

not less than fifty dollars nor more than one hundred dollars, and by imprisonment in the county jail not less than ten nor more than forty days.

SECTION 13. In addition to the punishment prescribed in the next preceding section for the misdemeanor therein described, if the town treasurer of the town of Koshkonong shall fail, neglect or refuse as aforesaid to do or perform any duty, act or thing required by this act to be done or performed by him, he shall be liable to pay and shall pay to said town of Jefferson as liquated damages, the sum of one thousand dollars, which sum may be recovered, with costs, in action brought in the circuit court in and for said Jefferson county, by the said town of Jefferson against the said treasurer of the town of Koshkonong as aforesaid, or against the said treasurer and the surety or sureties on his official bond, at the option of said town of Jefferson.

SECTION 14. Any justice of the peace in Jefferson county shall have jurisdiction concurrent with the circuit court, of all actions or prosecutions for the misdemeanors mentioned in sections seven (7) and nine (9) of this act.

SECTION 15. All acts and parts of acts conflicting or inconsistent with the provisions of this act are hereby repealed.

SECTION 16. This act shall take effect and be in force from and after its passage and publication, and shall be published in the "Jefferson Banner," a newspaper published at Jefferson, Jefferson county Wisconsin.

Approved March 18, 1878.

[No. 120, S.]

[Published April 9, 1878.]

CHAPTER 252.

AN ACT to remedy the evils consequent upon the destruction of any public records by fire or otherwise.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Whenever it shall appear that the records, or any material part thereof, of any county in this state have been destroyed by fire or otherwise, any map, plat, deed, conveyance, contract, mortgage, deed of trust, or other instrument in writing, affecting real es-

Liquated
damages.

Jurisdiction.

Repealed.

Publication.

Instruments
may be re-re-
corded.

tate in such county, which has been heretofore recorded, or certified copies of the same, may be re-recorded; and in re-recording the same, the register of deeds shall record the certificate of the previous record, and the date of filing for record appearing in said original certificate so recorded shall be deemed and taken as the date of the record. And copies of any such record of such instrument so authorized to be made under this section, duly certified by the register of deeds of any such county, under his seal of office, shall be received in evidence, and have the same force and effect as certified copies of the original record.

When recorded
in another
county.

SECTION 2. In any county in this state, where the records have been burned or destroyed, as specified in the last section, and any map, plat, deed, conveyance, contract, mortgage, deed of trust, or other instrument in writing affecting real estate in such county, has been recorded in any other county in this state, certified copies of the same, heretofore or hereafter made, may be re-recorded in such county where the records have been so burned or destroyed; and in recording the same, the register of deeds shall record all certificates attached thereto; and if any of such certificates show the previous recording of the same in the county where the records have been burned or destroyed, the date of filing for record in such county, appearing in said certificate so recorded shall be deemed and taken *prima facie* as the date of the record thereof. And copies of any such record so authorized to be made under this section, duly certified by the register of deeds of any such county, under his seal of office, shall be received in evidence and have the same force and effect as certified copies of the original record.

Certified copies

SECTION 3. Whenever, in any court of record in this state, or any other state, or in any court of the United States, there is any original deed, conveyance, contract, mortgage, deed of trust or other instrument in writing affecting real estate in such county, or certified copies thereof, a copy thereof, certified by the clerk of such court under his seal of office, may be made and recorded in such county where the records have been so burned or destroyed, and in recording the same, the register of deeds shall record all the certificates attached thereto; and if any of such certificates show the previous recording of the same in the county where the records have been so burned or destroyed, the date of filing for record in such county appearing in said certificate so recorded, shall be deemed and taken as the

date of the record thereof. Copies of any such record so authorized to be made under this section, duly certified by the register of deeds of any such county, under his seal of office, shall be received in evidence and have the same force and effect as certified copies of the original record.

