

range eight, townships ten, eleven, twelve and thirteen, in ranges nine, ten, eleven and twelve, east of the fourth principal meridian, and the territory within the following described boundaries, viz: crossing the Wisconsin river on the township line between ten and eleven, six miles due west; thence up in a line parallel and six miles from the west shore of said river, to a point opposite to the upper rapids thereof, and thence due east to said rapids, be, and the same is hereby established and declared to be a county, with the name of Portage, and the seat of justice is hereby established at Kentucky city.

SECTION 2. All acts and parts of acts, which in any way contravene the provisions of this act, are hereby declared to be null and void.

Approved Jan. 12, 1838.

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### No. 40.

AN ACT to authorize the building a dam across the Manitowoc river.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin*, That William B. Slaughter, his heirs and assigns, are hereby authorized and empowered, to build a dam across the Manitowoc river, in the county of Manitowoc, attached to the county of Brown for judicial purposes, upon section ten, in township number nineteen north, and in range number twenty-three east of the fourth principal meridian, to erect mills or other machinery as they may deem proper, or in any other manner to make use of the water-power created thereby, to build wharves and to erect ware-houses, or such other building as may be deemed necessary and useful for commercial purposes, either above or below said dam, and for the accomplishment thereof to collect and use any materials which may be supplied from the banks, or bed of said river.

Location of the dam.

Conditions.

SECTION 2. The dam shall not exceed ten feet rise above the surface of the said stream at high water, and contain a convenient lock or locks for the passage of boats, barges, batteaux, or other water craft, not

less than ninety feet in length, and sixteen feet in width, whenever the river below said dam shall be so improved as to allow the ascent of such boats, barges, batteaux or other water craft up said dam.

SECTION 3. If, by the erection of said dam, any lands shall be flowed to the injury thereof, the owner of said lands shall be entitled to damages, to be ascertained as hereinafter prescribed; but no action of trespass shall be had or maintained by any owner or proprietor as aforesaid. Damages to be paid for.

SECTION 4. Whenever application shall be made in writing to any judge of the district court, by, or on behalf of, any owner or proprietor, whose lands are flowed by reason of said dam, the said judge shall forthwith appoint three disinterested persons, to inquire, and ascertain the damages to the lands thus overflowed, by a view of the premises, and report their opinion, together with the amount of damages, if any, which ought to be allowed for the injury occasioned as aforesaid, which amount shall be paid by the owner or owners of the dam; but no damages shall be allowed to any owner of lands for any supposed injury, where the water does not overflow the banks of said river, and the amount of damages shall depend upon the value or the quantity of land overflowed beyond the banks of said river. Mode of estimating them.

SECTION 5. From the decision of appraisers there shall be an appeal to the district court of the county in which said dam is situated: *provided* said appeal be entered by the party aggrieved in the clerk's office of the county, within twenty days after the award may be made; and if an appeal shall not be taken within the time herein limited, and either party refusing to pay the amount rendered against him, he shall be liable to an action of debt for the recovery thereof, with twelve per centum damages and costs before any court having cognizance thereof. The trial of an appeal from the award of the appraisers, shall be conducted in the same manner as those from justices of the peace. Appeal.

SECTION 6. It shall be the duty of the owner or owners of said dam, at all times to keep said lock or locks in repair, and to pass any water-craft as above described, which can be admitted through the same, free of toll without any unnecessary delay. Locks.

Penalty for injuries.

SECTION 7. Any person who shall destroy or in any manner injure said lock or dam, shall be deemed to have committed a trespass upon the owner or owners thereof, and be liable accordingly to an action for damages; and any person willfully and maliciously doing damage, shall be guilty of a misdemeanor, and punishable by fine and imprisonment: *provided*, that the imprisonment shall not exceed the term of one year.

SECTION 8. Nothing in this act shall be so construed as to authorize the said Slaughter, his heirs and assigns to construct said dam so as to flow the water back upon the dam, mill, or machinery of any other person already erected, or that may hereafter be erected according to a law providing therefor previous to the commencement of the erection of the dam aforesaid.

SECTION 9. The legislature may at any time so alter or amend this act as to provide for the further improvement of the navigation of the Manitowoc river.

Approved January 15, 1838.

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### No. 41.

AN ACT to authorize Thomas P. Burnett and Alexander McGregor to establish a ferry across the Mississippi river.

To have the right of ferrriage for ten years.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin*, That Thomas P. Burnett and Alexander McGregor, their heirs and assigns, be and are hereby authorized to establish and keep, or cause to be established and kept, a ferry across the Mississippi river between the east side or bank of said river, at or near the north-west corner of lot number thirty-nine of the private land claims, on Prairie du Chien and Coule des Sioux, on the west side of said river, for the term of ten years from and after the passage of this act: *provided*, that said ferry when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may hereafter be by law in this territory, fixing the rate of toll and prescribing the manner in which licensed ferries shall be kept and attended to.