

to issue bonds or to raise a sinking fund, are hereby repealed, and neither the said city nor any ward or wards, or other part or subdivision thereof, shall have power to issue bonds or other evidences of debt, except under or consistently with the provisions of this act.

SECTION 17. Whenever any portion of the tax levied for any one year, shall be unpaid and shall remain delinquent, and the lands sold therefor shall be unredeemed, an amount equal to such delinquent tax may in the discretion of the common council, with the approval of the commissioners of the public debt, at the time of levying city taxes for the next year, be added to the amount of taxes which would otherwise be levied for the same purposes, and levied and collected as the other taxes are levied and collected by law.

Re-levy of unpaid taxes.

SECTION 18. After so many of the bonds issued under this act shall have been satisfied and retired as to leave less than five hundred thousand dollars in amount thereof outstanding, nothing in this act contained shall be constructed so as to prevent said city, under authority thereto then obtained from the legislature, from issuing her bonds to any extent, so that the aggregate amount of the bonds so then issued and those issued under this act and then still outstanding, shall not exceed five hundred thousand dollars, nor from issuing bonds at any time for the purpose of extending the time of payment of the amounts of any of the bonds issued under this act at the same or less rate of interest, at the maturity thereof.

Limits to am't of bonds that may be subsequently issued.

SECTION 19. This act shall take effect from and after its passage.

Approved March 19, 1861.

CHAPTER 88.

[Published March 22, 1861.]

AN ACT concerning proceedings in Courts in certain cases:

*The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. In any action now pending or which shall hereafter be commenced in any court in this state,

Appointment of persons to take testimony in cer-

tain mortgage  
foreclosures.

to foreclose any mortgage or enforce any instrument or contract made or given by any person or persons to any corporation in whole or in part payment for subscription to the capital stock of such corporation, or given in payment of such capital stock in whole or in part, or made with or given to any person or persons for the benefit of such corporation, either in payment as aforesaid or as security for such payment, in which an issue of fact shall be joined according to the course of practice in said court, it shall be the duty of the court in which such action is or may be pending, on the application of either party, to appoint some suitable and proper person to take all the testimony to be taken in this state, which either party may desire to give in such action, and all such testimony which either party may desire to use on the trial of such action; and the person so appointed to take testimony shall take such testimony and report the same to the court, together with the objections to questions propounded or testimony taken.

Testimony to be  
reported to court

So much as may  
not be stricken  
out to be used  
as evidence.

SECTION 2. Upon the filing of the report of such testimony, either party may, upon ten days' notice of motion to the opposite party, move the court to strike out or suppress any portion or the whole of said testimony, and the court, upon hearing said motion, shall, by order, sustain or overrule the same, in whole or in part, and either party may except in writing to said order within twenty days after service on him of written notice thereof, which exception shall be filed with the clerk of the court, and served on the opposite party. So much of the testimony reported as has not been or shall not be struck out or suppressed as aforesaid, shall be read as evidence on the trial of said issue or issues. Such report, order and exceptions shall form a part of the record of the case, and upon any appeal taken in said action, either before or after final judgment, or upon writ of error brought to reverse any final judgment in said action, the same shall be considered by the supreme court the same as if incorporated in a bill of exceptions or case made.

Appeal.

SECTION 3. Either party may appeal to the supreme court from such order, by filing with the clerk of the court where such order was made, and serving upon the opposite party, within the time now by law provided for such appeal, a notice in writing, specifying the

order or the part thereof appealed from ; and such appeal shall be a stay of all proceedings in the action in which said appeal is taken, in the court from which the appeal is taken, until the appeal shall be disposed of and certified by the supreme court back to the court below.

SECTION 4. Any issue or issues of fact made or joined in any action mentioned in this act, shall, upon demand of either party, be tried by a jury : *provided*, such demand shall be made before the reading of any testimony in said action on the trial thereof. Trial by jury.

SECTION 5. In any such action as is mentioned in this act, or in any action brought to enforce any such instrument or contract in writing as is mentioned in this act, if the defendants, or either of them, shall set up fraud in obtaining of the same, or want of consideration, such instrument shall be deemed *prima facie* to be held and owned by the plaintiff in such action, if owned at all, with full notice at the time said plaintiff obtained the same, of all equities existing between the original parties thereto, and the oath of the plaintiff shall not be deemed sufficient proof to remove such presumption. Equities of original parties.

