

said, such person or persons, company or corporations so offending, shall forfeit and pay any sum not exceeding one hundred dollars nor less than ten dollars, to be recovered by action of debt, in the name of the board of commissioners of the proper county, for the use of the county, before any justice of the peace or court of record having jurisdiction of the same; in all of which cases it shall be the duty of the county commissioners, sheriffs, coroners, justices of the peace, constables and clerks of the several courts in this territory, and lawful for any other person or persons in case of their neglect, to cause such offenders to be sued, and the suit or suits prosecuted to effect, and bail may be required in such cases without affidavit, if the court or justice in their discretion shall deem the same necessary, to secure the county in the ultimate payment of any such penalty.

SECTION 51. *Be it further enacted,* That no person or persons, applying for a license or permit, shall be entitled to the same until he, she or they file, with the clerk of the board of commissioners, a receipt from the county treasurer for the amount ordered to be paid by such applicant, agreeably to the provisions of this act; and such receipt shall be charged in account against said treasurer, on the books of said board of commissioners.

SECTION 52. *Be it further enacted,* That from and after the first organization of the board of county commissioners under the provisions of the act organizing boards of county commissioners, in the several counties in this territory, all acts and parts of acts contravening any of the provisions of this act, are hereby repealed and of no effect.

Approved January 18, 1838.

No. 69.

AN ACT providing for, and regulating general elections in this territory.

Times of holding elections

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That an election for delegate to congress, and members of the

house of representative of this territory, shall take place on the first Monday in August next, and on the same day in every second year thereafter; an election for the members of the council of this territory, shall take place on the first Monday in August, 1840, and on the same day in every fourth year thereafter; an election for county, town and district officers, shall take place on the first Monday in March next; on the first Monday in August, 1838, and on the first Monday in August in each succeeding year; and all general and special elections for delegates to congress, members of the council and house of representatives, and all county, town and district officers shall be conducted in the manner hereinafter prescribed.

SECTION 2. That the county commissioners shall respectively, at their regular annual session in April, preceding the general election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election, at any election precinct, and for each of the polls of election, as provided for in the act setting off and establishing towns or districts, (as the case may be); and the clerk of the said board of commissioners, shall make out and deliver to the sheriff of the county immediately after the appointment of said judges, a notice thereof in writing directed to the judge so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of said notice, to serve said notice upon each of the said judges of election. The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges of election shall be and continue judges of all elections of civil officers, to be held at their respective precincts until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election. And the county commissioners shall, from time to time, fill all vacancies which may take place in the office of judge of the election, at any election precinct within their respective counties.

Judges of election, how appointed.

and notified.

May appoint their clerks.

SECTION 3. That the clerks of the several boards of county commissioners, shall, at least fifty days previous to any general election, and at least twenty days previous to any special election, make out and deliver

Clerk to make out notices.

to the sheriff of his county, three written notices hereof, for each election precinct; said notices to be as nearly as circumstances will admit as follows, to wit:

Form thereof.

"Notice is hereby given, that on the _____ Monday the _____ day of _____ next, at the house of _____ in the town or district of _____ in the county of _____ an election will be held for territorial, county and town or district officers, (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue open until six o'clock in the afternoon of the same day.

"Dated at _____ this _____ day of _____ A. D., (as the case may be.)

"Signed,

A. B.,

"Clerk of the board of county commissioners."

Where and when to be posted up.

SECTION 4. And the sheriff aforesaid, to whom such notice shall be delivered as aforesaid, shall post up in three of the most public places in each town or district, the notices referring to such town or district, at least thirty days before the time of holding any general election, and at least eight days before the holding of any special election; and in cases where towns or districts may not be set off by law, as election precincts, said notices shall be posted up by the sheriff as follows: one at the house where the election is authorized to be held, and the two others at two of the most public and suitable places in that vicinity or settlement.

Vacancy of judge, how filled.

