

Repeal.

SEC. 2. So much of section two (2), of chapter fifty-one, of the General Laws for the year one thousand eight hundred and fifty-nine, and of all other existing laws, which prohibits or does away with the drawing and summoning a grand jury to attend at the September term of the circuit court in and for the county of Winnebago, are hereby repealed.

Grand jury—
September
term of each
year.

SEC. 3. There shall be drawn and summoned a grand jury to attend at the term of the circuit court in and for the county of Winnebago, appointed by law to be held in the month of September, in each year, in said county of Winnebago.

Repeal.

SEC. 4. All acts and parts of acts conflicting with or contravening the provisions of this act, are hereby repealed, so far as they contravene and conflict with the provisions of this act.

SEC. 5. This act shall take effect and be in force from and after its passage and publication.

Approved March 31, 1860.

CHAPTER 331.

[Published April 3, 1860.]

AN ACT to protect certain counties, cities, towns, and villages.

Preamble.

Whereas, certain counties, cities, towns, and villages in this State, have, by authority of law, loaned their credit, in the form of bonds or other securities, to divers railroad companies, incorporated by the laws of this State, upon agreements by said corporations, respectively, with said counties, cities, towns, and villages, respectively, that said corporations should and would pay and discharge the principal and interest, secured by said bonds or other securities, or some part thereof, as the same should become due and payable, by the terms of said bonds, or other securities, and indemnify and save harmless the said counties, cities, towns, and villages, respectively, from and against all payments, liabilities, loss, damage, or expense on account of said bonds or other securities or some portion thereof; and

Preamble.

Whereas, some of said corporations have made, are making, and may hereafter make, default in said agreement with said counties, cities, towns, and villages, re-

spectively, and *whereas*, the present provisions of law are deemed inadequate to protect, fully, the rights of said counties, cities, towns, and villages, in the premises, therefore,

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

SECTION 1. That whenever any corporation, to which any county, city, town, or village, in this State, has loaned, or may hereafter loan, its credit, in form of bonds or other security, upon an agreement by said corporation to pay the whole or any part of the principal or interest of said bonds, or other securities, so loaned, as the same might or should become due, or at any other time or times, or to save said counties, cities, towns, and villages respectively, indemnified and harmless from and against the same or any part thereof, shall make default in said agreement, and fail to pay any part of the principal, or any part of the interest so agreed to be paid by said corporation, for twenty days after the same shall have become due and payable, and for the space of three days after payment of any part thereof shall have been demanded of the president, vice president, secretary, treasurer, or other officer, or agent of said corporation, at its principal place of business in this State, by any holder of any such bond or other security, or shall make like default in the payment of any portion of the principal or interest, due upon any other bond or obligation of said corporation, which shall be secured by mortgage upon any of the property or franchises of such corporation, prior to any mortgage on the same or any part thereof, given by such corporation to such county, city, town, or village, to secure such agreement of such corporation with such city, county, town, or village, it shall be lawful for such county, city, town, or village, to apply, by petition, as hereinafter provided, to the circuit court for any county through which, or through any part of which, such corporation shall have located, or shall be operating any part of its railroad, or in which such corporation shall keep its office and principal place of business in this State, for the appointment of a receiver of the rights, privileges, franchises, books, papers, records, and every kind and species of property, real and personal, and all things in action, vouchers, and evidences of indebtedness, of such corporation, wherever situate or being.

When rail-roads default in certain payments receiver may be appointed by court on petition of creditor.

Nature of petition.

SEC. 2. Such petition shall be in writing, and be signed by the petitioner, or its attorney, and shall state the amount of bonds, or other securities, loaned by such county, city, town, or village, to such corporation; the time or times when loaned; the amount by the terms of said bond past due, at the time of filing such [said] petition, and whether principal or interest; and the contract or agreement of said corporation to make payment of any principal or interest, secured by said bonds or other securities, or to indemnify, [indemnify] and save harmless, said county, city, town, or village, therefrom, or from any part thereof, and the amount of indebtedness of said corporation, if any, which is secured upon the property or franchises of such corporation, or any part thereof, by mortgage or otherwise, prior to any mortgage or other security, or any part thereof, to such county, city, town, or village, as mentioned in section one of this act; and that said corporation has neglected to pay some part of the said principal or interest for more than twenty days after the same became due; and that said corporation has neglected to pay some specific sum due on some of said bonds or other securities, for three days after the same has been demanded, as aforesaid; and said petition shall demand the judgment of said court in favor of said petitioner, against said corporation, for the full amount of principal or interest due upon the whole of said bonds or other securities so loaned, and by such corporation agreed to be paid, as aforesaid, and also for the full amount of said indebtedness of said corporation, secured by prior mortgage or other lien, as aforesaid. Said pe-

Petition to be verified by affidavit and filed in the office of clerk of court.