SECTION 4. Whenever the public records of any plat or map, which is required by law to be kept by the register of deeds, has been or may hereafter be injured, lost or destroyed by fire or otherwise, it shall be the duty of the district attorney of the county in which such injury, loss or destruction has occurred, or shall occur, forthwith to file in the circuit court an information, in the name of the state of Wisconsin, setting forth substantially the facts of such injury, loss or destruction, with the circumstances attending the same, as near as may be; and thereupon the clerk of such court shall cause such information to be published, in full, in one or more public newspapers published in such county, for the period of four weeks, together with a notice addressed to "All whom it may concern," that said court will, at a term therein designated, to be held not less than four weeks from the first publication of such information and notice, proceed to hear and determine the matters in said information set forth, and will take testimony for the purpose of reproducing and re-establishing such records of maps and plats as the court shall find to be injured, lost or destroyed. Upon such publication being made, all persons interested shall be deemed defendants, and may appear in person, or by counsel, and be heard touching such proceedings. If the court shall be satisfied that any public records of maps and plats has been injured, lost or destroyed, an order to that effect shall be entered on record, and thereupon the court shall proceed to take testimony for the purpose of reproducing and re-establishing the record so injured, lost or destroyed. The proceedings may be continued from time to time, whether in term or not, and orders and decrees shall be made as to each map or plat separately. The clerk shall cause all maps and plats adjudged by the court to be correct copies of the records lost, injured or destroyed, as often and as soon as they are so adjudged, to be filed in the office of the register of deeds, with a certified copy of the order or judgment of the court in the premises attached thereto, and recorded in a book or books to be provided for that purpose. And the said record shall be deemed and taken in all courts and places as a public record, <sup>Plat or map—
how replaced.</sup>

and *prima facie* as a true and correct reproduction of the original record so injured, lost or destroyed.

Costs.

SECTION 5. All costs and expenses incurred in the proceeding under the last preceding section, including copies of maps and plats, and recording of the same, shall be taxed as costs against the county in which such proceedings are had.

Certified copies

SECTION 6. Whenever it shall appear that the records, or any part thereof, of any county in this state have been destroyed by fire or otherwise, so that a connected chain of title cannot be deduced therefrom, copies, duly certified by the proper officers, of all deeds, patents, certificates, plats, and legal subdivisions of lands in such county, in the custody or control of any officer of this state or of the United States, may be recorded in the register of deeds, office of such county, and the record so made shall have the same force and effect as the record of the originals of such instruments.

Fees and penalties.

SECTION 7. The register of deeds in any such county may charge and receive as a fee for recording any instrument under the provisions of this act, and the certificate of such recording, five cents for each hundred words or fraction thereof, and no more, and any register of deeds who shall charge a greater fee than the foregoing, or who shall refuse to record such instruments in writing, aforesaid, for the fee aforesaid, shall be deemed guilty of a malfeasance in office, and subject to all the penalties provided by law for such offense.

Action to recover records.

SECTION 8. Whenever the records of any county in this state shall have been injured, lost or destroyed by fire, it shall be the duty of the judge of the circuit court in which such county is situated, and of the county judge of such county to examine into the state of the records of such county, and in case they find any abstracts, copies, minutes or extracts from said records existing after such destruction as aforesaid, and find that the said abstracts, copies, minutes or extracts were fairly made before such destruction of the records, by any person or persons in the ordinary course of business, and that they contain a material and substantial part of said records, the said judges shall certify the facts in regard to such abstract of titles as found by them, and if they are of the opinion that such abstracts, copies, minutes and extracts tend to show a connected chain of title to the land in said county; they shall file such certificate, finding or opinion with the clerk of the circuit court of such county; and thereupon said abstracts, copies, minutes, and extracts or certified copies thereof

shall be admissible as evidence in all the courts of this state as *prima facie* evidence. And it shall be the duty of the owner or owners or keeper of such abstracts to furnish to all parties requesting it, upon being paid the charges herein provided for, certified copies of the same, or parts thereof. And in all cases in which any abstracts, copies, minutes and extracts, or copies thereof, which are admissible in evidence under any of the provisions of this act, shall be received in evidence under this act, all deeds or other instruments of writing appearing thereby to have been executed by any person or persons, or in which they appear to have joined, shall (except as against any person or persons in the actual possession of the lands or lots described therein at the time or at the destruction of such county, claiming title thereto, and except, also, as against infants and persons of unsound mind, be presumed to have been duly witnessed, executed and acknowledged according to law; and all sales under powers of attorney, judgments, decrees and legal proceedings, shall be presumed to be regular and correct, except as against the person or persons in this section before mentioned; and any person alleging any defect or irregularity in any such conveyance, acknowledgment, sale, judgment, decree or legal proceeding, shall be held bound to prove the same: *provided*, that nothing in this act contained shall impair the effect of said destroyed records as notice.

