

[No. 154, S.]

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CHAPTER 318.

AN ACT to amend section 1777 of chapter 86 of the revised statutes of 1878, relating to additional powers of peculiar corporations.

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

SECTION 1. Section 1777 of chapter 86 of the revised statutes of Wisconsin for the year 1878 is hereby amended so as to read as follows: Section 1777. Any corporation formed under this chapter in whole or in part, for the improvement of any stream and driving logs therein, or for holding or handling logs therein, which shall have taken prior possession of such stream for that purpose, shall have power to improve such stream and its tributaries, by clearing and straightening the channels thereof, closing sloughs, erecting sluice ways, booms of all kinds, side rolling and flooding dams, or otherwise, if necessary; but shall in no case, in any manner, materially obstruct or impede navigation upon such stream, or erect any dam or other obstruction below the head of steamboat navigation, or obstruct any navigable slough, except with the written consent of the owners of the entire shores on both sides thereof. Every such corporation which shall so improve a stream and so keep in repair and operate its works as to render driving logs to the mouth thereof reasonably practicable and certain, may charge and collect reasonable and uniform tolls upon all logs, lumber and timber driven or floated on the same, to be fixed by the directors, and may take possession of all logs put into such stream or upon rollways so as to impede the drive, when the owners thereof or their agents shall not have come upon the stream adequately provided with men, teams and tools, for breaking the rollways and driving such logs in season for making a through drive down such stream, without hindering the main drives; and shall also, at the request of the owner of any logs and timber put into said stream, take charge of the same, and drive the same down and out of such stream, and charge and collect therefor of the owner or party controlling said logs and timber, reasonable charges and expenses for such services. And such corporation shall, for all such tolls, costs and expenses have a lien on the logs for which the same were incurred, and may seize, in whosoever possession found, and hold a sufficient amount thereof to pay the same,

Improvement
of streams and
powers of com-
panies or cor-
porations in re-
lation thereto.

Ten days' notice to be given.

and make sale thereof, upon giving ten days' notice in the manner provided for notifying sales on execution upon the judgment of justices of the peace, or may enforce such liens as other log liens are enforced, according to these statutes. No injunctive order shall be granted to prevent the use or enjoyment of any such improvement, or abate any such dam necessary thereto, unless such corporation shall fail for sixty days after judgment to pay any damages recovered for any injury done by or in consequence of its works. Any corporation formed for the improvement of a stream which is in whole or in part a boundary between this and an adjoining state and authorized to drive logs or maintain booms or dams in such stream, shall have authority to purchase and hold stock in corporation or corporations in such adjoining state created for similar purposes upon the same stream, or to consolidate or otherwise unite with such corporation or corporations in such adjoining state whenever the purposes for which the corporation in this state is organized can be better effected thereby; provided, that no such purchase or consolidation or other union shall be made without the assent of holders of three-fourths of the capital stock of such first named company.

May overflow lands.

Any corporation created and existing under any laws of this state, in whole or in part for any or either of the purposes above specified, and any corporation owning or controlling dams, booms or improvements designed in whole or in part to accomplish any of the purposes above specified, shall have the power to overflow all such lands as shall be necessary for its use, and to acquire title thereto for such purpose by purchase as hereinafter provided, but in case such corporation and the owners of any such lands cannot mutually agree for the purchase, lease, or use thereof, or any easement therein, that may be necessary for such corporation, or the compensation to be made for taking any property for the use of said corporation, then either the said corporation or the owner of any lands so required may apply by petition to the circuit court of the county in which such lands shall be situated, or to the presiding judge thereof, which petition shall be signed and verified by the owner of such land or his attorney, or the attorney or some officer of such corporation, and shall contain a description of the land sought to be taken, used, overflowed or acquired for such purpose, the names of the parties who own and occupy the same,