How served.

tion shall be verified by affidavit, that the same is true to the knowledge, or in the belief, of the person making such affidavit, and shall be filed in the office of the clerk of said court, and a copy thereof shall be served upon said corporation, by delivering the same to the president, vice president, secretary, treasurer, or other officer of said corporation, or any agent of said corporation conducting its affairs in this State.

Filing of petition, commencement of suit in favor of creditors.

SEC. 3. From the filing and service of said petition, as provided in the proceeding [preceding] section, the same shall be deemed the commencement of an action in favor of such petitioner, as plaintiff, against said corporation, as defendant, for the benefit of said petitioner, and all owners and holders of said bonds, or other securities, upon which any payment of principal or interest

shall have been due, and remain unpaid, more than twenty days before the filing and service of said petition.

SEC. 4. The said corporation shall answer said petition, within twenty days after service of copy of said petition, as provided in this act. Said answer shall be in writing, and shall be verified by the affidavit of some officer of said corporation, that the same is true to the knowledge, or within the belief of the officer making said affidavit, [and] shall be filed in the office of the clerk of said court, and a copy thereof shall be served upon the petitioner, or his attorney. And said answer shall be deemed to admit every allegation in said petition, which it does not deny, and shall fully state, and set forth, the amount or amounts which said corporation may have paid upon said bonds, or other securities mentioned in said petition, and when paid, and whether principal or interest, and upon what instalment paid, and how much remains due and unpaid by said corporation on said bonds, or other securities, described in said petition. And said answer may also set forth any matter which does or will release and discharge said corporation from obligation to pay the whole or any part of the sum for which judgment is demanded in said petition, or which does or may show that said corporation is not legally bound to pay the whole or any part of the sum for which judgment is demanded in said petition. And if said corporation shall neglect to answer said petition, and file and serve a copy of the same, as above provided, within twenty days after service of said petition, said court shall deem said petition confessed by said corporation, and shall thereafter, on motion of the petitioner, render judgment against said corporation, as demanded in said petition.

Corporation to answer.

Nature of answer.

Filed.

How answer construed.

What answer may set forth

Neglect to answer.

SEC. 5. Within ten days after the filing and service of a copy of said answer, as above provided, the said petitioner may demur, or reply to said answer, or to any part or parts thereof, or may demur to a part or parts thereof, and reply to other part or parts thereof; and any issue of law or facts thus created, shall be tried and determined, as by law provided for the trial and determination of issues of law and fact in civil actions.

Demur or reply to answer.

Issue of law or facts—how tried.

SEC. 6. If no issue of law or facts shall be created by the answer, or by the answer and reply, then the court shall, on motion of the petitioner, render the judgment demanded in said petition, and if any issue or issues of law, or of fact, shall be so created, and after trial thereof, as hereinbefore provided, it shall appear that said cor-

When issue of law or facts is created.

When issue of law and facts created. Corporation has neglected, as stated in said petition, to pay any sum or sums mentioned in said petition, which said corporation ought and is bound to pay, then said court shall render judgment, as demanded in said petition, for such amount as shall appear to be so due and unpaid.

Trial as in civil actions. SEC. 7. After issue or issues, joined in said proceedings, as in this act provided, the trial thereof shall be conducted, and may be continued for cause shown, as in civil actions.

Judgment a lien on all rights, &c., of road. SEC. 8. Whenever the court shall, in any proceeding, provided for in this act, render judgment against said corporation, said judgment shall be, from the rendition thereof, a lien and incumbrance upon all rights, privileges, franchises, property real or personal, things in action, and assets of said corporation, and shall be enforced in the same manner as is provided by law for enforcing judgments in civil actions, except as otherwise provided in this act.

