

[No. 181, A.]

[Published March 26, 1878.]

## CHAPTER 206.

AN ACT to amend and extend an act entitled "An act to incorporate the Apple River Log Driving Company," approved March 6th, 1868.

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

SECTION 1. Section one of chapter four hundred and thirty of the private and local laws of this state for 1868, is hereby amended by striking out of said section the words "ten years," and inserting in lieu thereof the words "twenty years," and the said act and the rights, privileges and franchises thereby conferred, or which may have been acquired or become vested thereunder and under the acts amendatory thereof, are hereby confirmed, continued and extended for the period of ten years, or until the first day of July, 1888: *Amended.*  
*Franchises continued and extended.*  
*Appointment of agent or attorney.*  
*provided, that the said company shall, within sixty days from and after the passage and publication of this act, duly execute in its corporate capacity, and file in the office of the clerk of the circuit court, in and for the county of St. Croix, an instrument designating and appointing an agent or attorney resident in said county and authorizing said agent or attorney to accept service of process for said corporation in all suits and cases against said corporation, and said company shall at all times during the existence of its charter keep an agent or attorney as in this proviso required, and all services of summons or other process upon such agent or attorney shall be held and deemed to be a good and valid service upon said corporation for the purpose of giving the courts of Wisconsin jurisdiction over the same.*

SECTION 2. Section eleven of said chapter four hundred and thirty is hereby amended so as to read as follows: Section 11. The said Apple River Log Driving Company is hereby authorized and empowered to receive and take possession of all logs or timber coming down or driven down the said Apple river or any of its tributaries, at the several points in the following section named, and drive all such logs and timber down said river to the mouth thereof, and at all times after receiving possession as aforesaid, shall be deemed to continue in and be entitled to the absolute, entire and exclusive possession of such logs or timber wherever the same may be, until all fees for driving and costs, charges and preferred liens thereon are fully paid, and *Amended.*  
*Powers of company.*  
*Possession.*

Lien.

the said log driving company may be and is hereby authorized to demand, receive, levy, sue for, recover and collect from the owner or owners of all such logs or timber the prices per thousand feet hereinafter prescribed for all logs and timber that may be driven by said company, and the same shall be due and payable as follows, one-half when they reach the west line of section twenty-eight in township thirty-one north, range nineteen west; and the other half when said logs shall have reached the St. Croix boom. And the same shall be and remain a lien upon all such logs, and also of all logs of the like mark, cut the preceding logging seasons wherever the same may be, until the amounts for driving due upon said logs are fully paid and satisfied; and if the said amount is not fully paid within ten days from and after a majority of the said logs shall have passed into the said St. Croix boom, then the said company may assume possession of said logs or any of the same wherever the same may be, and may demand and recover the same from any boom or other place, and may proceed to sell the same at public auction by posting up a notice of the time and place of such sale in the office of the surveyor general of the first timber district of Minnesota, ten days before the time thereof, and publishing a like notice in some weekly newspaper, printed and published in the city of Hudson, county of St. Croix, Wisconsin, once in each week for two successive weeks prior thereto, and out of the avails of such sale to retain sufficient to pay the amount due from said driving, with interest, and all costs of taking possession of, keeping, caring for and selling the same, and of the overplus, if any, to turn over to the owner of such logs, and if he be not certainly known, then to be deposited in the office of the clerk of the circuit court of St. Croix county, Wisconsin, for the benefit of such owner.

Limitation of tolls.

SECTION 3. The said company shall not charge for driving logs, boomed in Blake's Lake, more than one dollar and fifty cents per thousand feet, and shall drive logs boomed in Big round Lake at the same price, and shall drive logs boomed in Bone Lake for one dollar and sixty cents per thousand feet, and the gates in the dam authorized to be maintained in said company shall not be shut down in any year between the fourth day of July and the first day of September.

Length of logs to be driven.

SECTION 4. No logs shall be cut for the purpose of being driven down said Apple river of greater length than fifty feet, nor into Bone or Blake's lake for such

purpose of greater length than thirty-two feet: *and provided*, if logs of greater length shall be driven to such points without the consent of said company first obtained in writing, said company may, at its option, leave the same at any point on said river and collect as for the same driven to the said point near the mouth of Apple river, or it may drive the same and charge double the foregoing rates for such driving. All the logs to be so driven shall be scaled in the woods by the surveyor-general of the fourth lumber district of Wisconsin, whose certified scale bill shall be final and conclusive between the parties, the costs of such scaling to be borne by said company, and the fees for driving shall be computed from such scale; *and provided further*, that all the tolls for sluicage at any dam now chartered or that may hereafter be chartered by the legislature of the state of Wisconsin shall be paid by the parties owning the logs and lumber against which such sluicage may be charged, and the said company may collect the same, should it so elect, at the same time and manner it is authorized to collect for driving as aforesaid: *provided, however*, that nothing herein contained shall be construed as authorizing said company to charge fees for driving logs which they have not actually driven.

Scaling of logs.

Tolls for sluicage.

