

ed and planted in any other manner than that which is prescribed in this act, every person so offending shall forfeit and pay the sum of one hundred dollars.

SECTION 9. If any person or persons, shall dispose of, offer for sale, or lease for any time, any out or in lots in any town or addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this act shall have been complied with, every person so offending shall forfeit and pay the sum of twenty-five dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale.

Fees for sur-  
veyor,

and recorder.

SECTION 10. The county surveyor, who shall lay out, survey and plat any town or addition, shall be entitled to receive twenty-five cents for each and every in and out lot the same may contain, and the recorder of the county recording the same shall receive the sum of two cents for each and every lot as aforesaid; the said plat and survey, to be by him transcribed or copied into a book to be provided for that purpose.

Prosecutions to  
be in the name  
of the county  
treasurer.

Receipt.

SECTION 11. All forfeitures, and liabilities, which may be incurred and arise under this act, shall be prosecuted for, and recovered, in the name of the county treasurer; and any officer or officers paying over any money to the said treasurer received under any of the provisions of this act shall take his receipt therefor, and forthwith file the said receipt with the clerk of the board of commissioners; and the said clerk shall charge the amount of said receipt in account against said treasurer on the books of the county commissioners.

SECTION 12. All acts and parts of acts, contravening the provisions of this act, are hereby repealed. This act to be in force from and after its passage.

Approved January 18, 1838.

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## No. 71.

AN ACT to incorporate the Marquette and Kentucky city canal company.

Name and pow-  
ers of the cor-  
poration.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That all such persons as shall become stockholders, agreeably to the provisions of this act, in the corporation hereby

created, shall be a body politic and corporate, by the name and style of "the Marquette and Kentucky city canal company," and by that name, may have succession, may sue and be sued, complain and defend, in any court of law or equity, may purchase, hold and convey real, personal or mixed estate, may make and use a common seal, and alter the same at pleasure, may make by-laws, rules and regulations for the management of its property, the regulation of its affairs, and for the transfer of its stock, not inconsistent with the laws of this territory, and of the United States; and may moreover appoint such subordinate agents, officers and servants, as the business of said corporation may require and allow to them a suitable compensation, prescribe their duties, and require bonds for the faithful performance thereof, in such penal sum, and with such securities, as they may choose, who shall hold their offices during the pleasure of a majority of the directors of said corporation.

SECTION 2. That the capital stock of said corporation shall be two hundred and fifty thousand dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each. Capital stock.

SECTION 3. That M. C. Johnson, Wm. B. Blackburn, A. B. Morton, Joel B. Southerland, A. A. Bird, Aaron Vanderpool, John P. Arndt, Ebenezer Childs, and William Dickinson, shall be commissioners for receiving subscriptions to the capital stock of said corporation, who shall give notice, within twelve months after the passage of this act, of the time and place where books will be opened, at Green Bay, and such other places as they may deem necessary, in some public newspaper, at least ten days previous to the opening of such books of subscription. Commissioners.  
A majority of said commissioners shall appoint one or more of their number, who shall attend at the time and place appointed, by such notice for the opening of said books, and shall continue such subscriptions to the capital stock, of the said corporation, from all persons who shall subscribe thereto, until fifty thousand dollars shall have been subscribed; whereupon said books may be closed, by the said commissioners, and transferred to the board of directors, as hereinafter provided. Each subscriber, at the time of subscribing, shall pay to the commissioners one dollar. Notice.

on each share of the stock by him subscribed; and the said commissioners shall, as soon as the directors are elected, deliver to them the whole amount of money received on the subscription of stock.

Directors, how  
elected.

SECTION 4. That the affairs of said corporation shall be managed by a board of seven directors, to be annually chosen by the stockholders, from among themselves. As soon as may be, after fifty thousand dollars of the capital stock shall have been subscribed, the commissioners shall give notice of the time and place, at which a meeting of the stockholders will be held, for the choice of directors; and at such time and place, appointed for that purpose, the commissioners or a majority of them shall attend, and act as inspectors of said election; and the stockholders present, shall proceed to elect their directors by ballot, and the commissioners present shall certify the result of such election, under their hands, which certificate shall be recorded in the books of the corporation, and shall be sufficient evidence of the election of the directors therein named. All elections thereafter shall be held at the time, and in the manner, prescribed by the by-laws and regulations of said corporation. Each stockholder, shall be allowed as many votes, as he owns shares, at the commencement of such election; and a plurality of votes shall determine the choice. The said directors shall hold their offices for one year, and until their successors are elected, and they shall elect one of their number as president of said board.

Term of office.

Directors may  
collect the  
amount sub-  
scribed.