How enforced. SEC. 9. At any time after the filing and service of said petition, as in this act provided, the petitioner may apply to the court in term time, or to the judge thereof in vacation, (giving at least five days notice to said defendant of said application,) for the appointment of a receiver, according to the prayer of said petition. And if said court or judge shall be satisfied, upon such application, that the county, city, town or village petitioning in said petition, has loaned its credit to said corporation, in form of bonds or other securities, upon an agreement by said corporation to pay the principal or interest on said bonds or other securities, or any part thereof, as the same shall fall due, or at any other time or times, or indemnify [indemnify] and save said county, city, town or village harmless from and against all liabilities, loss, or expense on account thereof, or on account of any part thereof; and that said corporation has neglected to pay any sum of principal or interest which it has, as aforesaid, agreed, and is legally liable to pay, for more than twenty days after the same has become due and payable, and that any part thereof has been demanded; as in this act provided, and after such demand remains unpaid for more than three days thereafter, then it shall be the duty of such court, or judge forthwith to appoint some suitable person receiver, as prayed in said petition, who shall give a bond to the said petitioner and said corporation, as joint obligees, in such sum as such court or judge shall then and there order, conditioned for the faithful

Apply for appointment of receiver. SEC. 9. At any time after the filing and service of said petition, as in this act provided, the petitioner may apply to the court in term time, or to the judge thereof in vacation, (giving at least five days notice to said defendant of said application,) for the appointment of a receiver, according to the prayer of said petition. And if said court or judge shall be satisfied, upon such application, that the county, city, town or village petitioning in said petition, has loaned its credit to said corporation, in form of bonds or other securities, upon an agreement by said corporation to pay the principal or interest on said bonds or other securities, or any part thereof, as the same shall fall due, or at any other time or times, or indemnify [indemnify] and save said county, city, town or village harmless from and against all liabilities, loss, or expense on account thereof, or on account of any part thereof; and that said corporation has neglected to pay any sum of principal or interest which it has, as aforesaid, agreed, and is legally liable to pay, for more than twenty days after the same has become due and payable, and that any part thereof has been demanded; as in this act provided, and after such demand remains unpaid for more than three days thereafter, then it shall be the duty of such court, or judge forthwith to appoint some suitable person receiver, as prayed in said petition, who shall give a bond to the said petitioner and said corporation, as joint obligees, in such sum as such court or judge shall then and there order, conditioned for the faithful

Receiver to give bond.

performance of his duties as such receiver, and that he will pay or deliver over all money or property, or other things of value, that may come to his hand as such receiver, according to the order of said court. Said bond to be signed by at least two sureties, who shall each justify to the full amount of said bond; or by more than two sureties, who shall justify to an amount in the aggregate of twice the penal sum of said bond, and said bond shall be filed in the office of the clerk of said court.

Sureties.

SEC. 10. Said receiver, from and after the filing of his said bond, shall be deemed seized, and possessed, as receiver as aforesaid, of all the rights, privileges, franchises, books, records, papers, and every kind and species of property, real or personal, and all things in action, vouchers and evidences of indebtedness of such corporation, wherever situate or being. And it shall be the duty of each and every officer, agent, and employee of said corporation, to deliver up the same, or any part thereof, to said receiver, on demand, and any refusal so to do, on the part of any such officer, agent or employee, shall be considered a contempt, and punished accordingly by said court. And said receiver shall operate the railroad, and other property which may come to his hands, as aforesaid, in the most advantageous manner, and receive the rents, tolls, and income thereof, and pay the expenses, of such operating; and, from time to time, as required by said court, file an account of his receipts and disbursements, and pay over the nett proceeds in his hands to said court.

Receiver to be seized of all rights, privileges, franchises, &c., of road.

Receiver to operate road, &c.

SEC. 11. All moneys so paid out to said court, shall be applied by said court, to pay, first, all costs of said proceedings, including allowance to said receiver, as said court shall deem reasonable and allow, and the surplus thereof shall constitute a fund for the satisfaction of said judgment, in the manner hereinafter provided. After the rendition of said judgment, said court shall, by order, require said petitioner to cause notice to be published in some newspaper printed at Madison, in this State, and also in some newspaper printed in said county where said court is held, or if no newspaper is printed in such county, then in some newspaper printed in some other county, but not in the county of Dane, to be named in the order of said court; which notice shall contain a brief statement of the proceedings on said petition, to judgment inclusive; and further state, that on a certain day, to be appointed by said court in said order, not less than three

How court to apply moneys.