SECTION 9. In case of such destruction of records Jurisdiction. as aforesaid, any and all courts in such county having equity jurisdiction shall have power to inquire upon due notice to the parties interested into the condition of any title to or interest in any land in such county, and to make all such orders, judgments and decrees as may be necessary to determine and establish such title or interest, legal or equitable, against all persons, known or unknown, and all liens existing on such land, whether by statute, judgment, mortgage, deed of trust or otherwise.

SECTION 10. It shall be lawful for any person claiming title to any lands in such county at the time of the destruction of such records, and for all claiming under any such person, to file a summons and complaint in any such court in such county having equity jurisdiction, praying for a decree establishing and confirming his title. Any number of parcels of land may be included in one complaint, or separate complaints may be filed as the plaintiff may elect. Said complaint shall Action to establish claim of title.

state clearly the description of said lands, the character and extent of the estate claimed by the plaintiff, and from whom and when and by what mode he derived his title thereto. It shall give the names of all persons owning or claiming any estate in fee or otherwise in said lands or any part thereof, and all persons claiming by mortgage or other lien, and also all persons who shall be in possession of said lands, or any part thereof, and also all persons to whom any such lands shall have been conveyed, and the deed or deeds of such conveyance shall have been recorded in the office of the register of deeds of such county, since the time of the destruction of such records as aforesaid, and prior to the time of filing such complaint, and their residence, so far as the same are known to said plaintiff; or so far as such title, lien or claim appears from any record in said county, or from any abstract, as mentioned in this act; and if no such persons are known to said plaintiff, it shall be so stated in the complaint. All persons so named in the complaint shall be made defendants, and shall be notified of said suit by summons, if residents of this state, in the manner now provided by law: *provided*, that the notice specified in the next section of this act shall be the only publication of notice or summons required, either in case of resident or non-resident defendants. All other persons shall be deemed and taken as defendants, by the name or designation of "all whom it may concern." Said complaint shall be verified by the affidavit of the plaintiff, or by the agent of said plaintiff; and the party so swearing falsely, shall be deemed guilty of perjury and punished accordingly, and shall be liable in damages to any person injured by such false statements, to be recovered in an action at law in any court having jurisdiction thereof.

Duties of clerk
of court.

SECTION 11. It shall be the duty of the clerk of the court in which said complaint is filed to enter in a separate book or books to be kept for the purpose, the names of the plaintiffs and defendants, the date of filing the complaint, and a description of all the lands included therein, which record shall at all times be open to the public. All lands in each separate town, city, village, section or subdivision, shall be entered on the same page or consecutive pages, with an index to said book or books, showing on what page any such separate town, city, village, section or subdivision may be found. Said clerk shall also in all cases cause publication of notice to be made of the filing of said complaint, which notice shall be substantially as follows:

"LAND NOTICE."

Style of notice.

The State of Wisconsin, — court, — county.

A. B., plaintiff, against C. D., etc. [here give names of all known defendants].

And to all whom it may concern :

Take notice. You are hereby summoned and required to answer the complaint in this action, which was filed in the office of the clerk of the — court of the county of —, in —, on the — day of —, 18—, and to serve a copy of your answer to said complaint on the plaintiff's attorney at his office in —, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated, —, 18—

— — —,
Plaintiff's Attorney.

