

CHAPTER 272.

[Published April 20, 1861.]

AN ACT to more clearly determine the rights of joint owners of water powers, and to regulate the uses thereof.

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

SECTION 1. In cases of disagreement between the owners of water powers, holding as joint tenants or tenants in common, in respect to the use of the waters thereof, or the repairs of dams or other structures required to operate the same, the circuit courts of this state, in addition to the powers heretofore exercised by them, shall have power, upon application for that purpose, as hereinafter provided, to appoint one or more commissioners, not exceeding three in any one case, to make partition of said water between the respective owners thereof, and to apportion the expense of repairs according to the rights of the respective parties.

Circuit courts may appoint commissioners to partition water, &c.

SECTION 2. It shall be the duty of the party or parties coming under the provisions of this act, to proceed in all respects as provided in chapter 142 of the revised statutes, entitled "Of the partition of lands owned by several persons," for the purpose of bringing in the respective parties interested in such water power; and upon the appearance of said parties, or upon due proof that the said parties have been summoned or notified as provided in said chapter 142, the court in which the proceedings shall be pending, shall, upon its being shown to be necessary, in order to determine the rights of said parties, by an order (to) appoint commissioners as aforesaid, and (to) empower and direct them to examine into the matters complained of, and upon reasonable notice to the owners or occupants of the water power, to enter upon and take control of the mills, machinery, flumes, gates, wheels and other appurtenances of said water power, and to exercise such reasonable control of the same as will enable said commissioners to ascertain the respective rights of the parties, and to determine the manner of using, applying and preserving the same.

Manner of proceeding.

May take control of mills, &c.

SECTION 3. It shall be the duty of such commissioners, upon accepting their appointment, to take an

Duties and powers of commissioners.

oath before some person authorized to administer oaths, for the faithful performance of their duties, and to proceed with reasonable despatch to investigate the matters complained of; to examine witnesses touching such matters, for which purpose either of said commissioners shall be authorized to administer oaths to such witnesses; to apply such tests to ascertain and determine the rights of the respective parties, and the manner of using and exercising those rights, as the nature of the case may require, interrupting as little as may be, the operations of the owners or occupants of such water power in the use thereof; to determine the rights of said parties, and the manner of the use thereof, and to report their determination, with all the facts and a full statement of their experiments, and the evidence taken by them, to the court from which they received their appointment; such determination to be binding upon the parties until changed or modified by the court.

To report to court.

Order and judgment of court.

SECTION 4. Upon the coming in of the report of such commissioners, and upon hearing the parties, the court before which the proceedings are pending, shall make such order and enter such judgment as the respective rights of the parties shall require, confirming or modifying the determination of said commissioners, or for the purpose of more fully determining the rights of such parties, may continue such commissions, and upon reasonable notice, on the application of either party interested, order a re-examination of the matters complained of, and from time to time modify its judgment, until the rights of the parties and the manner of exercising the same shall be fully settled and defined.

Trial by jury and appeal.

Nothing herein contained shall be construed to deprive parties of the right of trial by jury upon questions of fact properly triable by jury, or of the right of appeal from any such order or judgment as is subject to appeal in other cases.

Orders for costs, &c.

SECTION 5. The court before which such proceedings are pending, may, in its discretion, from time to time, make such orders as may be necessary for the payment of the commissioners herein provided for, and the other costs and disbursements therein, and may apportion the same among the respective owners, in the ratio of their respective interests.

SECTION 6. This act shall take effect and be in force from and after its passage and publication.

Approved April 15, 1861.