SECTION 5. Any portion of the capital stock which shall not have been subscribed for and taken, as herein before provided, shall be subscribed for and taken, under the direction of the directors of said corporation, whenever they shall direct one or more books to be opened for such purpose, and shall be subscribed and taken, in such manner as the said directors for the purpose shall order and appoint. The said directors shall have power to collect, under such regulations as they may deem proper, the amount subscribed by each stockholder, in instalments not exceeding ten dollars on each share, after giving thirty days' notice in some public newspaper published at Green Bay, of the time at which such instalment will be required; and in case any stockholder shall neglect or refuse to pay the amount of his subscription,

when so required, the said directors shall have power to sue for, and collect the same, in an action of assumpsit in any court having cognizance thereof.

SECTION 6. That said corporation shall have the right to construct, maintain and continue, a navigable canal from the town of Marquette, on Fox river, or Lake a Puckaway, by the nearest and best route to Kentucky city, on the Wisconsin river, as shall be determined on by said corporation. And the said corporation shall have authority to construct such navigable feeders as may be actually necessary, for supplying the canal herein named with sufficient water for the navigation thereof. All hydraulic privileges which shall be created by the construction of said canal and its branches, or of such locks and dams or other works as shall be connected therewith, shall belong exclusively to said corporation, who are hereby authorized to occupy and use the same for the erection and propulsion of any kind of machinery, or to lease said power for a term of years, or sell and dispose of it forever, to any person or persons and upon such terms as may be determined by said corporation. And all persons are hereby prohibited from using, occupying, or in anywise interfering with such privileges without the assent of said corporation.

Location of the canal.

Hydraulic privileges.

SECTION 7. That it shall be lawful for said corporation, by themselves and by any and every superintendent, agent, and engineer, employed by them, to enter upon, and take possession of, and use, all and singular any lands, waters, streams, and materials, necessary for the prosecution of the improvements authorized by this act; and to make all such feeders, dykes, locks, dams and other works and devices, as they may think proper for making said improvements, doing nevertheless no unnecessary damage; and in case any lands, waters, streams, or materials, taken or appropriated for any of the purposes aforesaid, shall not be given or granted to said corporation, and in case said corporation shall not be able to acquire the title to the same by agreement with the parties concerned, a board of appraisers shall be appointed, consisting of three persons, one of whom shall be appointed by the directors of the company hereby incorporated, one by the claimants applying for damages, and one by the commissioners or supervisors of the county, in which said

Company may take private property.

Mode of appraisal.

lands, waters, streams, or materials, shall be, who shall, before they enter upon the duties of their office, severally take an oath or affirmation, before some person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act. And it shall be the duty of said appraisers, or a majority of them, to make a just and equitable estimate and appraisal of the loss or damage if any, over and above the benefit and advantage accruing by said work to the respective owners and proprietors, or parties interested in the lands, waters, streams or materials so taken for the purpose aforesaid. And the said appraisers or a majority of them shall make regular entries of their determination, and appraisal, with an apt and sufficient description of the several premises taken and appropriated for the purposes aforesaid, in a book or books to be provided and kept by the directors of said corporation, and certify and sign their names to such entries and appraisal, and in like manner, certify their determination as to those several premises which will suffer no damage, or will be benefited, more than injured, by or in consequence of the work aforesaid. And the said corporation shall pay the damages so assessed, and appraised, and the fee simple of the premises so taken and appropriated, shall thereupon vest in the said corporation: *provided, however,* that if the owner or owners of the lands, waters, streams and materials, so taken and appropriated, shall not make application to said corporation for the payment of damages by them sustained, within one year after such lands, waters, streams, or materials, shall have been taken possession of by the corporation, he, she or they shall thenceforth be barred from the collection of any damages from said corporation, for the lands, waters and streams so used.

Proviso.

SECTION 8. That it shall be lawful for the said corporation, to commence the construction of said canal at such points on any part of the aforesaid route, as in their judgment may appear expedient and proper; and so soon as any portion of said canal shall be completed, it shall be lawful for said corporation, to erect toll houses thereon, and collect such tolls as said corporation shall determine and fix for the use of said canal. And said corporation is hereby authorized to borrow any sum of money which may in their discretion be

Tolls.

Company may  
borrow money.

deemed necessary for the proper and efficient prosecution, of the works authorized by this act.

SECTION 9. That it shall be lawful for the directors of said corporation, to make from time to time, such rules and regulations, not inconsistent with the laws of this territory, and of the United States, in respect to the size and structure of boats, rafts and other floats, on the waters of said canal, and the weighing and inspecting of boats and their loading, and in respect to all matters in relation to the navigation of the canals, and the collection of tolls and water rents; and impose such forfeitures of money, for the breach of such regulations, as they may judge reasonable; and to provide for the detention and sale of any such boats, rafts and other floats, as shall or may contravene such rules and regulations, in cases where the owner or owners of such boats, rafts, or other floats, shall neglect, or refuse to pay such forfeiture: *provided*, that no forfeiture so imposed shall for a single offence exceed the amount of actual damages more than fifty dollars, and that nothing in this section shall be so construed, as to prevent said forfeitures being recovered by action of debt as hereinafter provided; *and provided also*, that the rate of toll for transportation shall not be more than double the amount charged by the state of Ohio on the Ohio canal in the year eighteen hundred and thirty-two.