SECTION 5. If any person appointed to act as a judge of the election as aforesaid shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by any justice of the peace residing within the county, town or district, to be nominated by the other judge or judges of the election; and if there be no justice present to act as judge, the other judge or judges of election shall nominate one or more capable and discreet electors residing within the county, town or district to fill such vacancy or vacancies; and if there be no judge of the election present to fill such vacancy or vacancies by nomination, then such vacancy or vacancies shall be filled by the votes of such qualified electors residing within the county, town or district, as may then be present at

the place of election ; and the justice or justices, person or persons so elected or nominated to fill such vacancy or vacancies, shall be and are hereby vested with the same power as if appointed by the board of county commissioners.

SECTION 6. Previous to votes being taken, the judges and clerks of election shall severally take an oath or affirmation in the following form, to wit: "I A. B. do solemnly swear (or affirm as the case may be) that I will perform the duties of judge (or clerk as the case may be) according to law, and the best of my ability, that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same."

Oath of Judge or clerk.

SECTION 7. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed a judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oaths or affirmations to each other, and to the clerks of the election ; and the person administering oaths or affirmations shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

By whom administered.

SECTION 8. At all elections to be held under this act, the polls shall be opened at the hour of nine o'clock in the morning, and continue open until six o'clock in the afternoon of the same day, at which time the poll shall be closed: *provided however*, that if no judge shall attend at the hour of nine o'clock in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election, as hereinbefore prescribed, the election may in that case commence at any hour before the time for closing the poll shall arrive, as the case may require ; *and provided also*, that the judges of the election may if they shall deem it necessary for the purpose of receiving the votes of all the electors wishing to vote, postpone the closing of the polls until nine o'clock at night. And upon opening the poll, one of the clerks under the direction of the judges shall make proclamation of the same ; and thirty minutes before the closing of the poll proclamation shall be made in like manner, that the poll will be closed in half an hour.

At what hour polls to be opened and closed.

Proviso.

SECTION 9. The clerks of the election shall furnish

the necessary poll books and stationery in conducting the same.

Manner of voting.

SECTION 10. The manner of voting shall be by the electors approaching the bar in the election room, at any time when the poll is open, and by presenting a ticket folded in such a manner that no names on said ticket are visible to the judges, who shall deposit the same immediately into a general ballot box prepared for that purpose, and the clerk shall take down the names of all such voters.

Place of voting.

SECTION 11. It shall be lawful for any elector to vote for delegate to congress, at any place of holding an election within this territory; for members of the council and house of representatives, at any place of holding an election in the county or district in which he may reside; for coroner, county commissioners, or county officers, at any place of holding an election in the county in which he resides; but for constables and other town officers he shall not vote out of the town or district in which he resides. And if any elector shall vote more than once at any election held under the authority of this act, he shall be fined in the sum of one hundred dollars, to be recovered by indictment before any court of competent jurisdiction, and the whole of such fine shall be appropriated to the use of the county in which the offense may have been committed.

Penalty for voting twice.

Qualification of an elector.

SECTION 12. No person shall be entitled to vote at any election in this territory who has not attained the age of twenty-one years, who is not a free white male citizen, or foreigner duly naturalized according to the acts of congress on that subject, and who has not resided in this territory for at least six months immediately previous to his application to vote; and when any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the requisite qualifications of an elector, or if his vote shall be challenged by any elector who has previously given his vote at such election, the judges of the election shall tender to such person an oath or affirmation in the following form, "I, A. B. do solemnly swear (or affirm as the case may be) that I am a resident of the county of _____ in the territory of Wisconsin, a citizen of the United States, that I have resided in this territory for the period of six

Oath.

months immediately preceding this election, that I have to the best of my knowledge and belief attained the age of twenty-one years, and that I have not voted at this election." And if the person so offering to vote shall take such oath or affirmation his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges, that said oath or affirmation is false. And if such person refuses to take such oath or affirmation his vote shall be rejected. And if any person shall take the said oath or affirmation knowing it to be false, he shall be deemed guilty of willful and corrupt perjury, and shall on conviction suffer such punishment as is now or shall hereafter be prescribed by law for persons guilty of perjury. And if any person shall vote at any election who is not a qualified voter, he shall forfeit and pay any sum not exceeding fifty dollars nor less than twenty-five, to be recovered in the same manner as other penalties under this act are: *provided however*, that if such person shall have been considered by the judges of the election a legal voter then such person shall not be so fined.

False swearing,
perjury.

