

his services to five dollars for every one hundred dollars of county taxes by him collected, is hereby repealed: *Provided, however,* That each collector shall be entitled to retain five per cent of the county tax collected by him for his services, until the sum collected by him amounts to four thousand dollars; and for any balance that the tax of any county may exceed said sum of four thousand dollars, the said collector shall receive and retain two per cent for collecting the same: *And provided also,* That the other fees of the collectors for services shall be the same as now authorised by law, except that the collector shall not receive more than twelve and a half cents for each certificate of a lot or tract of land sold for taxes; nor shall the county commissioners make an allowance to any commissioner or viewer of roads for his services, exceeding one dollar and fifty cents per day.

Allowance to  
road commis-  
sioners.

SEC. 16. This act shall take effect from and after its passage.

Approved, February 19th, 1841.

## No. 5.

AN ACT supplemental to the act concerning Testimony and Depositions.

*Be it enacted by the Council and House of Representatives of the Territory of Wisconsin:*

SEC. 1. That whenever it shall become necessary in an ac-  
tion before a justice of the peace, to give evidence of a judg-  
ment, or other proceedings had before him, the docket of such  
judgment, or other proceeding, or a transcript thereof, certified  
by him, shall be good evidence thereof before such justice.

Transcript of  
justice's judg-  
ment, evidence  
when.

SEC. 2. A transcript from the docket of any justice of the  
peace, of any judgment had before him; of the proceedings in  
the cause previous to such judgment; of the execution issued  
thereon, if any; and of the return to such execution if any.

When same is  
evidence in o-  
ther counties  
than that in

when subscribed by such justice, and verified in the manner prescribed in the next succeeding section, shall be evidence to prove the facts stated in such transcript. which rendered.

SEC. 3. To entitle such transcript to be read in evidence in a different county than that in which the judgment was rendered or the proceedings originated, there shall be attached thereto, or endorsed thereon, a certificate the clerk of the district court of the same county in which such justice resides, under the seal of said court, specifying that the person subscribing such transcript was, at the date of the judgment therein mentioned, a justice of the peace of such county.

SEC. 4. The proceedings in any cause, had before a justice, not reduced to writing by said justice, nor being the contents of any paper or document produced before said justice, unless such paper or document should be lost or destroyed, may be proved by the oath of the justice. In case of his death or absence, they may be proved by producing the original minutes of such proceedings, entered in a book kept by such justice, accompanied by proof of his handwriting; or they may be proved by producing copies of such minutes, sworn to by a competent witness, as having been compared by him with the original entries, with proof that such entries were in the handwriting of the justice.

Proceedings in justice's court, how proved.

SEC. 5. Whenever in any action, the plaintiffs in their declaration, or the defendants in their plea or notice, aver that the plaintiffs, or defendants, or third persons were partners at any particular time; or that as such partners they used any particular partnership name or style under which business was done, such averments shall be taken to be true, unless expressly denied by the affidavit of the opposite party or some one in his behalf within the usual time of pleading.

Averments of a partnership not to be denied, unless.

SEC. 6. On actions against two or more defendants upon contracts in writing, alleged to have been executed by such defendants, as partners, or otherwise, proof of the joint liability of the defendants shall not be required to entitle the plaintiff to judgment, unless such proof shall be rendered necessary by pleading in abatement, or the filing pleas denying the execution of such writing, verified by affidavit.

Evidence on joint contracts.

Beneficial party treated as real party.

SEC. 7. That suits instituted in the name of one for the use of another, shall not abate by the death of the person whose name is used as plaintiff, but shall be prosecuted to judgment and execution as though the person for whose use they may have been instituted was plaintiff; and persons for whose use suits are prosecuted shall be considered as parties to the proceedings so far as to authorise judgment against them for costs, and to make them liable for all fees of officers, as though their names were used as plaintiff; and so far as to allow them to prosecute appeals, writs of certiorari, and writs of error, and to execute the necessary bonds for these purposes.

Doings of notaries public accredited.

SEC. 8. Full faith and credit shall be given to the attestations, protestations, and other instruments of publication, under seal, of all notaries public appointed in any state or territory of the United States.

Evidence of indorsement of notes, &c.

SEC. 9. In all actions brought on promissory notes, or bills of exchange by the indorsee, the possession of the note shall be prima facie evidence that the same was indorsed by the persons by whom it purports to be indorsed.

Party may be witness.

SEC. 10. In all actions or proceedings at law in civil cases, either party may give notice to the adverse party that he wishes to have said party sworn as a witness in such cause; and if said adverse party shall not appear at the time of trial, or shall refuse to be sworn or testify, or shall fail to take and produce his deposition, as hereinafter provided, then the party giving such notice, if the notice shall be deemed by the court sufficient, may himself be sworn as a witness in such cause.

A party may give his deposition in case.

SEC. 11. If the party receiving such notice shall live more than thirty miles from the place of trial, or shall be about to go out of the territory, not to return in time for the trial, or is so sick, or infirm, or aged, as to make it probable that he will not be able to attend at the trial, he may give notice of any such fact to the opposite party, and that his deposition will be taken before some justice of the peace, therein named; said notice shall be given and the deposition taken according to the provisions for taking the depositions of witnesses under like circumstances. The depositions thus taken, and duly produced, shall be admitted as testimony on the trial.

SEC. 12. If the party, receiving the notice mentioned in Same subject. the tenth section of this act, shall not be a resident of the territory, he may proceed to take out a commission for obtaining his testimony, in the same manner that commissions are taken out for obtaining the testimony of foreign witnesses, according to the rules and practice of the courts. A deposition properly taken under this section, produced at the trial, shall be admitted as testimony.

SEC. 13. The twenty-ninth section of an act of the revised statutes of Wisconsin, entitled "an act concerning proceedings of courts of record," shall be so taken and construed as to permit special pleas, demurrers and pleadings at the option of either party, plaintiff, or defendant. Special pleas allowed.

SEC. 14. All notices required by this act, may be given by, Notices, how served. or to the attorney of the party.

SEC. 15. The fifty-seventh section of the act, entitled "an act concerning testimony and depositions," is hereby repealed. Revised statutes, page 242.

SEC. 16. This act shall take effect, and be in force, from and after its passage.

Approved, February 19th, 1841.

## No. 6.

AN ACT to amend an act to provide for the punishment of offences against Private Property.

*Be it enacted by the Council and House of Representatives of the Territory of Wisconsin:*

[Sec. 1.] If any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods, or prairie, or other grounds, within this territory, other than his own, or shall intentionally, or by neglect, permit the fire to pass his own prairie or grounds, to the injury of any other person or persons, every person so offending shall, on conviction thereof, for every such Penalty for setting woods or prairies.