Said notice shall be published once a week for six weeks successively, and the several publications shall be in the same newspaper in said county, and when there shall be more than one newspaper published in said county, the clerk of the circuit court of such county shall advertise for bids for publishing such notices in two papers (to be selected by the circuit judge), and the publishing of said notices shall thereupon be awarded by said circuit judge to the newspaper making the lowest bid therefor; or if there are more than one making the same bid, then the said judge to determine to which said publication shall be awarded, said award to be by order of said court entered of record therein; and a copy of such order certified by the clerk of said court, under the seal thereof, shall be transmitted and entered of record in all other courts of said county having equity jurisdiction, before which proceedings under this act may be had. All publications provided for in this section shall be made in the newspaper so designated. Said newspaper shall not be changed except by order of the judge, and then selection to be made in manner aforesaid, and order entered of record as aforesaid. Publication of notices.

SECTION 12. Any person interested may oppose any such complaint and serve his demurrer or answer thereto on or before the expiration of twenty days from the date of the last publication thereof as aforesaid, unless the time be extended by order of court. Said Demurrer.

answer shall, except when made by a guardian *ad litem*, be verified by the affidavit of the defendant or by the agent of said defendant.

Judgment.

SECTION 13. If no demurrer or answer shall be served as before provided, the complaint may be taken as confessed, and a judgment entered according to the prayer of said complaint, upon proof of facts stated in the complaint, and notice of motion for such judgment shall be published once a week for six weeks successively, and the several publications shall be in the same newspaper in said county. The clerk of the circuit court of such county shall advertise for bids for publishing such notices (in two papers to be selected by the circuit judge), and the publishing of such notices shall thereupon be awarded by said circuit judge to the newspaper making the lowest bid therefor, or if there are more than one making the same bid, then the said judge to determine to which of said newspapers said publications shall be awarded, said award to be by order of said court entered of record therein; and a copy of such order, certified by the clerk of said court, under the seal thereof, shall be transmitted and entered of record in all other courts of said county having equity jurisdiction, before which, proceedings in said complaint, but if any person shall serve an answer as aforesaid to such complaint, the court may hear evidence or order a reference to take evidence and report the same to said court. If the complaint includes more than one parcel of land, and no demurrer or answer shall be served as to some of said pieces of land, the court may enter a decree as to those parcels as to which no answer or demurrer has been served, and hear evidence or order a reference as to the remaining parcels.

Decree of title.

SECTION 14. It shall be competent for said courts in all such judgments, to determine and decree in whom the title in any or all of the lands described in said complaint is vested, whether in the plaintiff or in any other of the parties before the court; but said judgment shall not in anywise affect any lien or liens to which said fee may be subject, whether by mortgage, deed of trust, judgment, statute, mechanics' lien or otherwise, but shall leave all such liens to be ascertained or published in some other proceeding, or to be enforced as the parties holding them may see fit. Any person having at the time of such destruction of the records as aforesaid, any lien, by mortgage, trust deed or otherwise, upon any lands in such county, and having lost the proof thereof, and all parties claiming un-

Liens.

der any such person may file a complaint for the purpose of establishing the existence, conditions, character and extent of said lien. All persons known to the petitioner as having or claiming any interest or lien in or upon said lands shall be made defendants by name, and the same proceedings shall be had as in the case of the plaintiff above provided. The judgment shall find the existence of such lien (if any exists), its condition, character and extent, and any lien so established may be enforced according to the terms thereof.

SECTION 15. Said judgment of said court, when entered on either of the complaints above mentioned, shall be forever binding and conclusive, unless an appeal be taken, or a writ of error be sued out in the manner now provided by law, in which case the final judgment entered in said cause shall be binding and conclusive as aforesaid, from the entry thereof, except as against minors, or persons of unsound mind: *provided*, that married women, insane persons and minors shall have two years after their disabilities are removed to appeal or sue out a writ of error from said judgment: *provided further*, that any judgment entered upon any complaint which does not make defendant by name all persons who shall be in possession of such lands or any part thereof, at the time of the filing of such complaint or which does not make defendant by name, all persons to whom any such lands shall have been conveyed, and the deed or deeds shall have been recorded in the office of the register of deeds of such county since the time of the destruction of the records as aforesaid, and prior to the time of the filing of any such complaint, shall be absolutely void as to such person so omitted, but shall be final and conclusive as to all others, except those by this act excepted: *provided, further*, that all defendants who shall not be actually served with a summons in the suit in which such judgment may be rendered, shall have allowed to them one year after the entry of such judgment within which to apply to the court rendering the same, to have said judgment vacated, opened or set aside.