Penalty for
voting when not
qualified.

SECTION 13. For the preservation of order, as well as the security of the judges and clerks of the election from insult and abuse, it shall be the duty of the constable or constables, residing within the town or district, who shall be designated for the purpose by the judges of election, to attend at all elections within such town or district; and should no constable attend at such election, the judges of election are hereby authorized and empowered to appoint one or more special constables, to assist in preserving order during the election. And the judges are hereby empowered to enforce a fine not exceeding twenty dollars, on any person or persons who shall conduct in a disorderly or riotous manner, and persist in such conduct after having been warned of the consequences; and on refusal to pay the same, to commit him or them to the common jail of the county, for any time not exceeding six days, or until the fine shall be paid. And the constable to whom the order shall be directed, and the jailer of the county are hereby required to execute said order, and receive such person or persons so committed, as though it had been issued or delivered by a magistrate in due form of law.

Constables to
attend elections.

Judges may
fine and im-
prison.

Manner of canvassing votes.

SECTION 14. When the votes shall have been examined and counted, the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive; and that whenever the judges of said elections shall, upon canvassing the votes, find two or more votes folded together, the said judges shall in that case reject all votes thus folded, the number being expressed in words at full length, such entry to be made as nearly as circumstances will admit in the following form, to wit:

Form of entry.

"At an election held at the house of _____, in _____ town (or district) in the county of _____ and territory of Wisconsin, on the _____ day of _____ A. D. _____, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit: A. B. had _____ votes for delegate to congress. C. D. had _____ votes for member of the council, E. F. had _____ votes for member of the house of representatives. G. H. had _____ votes for coroner. I. K. had _____ votes for county commissioner, (and in the same manner for any other persons or officer voted for.)

Attest,

Certified by us.

A. B. }
C. D. } Judges of the election.
E. F. }

G. H. }
I. K. } Clerks of election."

The judges of the election shall then enclose and seal one of the poll books, under cover, directed to the clerk of the board of county commissioners, of the county in which such election is held, and the packet thus sealed shall be conveyed by one of the judges or clerks of the election to be determined by lot, if they cannot otherwise agree, and delivered to the said clerk of the board of commissioners, at his office within nine days from the close of the polls; and the other poll book shall be deposited with one of the judges of the election, to be determined as aforesaid. And the said poll book shall be subject to the inspection of any elector, who may wish to examine it. And if any judge or clerk of an election, after having been deputed by the judges of the election, at which he shall

Penalty for a failure to deliver poll book to the clerk.

have served as judge or clerk, to carry the poll book of such election to the clerk of the board of commissioners, shall fail or neglect to deliver such poll book to the said clerk, within the time prescribed by law, safe with the seal unbroken, he shall for every such offense forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered in the name of the commissioners of the county by an action of debt in the district court.

SECTION 15. On the twelfth day after the close of the election, or sooner if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of his county, shall proceed to open said returns, and make abstracts of the votes in the following manner: the abstract of the votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly, shall be on one sheet; the abstract of votes for county officers, shall be on another sheet. And it shall be the duty of said clerk of county commissioners, immediately to make out a certificate of election to each of the persons having the highest number of votes, for members of the legislative assembly, and county officers, respectively, and to deliver such certificate to the person entitled to it, on his making application for that purpose, to the clerk at his office: *provided*, that when a tie shall exist between two or more persons, for the council or house of representatives, the clerk of the board of commissioners shall give notice thereof to the sheriff of the county, who shall advertise another election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of commissioners of each county, on the receipt of the election returns, of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled for their services, and lay the same before the board of commissioners at their next session; and the said board shall order the compensation aforesaid to be paid out of the county treasury.

SECTION 16. If the requisite number of county officers shall not be elected, by reason of any two or more persons having an equal and the highest number of votes, for one and the same office, the clerk, whose

Time and manner of opening returns, &c.

Certificate of election.

In case of a tie.

Compensation of judges and clerks of election.

In case of a tie in county officers.

duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by the said clerk, who shall then and there proceed publicly to decide by lot, which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk shall make out and deliver to the person thus declared duly elected, a certificate of his election, as hereinbefore provided.