SECTION 5. In case said company, for the purpose of its organization and operation, shall need to occupy or cause the overflow of any land, or damage any property belonging to another, the said company may acquire by purchase the right to occupy, flow, use and enjoy any such land or property; and if the said company, in any case, shall be unable to agree with the owner upon the terms of such purchase, or upon the compensation and damages to be paid for the occupation, overflow, or right to occupy and overflow any such land or any interest therein, the said company may have any such land or any interest therein condemned or taken for its use and benefit in the manner following: The judge of the circuit court for the county in which said property is situated, shall, upon the petition of said company containing a description of the land or other property or any interest therein so sought to be acquired or condemned, appoint three disinterested freeholders, resident in said circuit, as commissioners to ascertain, adjudge and determine the value of the land or property so taken or proposed to be taken, or any interest therein, and the damage which the owner thereof sustained by reason of such

Possession of overflowed lands, how acquired.

taking. The person so appointed shall take an oath faithfully to examine said lands or other property, and impartially and fairly to estimate and appraise the value thereof, and the damage the owners will sustain from such taking. Before proceeding to make such appraisement, said commissioner shall give at least ten days notice to the owners and occupants of the land so proposed to be taken and condemned, if known. If such owners be unknown or absent from the county, or non-resident, or if from any cause, a personal notice cannot be made in the county, then said notice may be given by printing and publishing the same once in each week, for two consecutive issues of some weekly newspaper printed and published in the county where such property is, and if no such paper be printed in such county, then in some paper printed and published in an adjoining county. If such owner be a minor or *non compos mentis*, or otherwise under disability, such service may be made upon the guardian of any such owner as the circuit judge may order; such commissioners shall proceed to view the premises or property so proposed to be taken and shall hear the allegations of the parties and shall determine the value of each piece of property so proposed to be taken, or the damages to each owner or party interested therein as will result from the contemplated taking. They shall make report in writing, signed by them or a majority of them, of their valuations and appraisements, and file the same with the clerk of the circuit court in the county where the said property is situated. The said clerk upon the filing of the determination of the said commissioners shall attach the same to the petition and order appointing the said commissioners, and the notice and proof of service of the same upon the owners or parties interested in said land. Upon depositing with said clerk the amount determined upon and awarded by said commissioners, if their determination and award be not appealed from, and if the same be appealed from, then the amount finally awarded by the court, the said company shall become, by virtue of said determination, possessed and vested with the right to occupy, use, flow, or cause to be overflowed, land or property described in said petition, leaving the fee simple title in said owners: *and provided further*, that if the said determination or award be appealed from, said company may, notwithstanding, proceed to take and use the property condemned, upon making and filing with

said clerk a bond in such sum as said circuit judge shall prescribe, with sureties not less than two, who shall be freeholders, resident in the state of Wisconsin, to be approved by such judge, conditioned that said company will abide the final determination of said appeal and will pay whatever sum it shall be determined upon said appeal that it ought to pay to the said owners, together with cost, if the said sum, as finally fixed, is greater than the amount awarded by said commissioners. If the said company shall occupy, use, overflow, or cause to be overflowed, for the space of thirty days, any land or other property as aforesaid, without filing their said petitions for the appointment of said commissioners, any owner of property so taken, used, occupied, flowed or caused to be overflowed, may file a petition for the appointment of said commissioners, and the same proceedings shall be had on said petition as herein provided, upon the petition if filed by the said company: *provided*, that the proceedings on said petition to the final judgment, if made by any land owner, shall be conducted at the expense of said company. Either party may appeal from the award of said commissioners to the circuit court for said county within thirty days from the filing thereof, by serving notice upon the adverse party or agent or attorney, and filing a bond, with sureties, to be approved by said judge, to pay the costs of said appeal, if unsuccessful thereon: *provided*, that no owner or occupant of said land so appealing shall be required to give a bond on such appeal as a precedent condition of the prosecution of the same, in a greater sum than one hundred dollars. On such appeal the party appealing shall be entered as party plaintiff, and the action shall proceed, and the appeal shall be considered as an action pending, and shall proceed as other actions at law. If the award finally made in said court upon such appeal be the amount or less than the amount awarded by the commissioners, the party owning the property shall pay costs of appeal, and if more, the company shall pay the same.

SECTION 6. Nothing in this act contained shall be construed as affecting the rights of said company or of any owner or occupant of land flowed by said company under any contract or agreement heretofore entered into between said company and such owner or occupant, it being the intention hereof to leave the said company and the other parties to such contracts in the same situation as to rights under the same as if this act had not been passed.

Construction  
of act.

SECTION 7. This act shall take effect and be in force from and after its passage and publication.

Approved March 15, 1878.

[No. 250, S.]

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### CHAPTER 207.

AN ACT to amend chapter four hundred and fifty-two of the private and local laws of Wisconsin for 1869, entitled an Act to incorporate the Nomakagon and Totogatic Dam Company, and the several acts amendatory thereof.

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

Amended.

Dams authorized to be constructed.

SECTION 1. Section eleven of chapter four hundred and fifty-two of the private and local laws of 1869, as amended by chapter one hundred and sixty-four of the private and local laws of 1870, and by chapter four hundred and five of the private and local laws of 1871, and by chapter four hundred and five of the laws of Wisconsin for 1876, and chapter one hundred and twenty-four of the laws of Wisconsin for 1877, is hereby amended so as to read as follows: Section 11. Said company, for the purpose of improving the several streams and rivers hereinafter mentioned, and the navigation thereof, is hereby authorized and empowered to construct three several dams across the Namakagon river as follows, to wit: One at such point as may be deemed necessary in town forty-three, range six; another at such point as may be deemed necessary in town forty-one, range eight; and another at such point as may be deemed necessary in town forty-one range ten; also a dam across the Totogatic river at such point as shall be deemed necessary in town forty-two or forty-three, range twelve; also a dam across the Eau Claire river at such point as shall be deemed necessary in town forty-four, range ten; also a dam across the St. Croix river at such point as shall be deemed necessary between the mouth of the Eau Claire river and the mouth of the Moose river; also four several dams across the Yellow river, as follows: One at such point as shall be deemed necessary in town forty, range sixteen; another at such point as shall be deemed necessary in town thirty-nine, range fourteen; another at such point as shall be deemed necessary in town