment of the amount of the judgment, with interest and costs at the expiration of the time for which the stay may be limited; and at that time execution may issue, as well against the defendant or defendants in the suit, as

Stay of execution, how obtained.

against the person or persons so entering security as aforesaid, and no further stay shall be had thereon.

Where and to whom application to be made.

SECTION 2. When judgment shall be obtained at any term of the district court of any county in this territory, it shall not be lawful for execution to issue, until the expiration of the term at which judgment has been obtained, giving time to the defendant to enter stay as aforesaid; and when judgment shall be obtained by default, execution shall not issue within ten days thereafter, and it may be lawful for the defendant or defendants, against whom judgment may have been thus obtained, to appear, himself or by his agent or attorney, at any time before an actual sale of his goods or property, before the said court, before the judge thereof in vacation, before the commissioner of bail of the county, or before the clerk of the said court, and give security to be approved of by such officer, for the payment of the judgment, interest and costs at the expiration of the time to which execution may by law be stayed; and thereupon execution upon said judgment shall be stayed for the term of one year, counting from the day of the issuing of the original process. And if execution should have been issued before the entering of such security, all further proceedings thereon shall be discontinued, upon the entering and filing of security as herein provided; and at the expiration of the time for which execution may be stayed, execution may issue as well against the defendant or defendants in the suit as against the person or persons so entering security as aforesaid.

Execution to be levied on principal first.

SECTION 3. In all cases where execution shall issue against the bail, the officer shall not levy upon the property of the bail, if he can find sufficient property of the principal to satisfy the execution; and in his return he shall state what amount of money collected by him on the execution, was collected from the bail and the time when the same was received.

Securities, how taken,

SECTION 4. Securities taken in open court shall be by acknowledgment in form of a recognizance, when taken by the judge in vacation, a commissioner of bail, or a clerk of the court, a bond or bonds shall be signed, executed, and acknowledged before, and approved by one of the above named officers, in favor of the plaintiff or plaintiffs in the suit, in a penalty of double the amount of the judgment, interest and costs, con-

ditioned for the payment of the amount of the judgment interest and costs, at a time therein to be fixed by the said officer, in accordance with the provisions of this act. To entitle the party to a stay, the bond or bonds so executed, acknowledged, and approved, shall be filed with the clerk of the district court of the county where the judgment was obtained. and filed.

SECTION 5. When the day of rendition of the judgment, shall be more than nine months from the day of the issuing of the original process upon which judgment was founded, the stay herein authorized shall be counted from the day of the rendition of the judgment, and shall be for three months in all cases where the necessary security shall be entered according to the provisions of this act. Stay to be not less than three months after judgment.

SECTION 6. When security shall be entered in open court, according to the provisions of the first section of this act, it shall be lawful for the plaintiff to call upon the defendant to justify his bail, either in term time or before the judge in vacation, upon reasonable notice to be given to the defendant, his agent or attorney; and in all cases where security may have been entered out of court, and the plaintiff may deem the bail insufficient and inadequate, he may give notice not less than ten days, to the party entering the same, his agent or attorney, that he will be required at some certain day named, before the judge in term time or vacation, before the commissioners of bail, or before the clerk of the court, to justify his bail. And in case either of these officers, before whom the hearing shall be had, shall deem the security insufficient, he shall order new bail to his satisfaction to be entered, and in case such order is not complied with in four days thereafter, execution may issue immediately against the party so failing, and against the bail so objected to, without further stay, upon the officer filing a certified copy of his proceedings on said hearing, with the clerk of the court. Justification of bail.

SECTION 7. Nothing herein contained, shall be construed to interfere with the entering of judgment upon confession or agreement, with such stay of execution as may be agreed upon by the parties; and nothing in this act contained shall be construed to allow a stay upon an execution upon a judgment against a sheriff, constable, coroner or other collecting officer, Exceptions to the above provisions.

for a delinquency by default in executing or fulfilling the duties of his office, in any point of view whatever, or upon any judgment against an attorney at law for money received by him for his client, or against a principal by his security, but execution in such cases shall be proceeded upon immediately.

Penalty for not  
paying over  
money.

SECTION 8. Any sheriff or other officer, in whose hands an execution may come, who shall refuse to pay over any moneys in his hands, raised on said execution, to the person entitled to receive the same, his agent or attorney, upon demand made, shall be amerced in a fine of fifty per cent per annum upon the amount so detained, according to the time which the same may be retained by the sheriff or other officer after demand made.

Execution, how  
levied.

SECTION 9. The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor, but if goods and chattels cannot be found sufficient to satisfy such execution, the officer shall forthwith levy the writ of execution upon the lands and tenements of the debtor, to satisfy the judgment upon which the writ of execution issued: *provided*, that if any debtor whose goods and chattels have been levied upon, shall, within six days after the levy thereof, give written notice to the sheriff that he would prefer that certain lands in said county, describing them, belonging to him, should be sold before the sale of his goods and chattels so levied upon, the sheriff shall then proceed no further in the sale of the goods so levied upon, until he shall have exposed the said lands to public sale, after due notice being given thereof according to law; and if said lands should not sell for sufficient to satisfy the execution, the sheriff, shall then proceed with the sale of the goods and chattels first levied upon: *provided*, that such delay shall not be had, when, in the opinion of the sheriff, the lands so designated for sale by the debtor do not belong to him, or shall be manifestly inadequate to the satisfaction of the execution.

Repeal.

SECTION 10. Any law or supposed law of this territory, which requires notice of the sale of real estate in a public newspaper printed in the city of Detroit, or at the seat of government of this territory, is hereby repealed; and in cases where publication of notice

for the sale of real estate is required to be made in a newspaper, and if there should not be a newspaper printed in the county it shall be published in the newspaper nearest to the seat of justice of the county where the land is situated.

SECTION 11. Section fourth of "an act concerning judgments and executions of the legislative council of Michigan and all other parts of said act and other acts inconsistent herewith are hereby repealed."

Approved January 19, 1838.

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### No. 86.

AN ACT to incorporate the town of Fort Madison.

SECTION 1. *Be it enacted by the council and house of* <sup>Limits.</sup> *representatives of the territory of Wisconsin,* That all that portion of territory which is included in a survey made by and under the authority of the United States, and which is known and designated as the town of Fort Madison, containing about six hundred and forty acres of land, in the county of Lee, in said territory, be, and the same is hereby constituted a town corporate, and shall hereafter be known by the name or title of the town of Fort Madison.

SECTION 2. It shall be lawful for the free male <sup>What officers</sup> inhabitants of said town over the age of twenty-one <sup>elected, and</sup> years, and being citizens of the United States and resident within the limits as described in the preceding section, to meet at some convenient place in said town of Fort Madison on the first Monday of May next, and on the first Monday of May annually thereafter, and then and there proceed, by plurality of votes, to elect by ballot a president, recorder and five trustees, who shall hold their offices one year, and until their successors are elected and qualified. And any five of them shall be a board for the transaction of business, but a less number may adjourn from time to time: *provided,* that if an election of president, recorder and trustees shall not be made on the day when pursuant to this act it ought to be made, the said corporation shall not for that cause be deemed to be dissolved, but