SECTION 6. In any action mentioned in this act, if the issue or issues shall, upon trial, be found against the plaintiff, the judgment of the court shall be accordingly, and the plaintiff shall, in said judgment, be ordered and directed to surrender the mortgage and note, or other instrument or contract on which such action may be founded, to be canceled, and judgment shall also be rendered in favor of the defendant or defendants, as the case may be, for costs ; and before said plaintiff shall prosecute any appeal therefrom, he shall be required to file said note and mortgage or other instrument or contract in writing on which said action is founded, with the clerk of said court, and shall pay all costs adjudged and taxed or taxable in said action, and no appeal by said plaintiff shall be deemed perfected until such filing and payment. When mortgage and note may be ordered to be canceled.

SECTION 7. The person appointed to take testimony according to the provisions of this act, shall have power to issue subpoenas, and require the attendance before him of any officer, agent, stockholder or employee of any corporation created by the laws of this state, and of any person or persons in this state. Powers of person appointed to take testimony.

Records, papers,  
 &c., evidence of  
 matters therein  
 stated.

Such subpoena shall be in the name of the state of Wisconsin, and shall be in the form now used in courts of record, except that the same need not be signed by the clerk, nor sealed with the seal of said court, and may require the production of any record, paper, book or memorandum belonging to any railroad company or other corporation, or which ever belonged to any such railroad company or other corporation; and any record, paper, book, memorandum or statement in writing, made by an officer, agent, director or employee of any railroad company or other corporation, in the due course of his business as such officer, agent, director or employee, shall be held and taken to be an admission or statement by such company or corporation, and valid and sufficient evidence as against said company or corporation or person seeking to recover upon such mortgage, instrument or contract, of the matters and things therein stated; and when the same shall have been properly proven, copies thereof, duly certified to be such, by such person appointed to take testimony, shall be attached as exhibits to said report, and be taken and read on the trial, with the same effect as the original: *provided, however,* that if any person shall neglect or refuse to appear and testify after having been subpoenaed as in this act provided, or if any officer, agent, director or employee of any railroad company or other corporation, shall neglect or refuse to permit such examination of the records, papers, books, memoranda or statements in writing of such railroad company or other corporation, as by this act is authorized and required to be made, or shall fail to produce the same, such person appointed to take testimony as aforesaid, shall report such fact to the court before which the case may then be pending, and such person, officer, agent, director or employee shall be deemed and adjudged guilty of a contempt of court, and in the discretion of the court shall be punished accordingly; and the court shall compel the attendance of such person, officer, agent, director or employee, before the person appointed to take testimony as in this act provided; and until such required testimony shall have been obtained, all further proceedings in the case shall be stayed, unless such testimony shall be waived by the party desirous of taking the same.

Contempt.

Where actions to  
 be brought.

SECTION 8. All actions upon any note or mortgage, given for the purposes mentioned in this act, shall be

brought and tried in the county where the mortgaged premises or a part thereof are situated, whether such action is brought on any note or contract or on any mortgage given for the security of such note or contract: *provided*, that the person or persons contesting the validity of such instrument, shall have change of venue for the same causes and on like terms as are now provided by law for change of place of trial in civil actions in courts of record; *and provided further*, that for the purposes of this act, and for carrying into effect its provisions, the holder of any mortgage or other instrument given for the purposes in this act specified, shall be taken and deemed to be a "plaintiff," and subject to all the provisions of this act as plaintiff.

Change of venue.

Who deemed plaintiff.

Depositions.

SECTION 9. The depositions or testimony of witnesses residing out of this state, may be taken on commission, as by law provided in other cases.

SECTION 10. In any action mentioned in this act, if final judgment shall be for the plaintiff, such judgment shall include all costs ordered or taxable against the defendant, and such judgment shall be a charge and lien upon the land or other property upon which any mortgage sought to be foreclosed, shall have been given, but such judgment shall be a charge and lien upon no other property. The defendant shall in no case be required to pay cost on continuances or on appeal, until after the final judgment in such action; and in any action mentioned in this act, the plaintiff shall be required by the court, on the application of the defendant, or of any one of the defendants, to give security for costs, by written undertaking to be signed by two freeholders and residents of the county in which such action shall have been commenced, or in which it shall be pending on change of venue; and each of such sureties shall justify in twice the amount mentioned in the undertaking, over and above all debts, liabilities and exemptions, which undertaking shall be in such sum as the court shall order, not less than two hundred and fifty dollars. And in all cases wherein the court shall order the plaintiff to give security for costs, all proceedings in said action in behalf of said plaintiff shall be stayed until such security shall have been given and approved by the court, and until a certified copy of such undertaking, justifications and approval shall have been served on the opposite party at least ten days.