Powers of directors.

Tolls limited.

SECTION 10. That any person who shall lead, drive or ride any horse, ox, ass, mule or other animal, upon the towing path, or bank opposite the towing path of the canal hereby authorized to be constructed, except for the purpose of towing boats, or other floating things upon the waters thereof, or for the purpose of conveying articles to and from said canal, in order to their transportation on the waters of the same, or their delivery at their place of destination, shall forfeit for every such offence the sum of five dollars, and shall pay all damages consequent upon such offence over and above the said forfeiture.

Penalty for riding on the towing path, &c.

SECTION 11. That if any boat or other floating thing, shall be so moved in any of the canals, as to obstruct the navigation thereof; or if any person or persons shall obstruct the navigation of said canal, or cause the same to be done, by means of loading, unloading, misplacing, or otherwise misconducting any

Penalty for obstructing the canal.

boat or other floating thing, and shall not immediately upon being requested thereto, by any engineer, superintendent or agent of said corporation, employed on said canal, or by any person incommoded by such obstruction, remove the same, the boatman or person who caused the obstruction, shall forfeit for every such offence the sum of twenty-five dollars, over and above the expense of removing said obstruction.

SECTION 12. That if any person or persons shall wilfully obstruct the navigation of said canal, or its branches, by sinking any vessel, timber, stone, earth or other things, in the same, or by placing any obstruction on the towing path thereof, or on the bank opposite the towing path, such person or persons, shall forfeit for every such offence the sum of twenty-five dollars, over and above the expense of removing the said obstruction.

Or doing other  
injury.

SECTION 13. That if any person shall wantonly or unnecessarily open, or cause to be opened, or shut, any lock-gate, or paddle-gate, or any waste-gate, or drive any nails, spikes, pins or wedges into either of said gates, or take any other mode of preventing the free use of either of said gates; or shall wantonly or maliciously break, throw down or destroy any bridge on said canals, such person or persons shall, for every such offence, forfeit the sum of fifty dollars, and pay all damages consequent upon such offence, over and above such forfeiture.

SECTION 14. That if any person shall, wilfully and maliciously, break, throw down, or destroy any lock-gate, bank, waste-wire, aqueduct, or culvert, belonging to the canals authorized by this act, such person or persons shall, for every such offence be deemed guilty of a misdemeanor, and on conviction thereof, before the proper court, shall be sentenced to imprisonment in the penitentiary at hard labor for any time, not less than three, nor more than five years, at the discretion of the court; and shall moreover be liable to pay all damages sustained in consequence of such offence.

Or give a false  
bill of lading.

SECTION 15. That every person who shall knowingly sign or deliver to any collector, a false bill of lading, with the design of avoiding the payment of tolls, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent

jurisdiction, shall be fined not less than three times the value of the property omitted, or falsely stated in such bill.

SECTION 16. That every collector of tolls, on the canals herein authorized, may require the master of any boat, upon exhibiting his bill of lading, to verify it by his oath, which such collector is hereby authorized to administer; and any person who shall testify falsely, before any collector, shall be deemed guilty of perjury. Collector may require oath.

SECTION 17. That for all damages done to the said canals, the offenders shall be proceeded against by indictment, in the proper courts, and on complaint being made to any judge or justice of the peace of the proper county, against any person or persons, doing any such damage as is mentioned in the preceding sections of this act, it shall be the duty of such judge or justice, forthwith to issue a warrant to the proper officers to arrest and bring before him such offender or offenders. If, upon the return of such warrant, it shall appear to the satisfaction of such judge, or justice, that such complaint is true, he shall commit such offender or offenders, if he or they shall refuse to give security for their appearance to the proper court to answer said complaint: *provided, however,* that if the offender or offenders, shall pay to such judge or justice of the peace, the penalties, forfeitures, and expenses, which he or they may have incurred, together with the costs of prosecution, such offender or offenders shall be discharged. Defendants may be indicted.

SECTION 18. That the captain, or master and the owner of any boat or other float, on the canals herein authorized, and likewise the boat or float itself, shall severally be liable for the payment of any penalty or forfeiture, and likewise of all damages which may accrue, in consequence of the violation of any of the provisions of this act, or of any order of the board of directors, duly made and published, relating to the canals or the navigation thereof, or the collection of tolls thereon, by any person navigating such boat, or assisting in the navigation or management thereof, at the time of such violation; and any such boat or other float, may, at the direction of the agents of the corporation hereby created, be prevented from navigating said canal, until such penalty, forfeiture, and Who liable for the penalty.



damages, and costs, accrued in prosecuting therefor, shall be fully paid.

