

exclusive right and privilege, for the period of ten years, of keeping and maintaining a ferry across the Wisconsin river, at the village of Germantown, in the county of Juneau, at the place where said Hughes now maintains a ferry, and no ferry shall be established within three miles of the ferry so maintained by said Hughes.

SECTION 2. Such ferry shall be subject to the same Rates of toll. regulations as shall or may be provided by law for the government of ferries, and the rates of toll shall lie [be] from time to time determined by the board of supervisors of the county of Juneau, in the manner provided by law.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved March 31, 1863.

CHAPTER 327.

[Published May 2, 1863.]

AN ACT to authorize the erecting, keeping and maintaining [of] a dam across the Honey creek.

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

SECTION 1. It shall be lawful for, and Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, their heirs and assigns, are hereby authorized to erect, perpetuate, keep and maintain a mill dam across the Honey creek, in the northeast quarter of section number seventeen, (17,) township number nine, (9,) north of range number six (6) east, in Sauk county, in said state of Wisconsin, at a hight not exceeding eight feet. Authority to build dam.

SECTION 2. The said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, their heirs and assigns, or any person or persons, their heirs or assigns, whose lands or property may be or have been injured by being overflowed, or liable to be overflowed, by reason of the erection and maintenance of said mill dam, may, and they are hereby authorized, at any time with-

Duties of commissioners.

in one year from and after the passage of this act, and not after, to apply to the county judge of Sauk county to appoint three disinterested persons as commissioners to assess the damages herein provided for; and upon such application, the said county judge shall appoint three disinterested persons, residents and freeholders of said county of Sauk, to act as commissioners, (which said commissioners shall each be duly sworn for that purpose, by any person having legal authority to administer oaths,) whose duty it shall be, and they shall proceed to make an examination of all the lands overflowed, or lands upon which the water shall be set back or liable to be set back by reason of the erecting and maintaining, or keeping up and maintaining said mill dam, and make an award in writing, in which they shall award to the owner or owners of any such overflowed land or lands upon which the water shall be set back or liable to be overflowed or set back, the amount of damages to which such owner or owners of said land or lands shall be entitled by reason of the keeping up and maintaining, or erecting and maintaining said mill dam. Said commissioners shall meet within sixty days from the time of their appointment, (unless such time shall be extended by an order of said county judge, for cause shown,) to make their examination and award by virtue of this act; and the owner or owners of such lands shall be notified to appear before them at the time and place of such meeting, and shall be entitled to be heard before said commissioners, in regard to the amount of damages by them sustained in consequence of the erecting and maintaining of said mill dam, or the keeping up and maintaining of said mill dam. Such notice shall, at least ten days before such meeting, be served personally, or by leaving a copy thereof at the residence of the owner or owners of the lands aforesaid, or upon the said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, as the case may be; and in case the owner or owners of said aforesaid land or lands injured by the erecting and maintaining, or the keeping up and maintaining of said mill dam, or in case (of) the said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, their heirs or assigns, or either of them, as the case may be, shall be non-residents of the said county of Sauk, or in case the residence of the

Notice of meeting of stockholders.

said parties, or any of them, shall be unknown to the said commissioners, then and in that case the said commissioners shall cause a notice to be published in a weekly newspaper, published in said county of Sauk, for six weeks successively next prior to such meeting, which notice shall specify the time and place and object of such meeting, and the said commissioners, upon such examination, may hear any evidence that may be offered by any party interested in relation thereto, and either of said commissioners shall have legal authority to administer oaths to any witnesses who may be produced before them to give evidence in relation to such damages.

SECTION 3. The decision and award of said commissioners shall be final, unless appealed from as provided for in this act, and the said award, together with due proof of the service of the notice or notices upon the owner or owners of said lands, shall be filed in the office of the clerk of the circuit court for said county of Sauk, and shall be *prima facie* evidence of the regularity of said proceedings; and the said award shall be and remain a lien upon the mills and dam, with their appurtenances, and the land under and adjoining the same, from and after the application made to the county judge aforesaid for the appointment of commissioners, as provided in this act: *provided*, that such lien shall not extend to any sum due more than three years before the time of applying for the appointment of commissioners as aforesaid; and the owner or owners of said overflowed lands may, upon motion, and within one year from the filing as aforesaid of said award or awards, have judgment for the amount of the award made by said commissioners in favor of the party making such motion, and execution thereon to enforce such judgment and lien, together with such costs and disbursements as are now by law allowed in similar proceedings; *and provided, further*, that if any of said awards shall remain unpaid for three months from the date of filing the same, unless appealed from, the party or parties aggrieved by such non-payment shall be at liberty to proceed by writ and to procure an injunction restraining the use and operation of said mills, until such award or awards, with costs, shall be fully paid; *and provided, further*, in case of such non-payment,

Award of damages.

Award a lien, &c.

said mill dam shall be liable to be treated as a nuisance, and to be proceeded against under the law for the abatement of nuisances.