Judgments—how far a lien.

Costs, and security therefor.

Vacancy—how filled.

SECTION 11. If the person appointed to take testimony as provided in this act, shall die or tender his resignation to the court or the judge thereof, or shall neglect or refuse to act under such appointment, the court shall at any time and from time to time as the case may require, appoint some suitable person for the purpose aforesaid, and such person shall have the same powers as if originally appointed.

Additional testimony.

SECTION 12. If, after the testimony shall have been reported to the court as provided in this act, either party shall make it appear to the satisfaction of the court, that the testimony of any person or persons is material to the issue, and that such party, after having used reasonable diligence, has been unable to obtain such testimony, the court shall refer it back to the person appointed to take testimony as aforesaid, or to some other suitable person according to the provisions of this act, and such person may proceed to take and report such testimony to the court as by this act provided.

Suppressed testimony.

SECTION 13. If any testimony taken according to the provisions of this act, shall be struck out or suppressed by the court, the expense of taking such testimony shall be taxed against the party at whose instance the same was taken, and such expense shall be paid before further proceedings shall be had on said action, unless waived by the opposite party.

When action to be tried.

SECTION 14. No action mentioned in this act shall be tried until the testimony shall have all been taken and reported by the court, nor until all objections to said testimony, and all motions to strike out or suppress testimony, shall have been finally disposed of on appeal, or the time for appealing from the order striking out or suppressing testimony, or refusing to strike out or suppress the same, shall have expired without such appeal have been taken, and all motions made in such action shall be granted or denied, with such reasonable costs as the court shall direct.

Powers conferred

SECTION 15. Any person appointed to take testimony as provided in this act, shall have power, and is hereby authorized, to take testimony anywhere in this state, after giving notice as in this act provided; and such person shall be authorized to require the attendance of witnesses in accordance with his subpoena, and to require the production of records, books, papers and

memoranda belonging to any railroad company or other corporation, from any part of this state, and any witness who shall neglect or refuse to obey the subpoena; of such person appointed to take testimony under the provisions of this act, shall be reported and dealt with as provided in section seven of this act. The person so appointed to take testimony shall be authorized and empowered to administer all necessary and proper oaths, and any witness who, being duly sworn by such person, shall willfully swear falsely to any matter or thing material in the trial of said action, shall be deemed guilty of perjury, and on conviction thereof shall be punished as by law in such cases provided. And such person appointed to take testimony, shall have power to adjourn the time and change the place of taking said testimony, from time to time, and from place to place, as convenience may require, on giving to both parties reasonable notice thereof.

Perjury.

Adjournments.

SECTION 16. On application to the person appointed to take testimony, as in this act provided, by either party, it shall be the duty of the person so appointed to fix a time and place for taking such testimony, and to give at least ten days' notice thereof to the opposite party in the action; and in fixing the time when such testimony shall be taken, he shall also allow at least one day for every twenty miles between the residence of either party and the place fixed for taking testimony. In addition in said ten days' notice, and in computing the time above designated, Sundays shall not be counted. The person appointed to take testimony in accordance with the provisions of this act, shall be appointed in all other cases mentioned in this act, which shall be pending in the same circuit.

Notice of time and place for taking testimony.

SECTION 17. The person taking testimony in accordance with the provisions of this act, shall be entitled to demand and receive therefor ten cents per folio, or one hundred words, for all writing necessarily done by him in connection with his appointment, and he shall also be allowed ten cents for every mile necessarily traveled by him in going to the place fixed for taking such testimony. The charges mentioned in this section shall all be paid before the testimony shall be reported to the court, unless waived by the person appointed to take testimony.

Fees.

When to be paid.

SECTION 18. In all actions mentioned in this act, the

Testimony—

**manner of taking** plaintiff shall take and produce all the testimony in his behalf, before any testimony shall be required to be taken by the defendant, but after the testimony shall have been taken by the defendant, the plaintiff may give any further testimony tending to rebut the testimony taken by the defendant, on new matter; but the plaintiff shall not be allowed to present testimony cumulative to that by him at first given.

**Informality in taking testimony**

SECTION 19. If in any case mentioned in this act the court shall strike out or suppress any material testimony on the ground of informality, irregularity or error in taking the same, said court shall order such testimony to be retaken, and in conformity with the requirements of this act.