Clerk to forward abstracts to the secretary of the territory.

SECTION 17. The clerk of the board of commissioners, immediately after making out abstracts of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the office of the secretary of the territory; and it shall be the duty of the secretary of the territory, with the marshal of the territory, or his deputy, in presence of the governor, to proceed, within fifty days after the election, and sooner, if all the returns be received, to canvass the votes given for delegate to congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal number of votes, the governor shall order a new election.

In case of a tie for delegate to congress.

When secretary to send a messenger to clerk.

SECTION 18: If the returns of the election of any county in this territory, shall not be received at the office of the secretary of the territory, within thirty days after the day of election, the said secretary shall forthwith send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish the said messenger, with a copy of such returns; and the said messenger shall be paid out of the contingent funds of said territory, the sum of ten cents for each mile he shall necessarily travel in going to, and returning from, the office of the said clerk.

Resignations.

SECTION 19. Any person who shall receive a certificate of his election as member of the council or house of representatives, of the legislative assembly, coroner, or county commissioners, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or have taken the requisite oath of office; and when any vacancy shall happen in the office of members of the council or house of represen-

Vacancies, how provided for.

tatives of the legislative assembly by death, resignation, or otherwise, the governor shall issue a writ of election directed to the sheriff of the county or district, in which such vacancy shall happen, commanding him to notify the several judges of elections in his county or district, to hold a special election to fill such vacancy or vacancies at a time to be appointed by the governor: *provided*, that if there be no session of the general assembly, between the happening of such vacancy and the time of the general election, it shall not be necessary to order a special election, to fill such vacancy. And when any vacancy shall happen, in the office of sheriff, either by death, resignation or otherwise, the clerk of the board of county commissioners in which such vacancy shall happen, shall immediately notify the governor, that he may appoint some suitable person to fill such vacancy. And when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

SECTION 20. If any candidate of the proper county or district shall desire to contest the validity of any election, or the right of any person, declared to be duly elected, to hold his seat in the council or house of representatives, of the legislative assembly, such candidate shall give notice of his intention in writing to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within twenty days after the day of election, expressing the points on which the same will be contested, the name of one of the justices of the peace, who shall attend at the taking of the depositions; the place where, and the time when the said depositions will be taken; which time, so fixed upon for the taking of the depositions, shall not exceed forty days from the day of election; and the party whose election is contested, shall have a right to select another justice of the peace and the two justices so selected shall make choice of a third justice, and if they fail to agree upon a third justice to act with them, they shall proceed to select by lot a justice of the peace, who shall preside with them at the taking of such testimony. And the three justices thus selected, or a majority of them, shall have power, and they are hereby authorized, to issue sub-

Manner of contesting a seat in the legislative assembly.

pœnas to all persons whose testimony may be required, by either of the parties, commanding such person or persons to appear, and give testimony at the time and place therein mentioned, under the penalty of fifty dollars, to be levied on each and every delinquent who has been duly served with process: *provided, however,* that should the person whose election is contested, fail to nominate a justice as aforesaid, it shall be the duty of the justice nominated by the person contesting the election, as aforesaid to select a justice of the peace, who shall proceed as above stated. And if any witness or witnesses summoned as aforesaid, shall fail or refuse to appear at the time specified in said notice, it shall be lawful for said justices, or either of them, to issue an attachment against such witness or witnesses, and the testimony of him, her, or them, so failing or refusing to appear, may be taken at any time before the next session of the legislature thereafter, by giving five days' notice to the party whose election is so contested, and to the party contesting the same. And if any justice of the peace selected as aforesaid, to attend at the taking of the depositions, shall without reasonable excuse fail or refuse to attend, at the time and place appointed, after having undertaken to attend, he shall forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, to be paid into the county treasury. And the said justices when met, shall hear and certify under seal, all testimony relative to the said contested election, to the president of the council or speaker of the house of representatives, as the case may require. And no testimony shall be heard by the said justices, on the part of the person contesting the election, which does not relate to the points specified in the notice, a copy of which notice, attested by the person who served or delivered the same, shall be delivered to the said justices, and by them transmitted with the other documents to the president of the council, or to the speaker of the house of representatives, to which ever body the person whose election is contested belongs.

