

judgment by default, so as to distress his principal, if such principal will enter himself defendant to such suit, and tender to such surety or his legal representatives, aforesaid, good collateral security, to be approved by the court before whom such suit is depending.

When surety not allowed to confess judgment.

SECTION 6. That when the special bail of any judgment debtor, shall be indemnified by the payment of such judgment, or part thereof, it shall be lawful for such bail, his executor, administrator or heir, to recover the amount of such payment with interest and costs, upon motion in the same court where judgment was rendered against such bail, or his legal representatives, of the said debtor, his heirs, executors or administrators.

When bail to have judgment upon motion.

SECTION 7. That in all proceedings by motion under this act, ten days notice of such motion shall be given to the person against whom such judgment is to operate.

Ten days' notice to be given.

Approved January 12, 1838.

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## No. 52.

AN ACT to locate and establish a territorial road, from Fort Howard to Fort Winnebago, on the west side of Fox river, and for other purposes.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That David Johnson, William Dickinson, R. M. Eberts, William White, William Powell, Corwell Pyre and Nathaniel Perry, be and they are hereby constituted, a board of commissioners to lay out and establish Territorial roads, as follows, to wit:

Commissioners appointed.

First—beginning at the mouth of Twin river on lake Michigan, thence up the west branch of said river to Neshoto, thence on the nearest and best route to the village of Green Bay, on the east side of Fox river. Second—beginning at the mouth of Kewaunee river of lake Michigan, thence the most eligible route to Rouse's farm on Green Bay. Third—beginning at Depere on the east side of Fox river, thence on the most eligible route to the mouth of the Manitowoc river,

Location of the several roads.

thence the most eligible route to the mouth of the Sheboygan river. Fourth—beginning at Fort Howard on the west side of Fox river, thence the most eligible route up said river to the Grand Cacklin, thence, up on the west side of said river, the most eligible route to Little Butte des Morts, thence the most eligible route to Knagg's ferry on Fox river, thence the most eligible route to Powel's on Green Lake, thence the most eligible route to Marquette on lake Apuckaway, thence the most eligible route to some point near Pouquette's farm, where said road shall intersect the United States road running from Green Bay to Prairie du Chien. Fifth—beginning at Fond du Lac, from thence the nearest and best route to the seat of government of Wisconsin territory.

When the commissioners shall meet.

SECTION 2. The said commissioners, or a majority of them, shall meet at Green Bay, on the fifteenth day of March next, in pursuance of their duties under this act, and proceed so soon thereafter as may be, to lay out and establish said roads.

Compensation.

SECTION 3. Said commissioners shall be allowed the sum of two dollars per day for their services, and shall have power to employ a competent surveyor, and to pay him at their discretion, for surveying, marking and setting mile posts on said roads: *provided*, that such surveying, marking and setting mile posts, shall not cost more than three dollars per mile.

Counties to pay expenses.

SECTION 4. It shall be the duty of the board doing county business in the counties through which these roads may pass, to allow and audit the accounts of the commissioners, and the sum shall be paid out of the treasuries of the said counties and no part of the expenses incurred or damages sustained shall be paid out of the territorial treasury.

Report.

SECTION 5. Said commissioners shall make a report of their doings under this act, and furnish to the clerks of the county board as aforesaid, copies of the same, as well as plats and field notes of the surveys as aforesaid; and the said clerks shall file the same in their respective offices.

SECTION 6. The said commissioners may divide the labor of establishing the roads aforesaid, any two of whom upon said division shall be sufficient for any one route.

SECTION 7. After the roads as aforesaid shall be es-

established agreeably to this act, they shall be territorial roads to all intents and purposes, and they shall be opened and worked as such as fast as the inhabitants of the counties through which they run, shall by a majority of their votes at their annual township meeting so decide. <sup>When roads to be worked.</sup>

- Approved January 12, 1838.

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### No. 53.

AN ACT providing for the taking the second census or enumeration of the inhabitants of the territory of Wisconsin.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That the sheriffs of the several counties within the aforesaid territory (and their deputies) shall be and they are hereby authorized and required to cause the number of the inhabitants of their respective counties and districts of the territory to be taken, omitting in such enumeration Indians not taxed and who do not live as civilized white men; and omitting officers and soldiers of the regular army of the United States who are not actual and *bona fide* residents of this territory. For effecting which purpose the sheriffs aforesaid shall have power to appoint as many deputies or assistants within their respective counties and districts as to them shall appear necessary, assigning to each deputy or assistant a certain division of his county or district, which division shall consist of one or more towns or townships of a district, plainly and distinctly bounded by water courses, mountains or public roads. The sheriffs and their deputies or assistants shall respectively take an oath or affirmation before some judge or justice of the peace resident within their respective county or district previous to their entering on the discharge of the duties by this act required. The oath or affirmation of the sheriff shall be: I, A. B., sheriff of the county of ———, do solemnly swear or affirm, that I will well and truly cause to be made a just and perfect enumeration of all the persons resident within the county or counties, territory or district, [here insert the name of county, territory or dis- <sup>Sheriffs to take census.</sup> <sup>Oath.</sup>