**Appeal may be taken within four years.**

SECTION 20. Either party to any action mentioned in this act, may appeal from the final judgment to the supreme court, by filing and serving a written notice of appeal within four years after written notice of such judgment, which notice of appeal shall specify whether the whole or what part of such judgment is appealed from; and such appeal shall stay all proceedings in said action, except on said appeal, until said appeal shall be finally determined and certified back to the court from whose judgment the appeal was taken.

**No title acquired until time for taking appeal expires.**

SECTION 21. If the party plaintiff shall recover judgment in any action provided for in this act, and any land shall be sold for the purpose of obtaining satisfaction of such judgment, in whole or in part, no title shall be acquired, under or by virtue of such sale, so as to entitle the purchaser, or any one claiming through or under him, to the possession or to the rents, issues or profits of the land thus sold, until the time for taking an appeal from final judgment as provided in this act, shall have expired. And all purchasers of land sold after final judgment, as aforesaid, in any of the cases mentioned in this act, shall be subject to the final decision of the case on appeal or on writ of error; and if in any such case the judgment shall be reversed, no rights or title shall ever accrue or exist under or by virtue of any such sale, but all rights of such purchaser, or of any person claiming under him, shall, to all intents and purposes, cease and determine from the time of the reversal of such judgment.

**No judgment for deficiency.**

SECTION 22. No judgment or decree shall be rendered or execution issued, for any deficiency after the

sale of the mortgaged premises upon the foreclosure of any such mortgage as is described in this act.

SECTION 23. Any defence that may be made to any such mortgage, contract or instrument in writing as is mentioned in this act, by the maker of any such mortgage, contract or instrument, may be made by any and all persons having any interest in the lands, or any part thereof, covered or affected by any such mortgage, contract or instrument in writing.

Defence.

SECTION 24. If the holder of any such mortgage as is referred to in this act, shall advertise the mortgage [mortgaged] premises for sale, by virtue of the power of sale contained in such mortgage, or by virtue of any law of this state authorizing the foreclosure of mortgages by advertisement, the mortgagor, or any person interested in the mortgage [mortgaged] premises, or any part thereof, may tender to the judge of the circuit or county court of the county in which such premises are situate, his petition, verified by affidavit, stating that such mortgage was given for the purposes mentioned in section one of this act, and that the same was obtained by false or fraudulent representations, or without valuable consideration, and such judge shall immediately issue an order enjoining said sale; and in such order said judge shall direct an issue to be made by complaint, and answer between said parties, which shall be tried by the circuit court of the county in which the mortgage [mortgaged] premises are situate, unless the venue shall be changed as provided in this act. From the service of such order upon the party making such sale, his agent or attorney, all further proceedings upon such sale shall be stayed until the final determination of the issue so joined. Such issue shall be tried, heard and determined in the manner prescribed in this act, and the holder of such mortgage shall be the plaintiff in the action.

Sale of mortgaged premises may be enjoined.

How issue made and tried.

SECTION 25. In all actions mentioned in this act, the parties shall proceed in accordance with, and be limited to the remedies and practice prescribed by, this act.

Actions—how conducted.

SECTION 26. No witness called in any action mentioned in this act, shall be excused from answering any question material to the issue, but his testimony shall never be used against him in any criminal prosecution or trial.

Witnesses.

SECTION 27. This act shall be published immediately

after its passage, and shall take effect and be in force immediately thereafter.

Approved March 19, 1861.

## CHAPTER 89.

[Published March 25, 1861.]

AN ACT to amend Chapter 304 of the General Laws of 1860, entitled "An act to constitute Shawanaw county a part of the Tenth Judicial Circuit, and to fix the Terms of Court therein."

*The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

First Monday of  
January.

SECTION 1. Section 1 of chapter 304 of the general laws of 1860, entitled "An act to constitute Shawanaw county a part of the tenth judicial circuit, and to fix the terms of court therein," is hereby amended by striking out after the word "the" in the fourth line of said section the words "third Monday of February," and inserting in lieu thereof the words "first Monday of January."

Repeal.

SECTION 2. All acts or parts of acts, so far as they conflict with the operation of this act, are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved March 21, 1861.

## CHAPTER 90.

[Published March 22, 1861.]

AN ACT to authorize the city of Appleton to exchange Bonds with its present Bondholders.

*The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

May issue bonds  
in exchange for  
those issued to

SECTION 1. For the purpose of taking up and exchanging the bonds of the city of Appleton, issued to