and if any such persons are infants, their age, as near as may be, and if any are of unsound mind or unknown, such fact shall be stated, with such other facts as may be material, which petition shall be filed in the office of the clerk of the circuit court of the county in which such real estate is situated, and shall be the commencement of a suit in such court. The court, or the presiding judge thereof, shall by order prescribe the notice to be given of the time and place of hearing such petition; which order shall state the date of filing such petition, and the object thereof, and shall contain a description of the lands described therein, and be directed to the parties therein named, and to all persons interested in said lands so far as known; and may be served personally on such owner or owners or parties interested or at their usual abode not less than five days before the time fixed for such hearing, or by publication in some newspaper to be designated by said court or presiding judge, not less than ten days before the time so fixed for the hearing thereof. At the hearing of such petition, any person whose estate or interests are to be affected by said proceedings may show cause and be heard against granting the prayer thereof, and if it shall appear that any such person is an infant, idiot, or person of unsound mind, the court or presiding judge may, upon reasonable notice to his guardian, if any he has, and if not, without further notice, appoint a guardian ad litem, to act for such infant, idiot or person of unsound mind, in such proceeding, and may require him to give proper security. The court or presiding judge shall hear the parties interested, and may adjourn such hearing from time to time, as shall be convenient, and if no sufficient cause is shown against granting the prayer of the petition, shall make an order appointing three disinterested and competent freeholders residing in the same or some adjoining county where the premises to be appraised are situated, as commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate described in said petition ordered to be taken, overflowed or used in such county for the aforesaid purposes, by such corporation, and may fix therein the time and place for their first meeting. The said commissioners shall before entering upon the discharge of their duties take and subscribe an oath to support the constitution of the United States and the constitution of the state of Wisconsin, and faithfully to discharge their du-

Notice to be prescribed by judge.

May show cause.

Commissioners to be appointed.

Shall subscribe an oath.

Manner of conducting the proceedings.

ties as such commissioners to the best of their ability. Whenever requested in writing by or on behalf of such corporation, or any person the owner of or person interested in any tract of land described in such petition, but not otherwise, they shall proceed to perform their duties in respect to the lands mentioned in such request, and shall cause notice to be given to each party interested in the proceeding of the time when and place where they will meet to determine the amount of compensation to be paid for taking, overflowing or using such land for the aforesaid purpose, which notice shall be personally served on such party or his authorized agent or attorney, or guardian ad litem, or by leaving the same at his residence or place of business with a person of suitable age and discretion, at least six days before the time of such meeting, and if any such party is a non-resident of this state or his residence is unknown and he shall have no authorized agent or attorney in this state known to such commissioners, such notice shall be published in some newspaper, to be designated by said court or presiding judge, for such length of time prior to such meeting as such court or presiding judge shall direct. The commissioners shall preserve and file proof of service of such notices, or of the appearance of such parties before them, either personally or by attorney, with their report. They shall view such of the premises described in the petition as shall be mentioned in said written request, and hear the allegations of the parties, and shall appraise, ascertain and determine the value of each such tract or parcel of land taken, overflowed or required for flowage purposes by such corporation, with the improvements thereon, and of each separate estate therein, and the damages sustained by the owner by reason of the taking, overflowing and use thereof, and fix the amount of compensation to be made therefor to each of such owners or parties interested therein. A majority of the commissioners being present, all of them having been notified, shall be competent to determine any matter before them, and they shall within twenty days after so viewing any lands so taken, used, overflowed or required, make and file in the office of the clerk of the circuit court of such county, a report of their proceedings concerning the lands mentioned in any such written request, making separate reports in relation to the lands of each separate owner, setting forth the amount awarded therefor, or for any separate estate

therein, to the owner or owners thereof, or parties interested therein. Said commissioners shall be entitled to such compensation as the court or presiding judge may direct, to be paid by such corporation. Within thirty days after the filing of such report, any person or party deeming himself aggrieved thereby, may appeal to such circuit court by filing in the office of the clerk thereof a written notice of appeal, whereupon such appeal shall be considered an action pending in court, subject to a change of the place of trial, and an appeal may be taken from any order or judgment therein to the supreme court, as in other actions; the owner of such lands in respect to which the award appealed from was made, or other persons interested therein, shall be considered the plaintiffs therein, and in such corporation the defendant. Such appeal shall be tried by jury, unless a trial thereof by jury is waived by both parties, and costs shall be allowed to the successful party on such appeal; and if the award in favor of the plaintiff be increased, to be added to the amount of the verdict and included in any judgment thereon; if it be decreased, in favor of the defendant, and be deducted from the amount of such verdict, and judgment shall be rendered according to the rights of the parties. Any report of the commissioners shall be recorded by the clerk of the court in whose office the same is filed in the judgment book, and at any time after the filing of such award, such corporation may pay to the owner or owners or parties interested in the land so taken or required, or to the clerk of said court for his or their use, the amount or amounts awarded by the commissioners, and thereupon such corporation may enter upon, take, overflow and use such land for the purpose for which it was so required; and such court, or presiding judge, may thereupon, upon notice of three days, award a writ of assistance to put such corporation into possession of the same, and may, upon such corporation giving security in such additional amount as shall be deemed proper, to pay any judgment which shall be recovered against it, award such writ, pending any appeal; if such corporation be in possession, or be put in possession of such land pending an appeal, the owners or parties entitled thereto, shall be entitled to receive the money paid to the clerk of the court on account of the award appealed from without prejudice to their appeal; but if such corporation shall have appealed, such money shall only be so withdrawn upon such owners or parties en-