How election of
county officers
contested

SECTION 21. When any candidate shall desire to contest the validity of any election or the right of any person declared to be duly elected, to hold and exercise the office of coroner or county commissioner or any county officer, such candidate so contesting the

election as aforesaid, shall proceed in all respects in the manner prescribed in the foregoing section, except that said justices before named, after hearing and examining all testimony produced, as provided in the foregoing section, and having summed up the same, shall decide which of the said candidates shall, in their opinion, have been duly elected—and said decision shall be final—and certify the same to the clerk of the board of county commissioners of the proper county, who shall thereupon make out and deliver to the successful party, a certificate of his election; and all necessary costs accruing, in any contested election, shall be paid by the unsuccessful party, to be recovered by action of debt as in other cases.

SECTION 22. That when two or more counties are united in one council or representative district the clerk of the board of county commissioners of the county last established shall, within twelve days after the day of election, attend at the office of the clerk of the board of commissioners of the senior county and there, in conjunction with the clerk or clerks of the senior county or counties shall compare the votes given in the several counties composing such council or representative district. And said clerks shall immediately make out a certificate of the election of the person or persons having the highest number of votes in such counties for member of the council or house of representatives of the legislative assembly; which certificate shall be delivered to the person entitled to it, on his application to the clerk of the board of county commissioners of the senior county at his office.

When two counties compose one district.

SECTION 23. If any judge of the election, or clerk or any other officer or person, in any manner concerned in conducting the election, shall willfully neglect, improperly delay, or refuse to perform any of the duties required by this act after having undertaken to perform such duties, he shall forfeit and pay to the county the sum of forty dollars; and if such judge of election, clerk or other officer or person, in any wise concerned in conducting the election, shall knowingly admit any person to vote, not qualified according to law, or shall knowingly receive and count more than one vote from one person, at the same election, for one office, or shall be guilty of fraud, corruption or partiality in any matter or thing relating to said election,

Penalty for misconduct.

each and every person so offending shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any court of record in this territory, in the name of the board of commissioners of the proper county, for the use of their county, in an action of debt with costs of suit or at the suit of any person who may sue for the same, the amount recovered to be paid into the county treasury. And every such person so offending as aforesaid, shall moreover on conviction, be rendered incapable of holding any office within this territory, for the term of ten years thereafter. If any judges of election shall willfully refuse to receive the vote of any elector who has a right, according to the laws of this territory, to vote at the polls where such judges preside, and who being challenged, shall offer to take the oath prescribed in such cases by this act, such judges of election so refusing shall be liable to the penalty of fifty dollars, to be recovered by action of debt in the name of the territory, or of any person who may sue for the same, the amount recovered to be paid into the county treasury: *provided*, that nothing in this act shall be so construed as to prevent the judges from refusing to receive the vote of any person, when it shall be proven to the satisfaction of a majority of them that in taking the said oath he shall have sworn falsely. And if any judge of election shall order to be received the vote of any person, who being challenged, shall not take the oath or affirmation prescribed by law, such judge of election so offending, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt in the name of the territory, or of any person suing therefor, the amount recovered to be paid into the county treasury.

Proviso.

In case of vacancies in the legislative assembly.

SECTION 24. When any vacancy shall happen in the office of member of the council, or house of representatives of the legislative assembly, by death, resignation or otherwise, it shall be the duty of the clerk of the board of county commissioners of the county, if one county only compose the council or representative district, as soon as he shall be informed thereof, to notify the governor of such vacancy; and if there be more than one county comprised within the limits of such council or representative district, it shall be the duty of the clerk of the board of county commissioners of the senior county in such district so to noti-

fy the governor. And the governor immediately upon his receiving such notification shall proceed in the same manner as is prescribed for other cases in the nineteenth section of this act.