Petitioner to publish notice.

Nature of notice.

months from the date of said order, the said court will make distribution of any surplus of said fund then remaining in court, among such holders of said bonds or other securities, described in said petition, as shall, before said appointed day, apply to said court by petition therefor, *pro rata*, upon all bonds or other securities, which are a first lien upon said property, and franchises, or any part thereof; then, *pro rata* upon such as are a second lien thereon, or any part thereof, and so on with each succeeding class of said indebtedness, paying each class in full in the order in which they are liens upon said property, and franchises, or any part thereof. And in case said indebtedness shall constitute several liens upon different divisions, sections, or portions of said railroad, property, and franchises, then the surplus arising from each division, section, or portion, to be distributed to pay the indebtedness, which constitute liens upon the same, in the order above provided; the revenue arising from each of such divisions, sections, or portions, being charged with its proportion of costs and expenses, as the court shall direct; which notice shall be printed, as aforesaid, at least six successive weeks before the day appointed for such distribution; and on the day appointed, as aforesaid, or on some subsequent day, as the court may direct, (proof being made, to the satisfaction of said court, of the printing of said notice, as required by this act,) the court shall make distribution, as mentioned in said notice, by order, to be entered by the clerk of said court, in the records of said court; and the amount so distributed shall be deemed a satisfaction of a like amount of said judgment. After the first distribution, as provided by this act, the court may, at such time or times as it shall deem just, and upon such notice as it shall direct, declare and make other distributions from said fund, as hereinafter provided, until said judgment shall be fully satisfied, together with all fees, costs, and allowances made by said court and said proceeding.

Notice to be printed six weeks.

Distribution to be made.

Other distributions.

Additional powers to receiver.

How only execution issued

SEC. 12. The said receiver shall have, in addition to the rights and powers expressly conferred upon him by this act, all other rights and powers of a receiver of a judgment debtor, appointed in proceedings supplementary to execution.

SEC. 13. No execution shall be issued on said judgment, unless by order of said court, on reasonable notice to such corporation; and if said court shall direct execution or executions to be issued, the same shall be levied

and returned as other executions are, by law, directed to be levied and returned, but the sheriff shall pay any money, made on any such execution, into said court, and the same shall be added to said fund, and, as a part thereof, be distributed, as in this act provided. Money to be paid into court to be added to fund.

SEC. 14. The said receiver shall remain in full possession and power, as hereinbefore provided, until said judgment shall be fully paid and satisfied, as in this act provided; and, thereafter, all the rights, privileges, franchises, property, things in action, or effects or assets of said corporation, remaining in his hands, shall revert and be, by him, immediately returned and delivered to said corporation. Receiver to remain in possession until judgment is fully paid.

SEC. 15. This act shall be beneficially construed to effectuate the purposes intended hereby; and in any particular not in this act regulated, said court may, by order, provide what steps shall be taken, and what remedies allowed, to accomplish the purposes hereby intended to be accomplished, which shall be as nearly as may be in analogy to proceedings in civil actions. Act, how construed.

SEC. 16. All general laws or special acts enacted in this State, and all charters of any and every corporation in this State, and all acts and laws amendatory of any charter or act of incorporation of any railroad company, or other corporation in this State, are hereby so far altered and repealed as may be necessary to give full and perfect effect to all the provisions in this act contained, but no further. Other acts altered or repealed.

SEC. 17. When any railroad corporation shall give security, to the satisfaction of the court, for the payment of annual interest on the bonds of any city, county, town or village, issued in aid of such corporation, within such time as the court shall direct, the order appointing a receiver shall be vacated. R. R. giving security vacate the appointment of receiver.

SEC. 18. The provisions of this act shall not affect, or in any way impair, any lien or remedy now secured, or provided for, by virtue of any mortgage which may have been executed by any railroad corporation, previous to the execution of any mortgage by said company to any city, county, town or village. This act not to affect any lien or remedy now secured, &c.

SEC. 19. This act shall take effect and be in force from and after its passage.

Approved April 2, 1860.