SECTION 16. Whenever any deeds or other instruments in writing, affecting the title to any of the lands in any such county, shall have been filed for record so short a time before such destruction of the records, as aforesaid, that no proof of them remains either on such records or among the abstracts, copies, minutes, or extracts specified in section eight of this act, it shall be the duty of the person having filed the same or claimed

Force of judgment.

Instruments lost before filed for record.

the benefit thereof, within one year from the time this act takes effect, to refile for record such deed or other instrument, or copies thereof, or if that cannot be done then he shall make and file a complaint to establish such deed or other instrument in writing under the provisions of this act. In all cases when an original deed or other instrument in writing affecting the title to real estate shall have been lost or destroyed, it shall be lawful for any person having a duly certified copy of such record, to cause the same to be recorded, which record shall have the same force or effect as now belongs to the records of such originals.

Rights of ex-
ecutors, etc.

SECTION 17. Executors, administrators, guardians and trustees shall be entitled to proceed under this act in behalf of the interest and rights they represent.

Evidence.

SECTION 18. In all cases under the provisions of this act, and in all proceedings or actions now or hereafter instituted as to any estate, interest or right in, or lien or incumbrance upon any lots, pieces or parcels of land, when any party to such action or proceeding, or his agent or attorney in his behalf, shall orally, in court, or by affidavit, to be filed in such action or proceeding, testify and state under oath that the original of any deeds, conveyances or other written or recorded evidence, has been lost or destroyed, or not in the power of the party wishing to use it on the trial to produce the same, and the record thereof has been destroyed by fire or otherwise, the court shall receive all such evidence as may have a bearing on the case to establish the execution or contents of the deeds, conveyances, records or other written evidence, so lost or destroyed; and the court shall receive as evidence any abstract of title made in the ordinary course of business prior to such loss or destruction, showing the title to such land, or any part of the title to such land, that may have been delivered to the owner or purchaser, or other parties interested in the land: *provided*, that any writings in the hands of any person or persons, which may become admissible in evidence under the provisions of this act, shall be rejected and not be admitted in evidence, unless the same appear upon its face without erasure, blemish, alteration, interlineation or interpolation in any material part, unless the same be explained to the satisfaction of the court, and to have been fairly and honestly made in the ordinary course of business. And any person or persons making any such erasure, alteration, interlineation or interpolation in any such

writing, with the intent to change the same in any substantial matter, after the same has been once made as aforesaid, shall be guilty of the crime of forgery, and be punished accordingly. And any and all persons who may be engaged in the business of making writings or written entries concerning or relating to lands and real estate, in any county in this state to which this act applies, and to furnish to persons applying therefor abstracts or copies of writings or written entries, as aforesaid, for a fee, reward or compensation therefor, and shall not make the same truly, and without alteration or interpolation in any matter of substance, shall be guilty of the crime of forgery, and be punished accordingly. And any and all such person or persons shall furnish said abstracts or copies, as aforesaid, to the person and persons from time to time applying therefor, in the order of applications and without unnecessary delay, and for a reasonable consideration to be allowed therefor, which in no case shall exceed the sum of one dollar for the first conveyance and thirty cents for each and every subsequent conveyance, or other like change of title, shown upon such abstract or copy; and any and all persons so engaged shall, within thirty days after the filing of the opinion of the circuit judge and county judge, in accordance with section eight of this act, file with the clerk of the circuit court his or their assent to the provision contained in section eighteen of this act, and no abstract or certified copies of the same (except such certified copies as have been made prior to the passage of this act) shall be received in evidence until such assent is filed in the office of the clerk of the circuit court.

Possessor of
abstracts.

SECTION 19. The word "person," when used in this act shall include persons and all bodies politic and corporate.

Construction
of law.

SECTION 20. This act shall take effect and be in force from and after its passage and publication.

Approved March 18, 1878.