SECTION 25. There shall be allowed out of the county treasury of each county to the several judges and clerks of election, such compensation not exceeding two dollars per day, as the board of county commissioners shall deem proper to allow, and to the person carrying the polls from the place of election to the clerk's office, the sum of five cents per mile, for going and returning. The board of county commissioners shall also allow to the clerks of election such compensation as they shall deem just for any stationery such clerks may furnish for the purpose of the election. Compensation

SECTION 26. That for the purpose of holding the first election for county officers, the electors present at the polls of election at nine o'clock, a. m. on the first Monday in March next, shall nominate and elect by *viva voce* vote three judges of the election; and the judges so elected shall appoint two clerks for said election. In case of the absence of a justice or justices of the peace, the judges shall proceed to qualify each other as provided heretofore in this act, and open the polls of election, and conduct the same agreeable to the foregoing provisions of this act. First election

SECTION 27. The returns of the first election shall be made to the clerk of the district court; and said clerk shall proceed to canvass the returns and make out the certificates, as provided heretofore, for the clerk of the board of county commissioners to do; and he shall sign said certificates in his official capacity as clerk of the said district court. And if from any cause, a vacancy should exist in the office of the clerk of the district court of any county, or if the clerk should be absent from the county, then the returns of the first election shall be made to the sheriff of such county, who in such case shall be invested with the same powers given by this section to the clerk of the district court. Returns, how made.

SECTION 28. That the term of office of all county and township officers to be elected on the first Monday in March next, whose term by law is one year, shall expire at the next general election in August, and a successor shall then be chosen; that the term of those Term of office of county and township officers.

ected for two years shall expire on the first Monday in August 1839, and a successor shall then be chosen; and the term of those elected for three years shall expire on the first Monday in August 1840, and a successor shall then be chosen: *provided* that nothing herein contained shall be construed to vacate any office before his successor is duly elected and qualified.

Proviso.

Election precincts, how established.

SECTION 29. The county commissioners of each county at their annual meeting in April, shall proceed to establish as many election precincts or points at which general elections shall be kept open as they may seem necessary, to suit the convenience of the settlements, and give notice thereof immediately thereafter in a newspaper printed in the county, if there be one; if not, then by posting three notices thereof, in three public places within the county; and upon application to said commissioners at any time more than thirty days previous to an election, the county commissioners may appoint new election precincts.

SECTION 30. For the first election for county and township officers in March 1838, the sheriffs in each of the counties in this territory, shall at least fifteen days before said election, establish as many election precincts as they may deem proper and necessary; and they shall give at least fifteen days' public notice of such election, the places of holding the same, and the officers to be elected, according to the provisions of the third and fourth sections of this act; and such election shall be conducted in the manner prescribed in this act: *provided*, that the provisions of this or the two preceding sections shall not extend to the counties of Brown, Milwaukee or Racine, or to the counties attached to them for judicial purposes.

In case of vacancy in the legislative assembly.

SECTION 31. If a vacancy should occur in the council or house of representatives of this territory from any cause and if the county or counties composing the district in which the vacancy may have occurred, should have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at any such election who does not at the time reside within the limits of the

original county, or district in which such vacancy may have occurred: *provided* that nothing herein contained shall be construed to permit any person to vote, so residing within the said limits, who has not the other qualifications of a voter.

SECTION 32. In cases of elections to fill vacancies, as provided for in the preceding sections, the returns shall be made by the clerks of the board of county commissioners, of the different counties, within twelve days, to the office of the clerk of the board of county commissioners of the original county, composing the district, and certificates of election shall be made out and signed by the clerks of the boards of county commissioners of the different counties, in which such election may have been held. Returns, how made.

SECTION 33. All acts and parts of acts, contravening any of the provisions of this act, are hereby repealed. This act to take effect and be in force from and after its passage.

Approved Jan. 18, 1838.

No. 70.

AN ACT providing for the recording of town plats.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That when any county commissioners, or other person or persons, wish to lay out a town in this territory, or an addition or subdivision of out lots, said commissioners or other person or persons shall cause the same to be surveyed, and a plat or map thereof made, by the county surveyor, if any there be in the county in which said town or addition is situated; but if there be no county surveyor in the county, then and in that case by the county surveyor of an adjacent county; which plat or map shall particularly describe and set forth all the streets, alleys, commons or public grounds, and all in and out lots, or fractional lots, within, adjoining or adjacent to said town, giving the names, widths, courses, boundaries and extent, of all such streets and alleys. Plat, by whom made.

SECTION 2. All the in lots, intended for sale, shall What to embrace.