Appeal.

SECTION 4. Any person or persons considering himself or themselves aggrieved by the award of said commissioners, may appeal therefrom within twenty days from the time of filing of such award, to the circuit court held in and for the county of Sauk, in the same manner as is provided for appeals from the decision of commissioners appointed to adjust the demands and claims against the estate [estates] of deceased persons. When the said appeal shall be so perfected, the said court shall have full power to hear and determine the same, and the same proceedings shall be had to determine the damages so sustained and for perfecting judgments thereon, as in actions for damages originally commenced in said circuit court: *provided, however,* that the owner or owners of overflowed lands aforesaid, so appealing from the award of the said commissioners assessing his, her or their damages, shall pay all costs and expenses of said appeal, in case the damages as determined in the said circuit court shall not be for a larger sum than that awarded by the said commissioners.

Costs of appeal.

Action for damages for overflowing lands, &c.

SECTION 5. No suit or proceeding at law or in equity shall be hereafter brought, prosecuted or further maintained, except as provided for in this act, against the said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, or any of them, their heirs or assigns, for any injury or damages arising from the overflowing or setting back of water upon any land or lands by reason of the erecting and maintaining, or keeping up and maintaining of said mill dam, from and after the passage of this act: *provided, however,* that the owner or owners of said overflowed land or lands, who shall have commenced actions against the said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, or any of them, for damages sustained by them or any of them, by reason of the overflowing of their or any of their lands, and to whom the commissioners aforesaid shall award damages pursuant to the provisions of this act, shall also be entitled to the costs incurred by them in and about the prosecution of said actions, and the same may be included in the award of said commissioners.

Proviso.

SECTION 6. In the notice provided to be given by the owner or owners of overflowed lands for the application for the appointment of commissioners, he, she or they shall particularly describe the lands claimed to be injured by such flowage, and shall state therein the amount of damage claimed on account of the same; and the said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, or any of them, their heirs or assigns, may, within six days after the service of said notice, tender him, her or them a sum in gross for his, her or their damages by reason of the erecting, maintaining and perpetuating the said mill dam; and if the sum so tendered shall not be accepted, and the said person or persons to whom the said tender shall be so made, shall proceed to have his, her or their damages assessed in the manner provided in this act, and the amount so assessed by the said commissioners, or in the said circuit court an [on] appeal, shall not exceed the amount so tendered, the said person or persons so instituting said proceedings shall pay all costs and expenses of the same.

Description of lands overflowed, and tender of damages, &c.

SECTION 7. Whenever the said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, their heirs and assigns, shall have paid and satisfied or tendered the amount of the award or awards of said commissioners, or the amount of any judgment or judgments which may have been entered thereon in the circuit court in case of an appeal or otherwise, as provided in this act, to the person or persons entitled to the same, or whenever the amount tendered to any person or persons as and for his, or their damages shall be accepted without assessment, the right to flow, overflow or set water back by means of said mill dam upon said lands upon which the damages shall be so assessed and paid or tendered or agreed upon and paid, shall become and be permanent in the said Rufus Merrihew, Alexander M. Morrill and Samuel H. Conklin, their heirs and assigns, without any further liability, interference or molestation whatever.

When right to flow lands shall vest in company.

SECTION 8. If the notice required to be served on the parties shall not be personally served on them in the cases provided for in this act, they or their representatives shall, on application and sufficient cause shown at any term before judgment, be allowed to

Defense of action.

defend the action; and they or their representatives may in like manner upon good cause shown, be allowed to defend after judgment at any time within one year after notice thereof and within three years after the filing of the award, on such terms as shall be just; and if the defense be successful and the judgment or any part thereof shall have been collected or otherwise enforced, such restitution thereof may be enforced as the court shall direct.

Per diem of commissioners.

SECTION 9. The commissioners provided for in this act shall be entitled to receive for each day actually spent about such business, the sum of three dollars each.

SECTION 10. This act shall take effect and be in force from and after its passage.

Approved March 31, 1868.

CHAPTER 328.

[Published May 2, 1868.]

AN ACT to authorize D. W. Montgomery to keep and maintain a ferry across the Mississippi river.

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

Exclusive right, &c.

SECTION 1. D. W. Montgomery, his heirs, executors, administrators and assigns, shall have the exclusive right and privilege for the term of five (5) years, of keeping and maintaining a ferry across the Mississippi river, in sections eleven (11) and twelve, (12,) of town twenty-three, (23,) in range sixteen (16) west, of Pepin county.

Tariff.

SECTION 2. The ferry shall be subject to such regulations as other ferries are or may be by law, and the proprietor thereof shall be entitled to receive for crossing any vehicle drawn by two horses or one yoke of oxen, one dollar, and for each additional horse or ox, fifteen cents; for any vehicle drawn by a single horse, seventy-five cents; for every single horse and rider, or single ox, cow or mule, ten cents; for each foot passenger, fifteen cents; for sheep and swine in droves of