Compensation
of commission-
ers.

Report to be re-
corded.

Action in case
corporation has
appealed.

titled to receive the same, filing a bond in such sum, and with such surety, as shall be approved by the court or presiding judge, to repay the amount by which such award shall be abated with costs. If such corporation shall omit to pay the amount so awarded into the court, or to pay into court the amount of any final judgment which shall be rendered on any appeal from such award, the party interested in such award may have judgment thereon, and may have execution on any such judgment, without motion. If any defect of title to, or incumbrance upon any portion of the premises shall be suggested in such petition, or any party to said proceeding, or any person not a party, shall petition the court or presiding judge, setting up a claim adverse to the title set out in said petition to said premises, or to the money, or any part of it, to be paid as compensation for the lands so taken, used or overflowed, the court shall hear and determine the rights of the parties to said money, and for that purpose may order a reference or an issue to be tried by a jury. Either party may except to the decisions of the court or presiding judge, and appeal to the supreme court in like manner as in civil actions, upon which judgment may be rendered and costs awarded, as in other cases. When no appeal shall be taken from any award within the time provided by law, and the corporation shall have paid the amount thereof into court, or filed a receipt therefor, duly signed by the owner, and acknowledged before an officer authorized to take the acknowledgement of deeds in the office of the clerk of the court, or when, after the determination of such appeal, the corporation shall have paid into court the amount of the judgment rendered thereon, or filed a receipt therefor as aforesaid the clerk of said court shall make a minute of such payment, or on the filing of such receipt, at the foot of the record of the report of such commissioners, in the judgment book of said court; and thereupon the exclusive use of said premises, and every part and parcel thereof, shall vest in such corporation, its successors and assigns, so long as used for the purposes of said corporation, without any other or further act, deed or conveyance; and said record, or a certified copy thereof, shall be *prima facie* evidence of such title in all courts and places. In case such corporation shall not have acquired title to the lands upon which it shall have heretofore constructed its dam, or any part thereof, such corporation may proceed to acquire or perfect such title in the manner

Either party
may except.

In case corpor-
ation shall not
have acquired
title.

heretofore provided, and at any stage of such proceedings the court at which the same may be pending, or the presiding judge thereof, may authorize such corporation, if heretofore in possession, by permission of the owner, to continue in possession and use and overflow such lands as have heretofore been overflowed during the pendency of such proceedings, and may stay all actions or proceedings against such corporation on account thereof, on its paying into court a sufficient sum, or giving such security as such court or presiding judge may direct, to pay the compensation therefor when finally ascertained; and in every such case the party interested in such lands or property may institute and conduct the proceedings to a conclusion, if such corporation delays or omits to prosecute the same, at its cost and expense, but no injunction to restrain the completion or operation of said dam shall be granted until such compensation has been fixed and determined. The court or the presiding judge thereof shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this chapter, as may be necessary, or to cause new parties to be added, and to direct such further notices to be given to any party in interest, as such court or presiding judge may deem proper, and also to appoint other commissioners in place of any who shall die, or refuse or neglect to serve or be incapable of serving, and shall apply to all such proceedings the practice in civil actions so far as may be, and the court shall have plenary power over the same, and may make or render any order or judgment that may be necessary to conduct and bring any such proceedings to a proper conclusion; provided, that this act shall not apply to any dam owned, controlled, leased to or by any municipal corporation or the lands flooded by such dam.

Proceedings to be conducted to a conclusion.

SECTION 3. All acts or parts of acts interfering or conflicting with, or in any wise contravening the provisions of this act, are hereby repealed, and this act shall be in force from and after its passage and publication. Repealed.

Approved March 30, 1882.