Lien.

SECTION 19. That all materials, that shall have been procured, by any contractor, for the construction of any part of said canal or any work therewith connected, shall from the time they are prepared for transportation to the place where they are to be used, be subject to the lien of the corporation, for all moneys that may have been or shall be advanced by the said corporation, during the performance of said contract; and for all damages that may be sustained in consequence of the non performance thereof; and no sale made by said contractor or under any execution issued upon any judgment or decree shall in any wise affect said lien.

Corporation must erect bridges.

SECTION 20. That said corporation shall be bound to erect bridges over said canal, at all places where it shall cross any public highway, which shall have been regularly laid and recorded, at the time of the construction of said canal; and where the location of the canal, shall interfere with any road, which shall be in use; and said corporation is hereby authorized to change the location of said road: *provided*, that before so doing the said corporation shall cause the new road so to be opened to be put in as good repair as the road vacated was at the time of such vacation.

When the work to be constructed.

SECTION 21. That said corporation shall commence the construction of the works authorized by this act, within three years from the passage thereof, and in default of said commencement being made within said three years, all the privileges herein and hereby granted shall be forfeited by said corporation, and this act shall be null and of no effect. And the right to construct so much of said works, which are by this act authorized, as shall not be completed within ten years from the passage of this act, shall be forfeited by said corporation, and the legislature shall have the right to dispose of such part or parts in such manner as to them may seem best calculated to promote the public interest.

Canal may be purchased by the government.

SECTION 22. That the future state of Wisconsin, at any time after its admission into the union, shall have the right to purchase and hold for the use of the state, the canal herein authorized to be constructed, together with all its branches and other im-

provements, by paying to the said corporation, the amount actually expended, in the construction and repairs of the same, together with such reasonable interest, not more than seven per centum per annum, as may be agreed upon by and between said state and the corporation: *provided however*, that in case the congress of the United States shall make any appropriation or donation, either in land or money, in aid of the construction of the work by this act authorized, the right to the same shall vest in said state, whenever the said transfer of the canal shall be made. And the net proceeds of all sales of land and the amount of all money so appropriated or donated, shall be deducted from the amount to be paid to the said corporation, for the transfer of said works to the state. And the said corporation are hereby authorized to apply to congress for such an appropriation, in money or lands, to aid in the construction of the works authorized by this act, as congress in its wisdom shall see proper to grant.

SECTION 23. That the said canal shall not be less than forty feet wide at the top water line, and four feet deep. The locks to be constructed of cut stone, and in a neat, permanent and workmanlike manner, at least eighty-five feet long in the chamber, between the upper and lower gates, and fifteen feet wide in the clear, between the walls; and all culverts, aqueducts, dams and other fixtures, to be constructed in like permanent manner, of such materials and dimensions as the circumstances of the case may require.

Dimensions of canal and locks.

SECTION 24. That said company shall not have a right to take the water from any mill which shall have been erected by any person, on any stream, except for the purpose of feeding said canal for the purposes of navigation.

SECTION 25. *Be it further enacted*, That in case congress shall make a donation of lands to the said corporation, for the purpose of aiding and assisting in the construction of said canal, and the lands so donated, or any part thereof, shall be settled upon and improved at the time of such donation, the said corporation shall sell to the person or persons so settled upon one quarter section, or one hundred and sixty acres each, comprehending his, her, or their improvement at one dollar and twenty-five cents per acre: *provided*,

Pre-emption right secured.

that the person so settled shall pay to the said corporation the amount due for said lands, within ninety days from the time the said corporation make a demand for the same.

Approved January 18, 1838.

### No. 72.

AN ACT to authorize Levi Moffett to keep a ferry across Skunk river, at Moffett's mill.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That Levi Moffett, is hereby authorized to establish and keep a ferry across Skunk river in the county of Des Moines, in this territory, for the term of ten years; and that the said Moffett shall have exclusive privilege in landing one-half mile each way above and below said mill; and further, that the said Levi Moffett shall ferry all persons free of ferriage, who shall apply to cross the said river having business at the mill, and machinery of the said Moffett, and also all persons summoned as grand and petit jurors of the district court of said county.

SECTION 2. That the said ferry shall be subject to all the conditions and requisitions of the several laws of this territory, regulating the tolls and duties of the keepers of ferries in this territory.

Approved January 18, 1838.

### No. 73.

AN ACT concerning grand and petit jurors.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That all persons who are qualified electors in this territory, shall be liable to serve as jurors in their respective counties as hereinafter provided. The following persons shall be exempt from serving as jurors, to wit:

All electors  
liable as jurors.

Exceptions.