

any cause now pending in such court or before such judge, justice of the peace or police justice or which may be commenced before the judge of said municipal court shall enter upon the duties of his office.

SECTION 11. This act shall take effect and be in force from and after its passage and publication.  
Approved March 14, 1889.

[No. 203, A.]

[Published March 15, 1889.]

## CHAPTER 95.

AN ACT to amend section 4269, of revised statutes of 1878, as amended by chapter 239, of laws of 1882.

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

SECTION 1. Section 4269, of revised statutes of 1878, as amended by chapter 239, of laws of 1882, shall be and the same is hereby amended by striking out of said section the words, "within ten days after service of the complaint," and inserting in lieu thereof, the words, "at or before the time of the service of his answer," so that said section when so amended shall read as follows: Section 4269. In all actions to recover the possession or value of logs, timber or lumber wrongfully cut upon the land of the plaintiff, or to recover damages for such trespass, the highest market value of such logs, timber or lumber, in whatsoever place, shape or condition, manufactured or unmanufactured, the same shall have been, at any time before the trial, while in the possession of the trespasser, or any purchaser from him, with notice shall be found or awarded to the plaintiff, if he succeed, except as in this section provided. The defendant in any such action may, at or before the time of the service of his answer, serve on the plaintiff his affidavit that such cutting was done by mistake, and therewith an offer, in writing, to allow judgment to be taken against him for the

Amending sec-  
4269, R. S.

Measure of  
damages in  
actions to re-  
cover posses-  
sion of logs or  
timber wrong-  
fully cut.

sum therein specified, with costs. If the plaintiff accept the offer, and give notice thereof, in writing, within ten days, he may file the summons, complaint and offer, with an affidavit of service of the notice of acceptance, and the clerk must thereupon enter judgment accordingly, which shall be in full satisfaction of the matters alleged in the complaint. If notice of acceptance be not so given, the affidavit of the defendant shall be deemed traversed. Upon the trial the jury shall find specially upon such issue, and also the true value of such logs, timber or lumber when so cut, as well as their highest market value aforesaid. If the jury find such cutting was by mistake, and the sum exclusive of costs, for which judgment was so offered was not less than the value of such logs, timber or lumber when cut, with interest from that time to the time of such offer, and ten per centum as damages upon the combined sum, principal and interest, the plaintiff shall have judgment for the amount of such offer only, less the costs and disbursements of the action since the date of such offer, to be taxed and deducted in favor of the defendant. If the jury find such cutting was by mistake, but the sum exclusive of costs, for which judgment so offered was less than such value, and interest and ten per centum damages combined, judgment shall be awarded the plaintiff on the verdict for the value found at time of cutting, with interest from the time of such cutting, and ten per centum thereon aforesaid, besides the costs of the action. If there be several defendants not alike liable, either, or any, may serve such affidavit and offer, and have a separate trial as to him or them; provided, that in all actions hereafter commenced, when the defendant shall have in good faith acquired a title to and entered upon the land under the same, believing such title to be valid, and shall have cut the timber therefrom under such circumstances, then the plaintiff if he shall recover, shall recover only the actual damages sustained by reason of such cutting. The defendant in his answer shall state the facts upon which he relies to establish such claim of title, and the burden of proof shall be on the defendant.

SECTION 2. This act shall be in force from and after its passage and publication.

Approved March 14, 1889.