

SECTION 4. This act shall take effect and be in force from and after its passage.

Approved March 22, 1865.

CHAPTER 190.

[Published May 4, 1865.]

AN ACT to amend chapter 101 of the private and local laws of the year 1857, entitled "an act to incorporate the Wolf river boom company, and to repeal chapters 101 and 540 of the private and local laws of the year 1856," and to repeal chapter 48 of the private and local laws of the year 1862, entitled "an act to amend an act entitled 'an act to incorporate the Wolf river boom company,' and to repeal chapters 101 and 540 of the private and local laws of the year 1856."

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

SECTION 1. Said boom company are hereby authorized and empowered to construct, maintain and keep a boom or booms on the Wolf river or any of its bayous, for the purpose of storing logs, timber or other articles or materials, at any point or points between Lake Poygan and section seventeen (17,) town twenty-two (22) north, and range fifteen (15) east; and shall also be empowered to make a cut across what is known as "Ox-bow bend" on said river, above the village of Northport, in the county of Waupaca, for the free passage of boats, rafts and cribs of all descriptions; and shall also be empowered to boom the said Wolf river at the head and foot of said cut: *provided*, that said booms shall in nowise interfere with the free navigation of said river. And it is further provided, that the said boom company shall put in the above mentioned booms in a substantial manner, and shall be held liable for any damage that the owners of logs may sustain from their neglect to keep their booms in proper repair; and said company shall hang all necessary booms for storing and rafting logs within the limits of their jurisdiction.

Further power of company.

SECTION 2. Owners of logs or timber shall drive their logs or timber into such booms or bayous as the

Where logs, &c. shall be driven.

boommaster of said company may direct; and said boommaster shall have the power to stop any or all drives of logs or timber, by giving timely notice to parties having charge of the said drives. Parties having charge of said drives of logs or timber, shall stop the same until said boommaster shall notify them that such boom or booms as are designed for their occupation, are in readiness. But if said parties shall disregard said notice of said boommaster to stop their drives, then said owner or owners of said logs shall assume all the risk, liability and responsibility of securing said logs or timber; and if booms below on said river are not in readiness to receive said logs, owing to their being occupied by other logs, or are not of sufficient capacity to hold said drives, then said owner or owners of such logs and timber shall run said logs into what is known as "Cut-off bay," and such logs and timber shall be liable, and said boommaster may proceed to collect, (in addition to said drift boomage of ten cents per thousand, bound [board] measure,) such an amount of charges as is incurred in so storing said logs. Said boommaster may proceed to collect the same in the way and manner prescribed in section four of this act. And it is expressly provided, that the above mentioned logs and timber shall be in the sole care and custody, risk, liability and responsibility of the owner or owners thereof, except as in sections one and five of this act expressly provided. And it is also provided, the above mentioned boommaster shall be appointed by the president of said company immediately after their annual election of officers.

Exclusive right
of booming.

SECTION 3. Said boom company shall have the exclusive privilege and the right of booming and occupying all bayous and such portions of the shore of said Wolf river as are or may be necessary for the safe storage of logs, timber or other materials, or for rafting purposes, between points mentioned in section one of this act.

Boomage fees.

SECTION 4. The said boom company shall be entitled to have and receive ten cents per thousand feet, board measure, upon all logs, timber, floating materials or other articles or materials floating or running in or through any of the booms of said company, or received or stored in any such booms. And the boomage fee and all other claims which said company may have un-

Lien, &c.

der the provisions of this act, (or that of which this is amendatory,) shall be a lien upon such logs, timber or floating material, and upon any boards, lumber or articles into which the same may be manufactured. And the said company shall be entitled and authorized without process of law, to seize, wherever the same may be found, take and keep possession of, any such logs or timber, or other materials, (or any boards, lumber or articles into which the same may be manufactured,) against which said company may have any such boomage, demand or claim, or upon which they may have such lien. And said company at any time when it shall deem advisable, (after said boomage, claim, demand or lien shall become due and payable,) enforce the collection on and payment of any such demand, claim, boomage or lien, out of and from such logs, timber or materials, (or any boards, lumber or articles into which the same may have been manufactured,) by selling the same at public auction, or any part of the same, in the city of Oshkosh, Winnebago county, Wisconsin, after giving twenty days' notice of such sale in some newspaper published in the cities of Oshkosh and Fond du Lac, and in some paper published in the county of Waupaca, and after serving a copy of said notice upon the owner or owners of any such logs, timber or materials, if known to be within the county where such sale is to be made, and to apply the avails and proceeds of any such sale to the payment of such boomage, claim, demand or lien, and the costs, charges and expenses of seizing, taking and keeping, advertising and selling, with reasonable attorney and counsel fees, returning the residue, if any, to the owner or owners of such property. And the affidavit of the publisher, printer or foreman of any newspaper, (in which any such notice of such sale shall be published,) of the publication of any such notice of sale, shall be entitled to be used in evidence in all courts of justice in this state, and in all proceedings before any officer, body or board, and shall be *prima facie* evidence of such publication, and of facts stated therein; and no person or persons, company or corporation, shall be entitled or permitted to bring, commence or prosecute in any of the courts of this state against said company or any of its officers, stockholders, agents or employees thereof, any suit, action or proceedings for the recovery of any logs,

May sell logs, &c.
for fees.

Notice of sale.

No action for recovery of such logs, &c. after one year.

timber or other materials, (or the boards, lumber or articles into which the same may be manufactured,) so seized, taken and sold under the provisions of this act, (or of that of which this is amendatory,) or for the recovery of any claim, demand or damages for taking, seizing or selling any such property under the provisions of this act, (or that of which this is amendatory,) after the expiration of one year from and after such sale, and the selling of the same as herein provided. And hereafter all person or persons, company or corporation, shall be forever barred from bringing any suit, action or proceedings, and further, no action, suit or proceedings shall be commenced or prosecuted in any of the courts of this state against said company or any of its officers, stockholders, agents or employees, for any negligence, carelessness, omissions, malfeasance or malpractice of said company, or any of its officers, agents or employees, in carrying out, using or enjoying any of the franchises, powers, rights, duties or privileges of said company under this act, (or of the act of which this is amendatory,) after the expiration of two years from the time any cause of action shall accrue to any such person or persons, company or corporation, against said company or any of its officers, agents, stockholders or employees, from any such negligence, carelessness, omissions, malfeasance or malpractice of said company, or any of its officers, agents or employees, as aforesaid, but thereafter all such persons, corporations or companies shall be forever barred from bringing any such actions or proceedings.

No action to be brought against the company for carelessness, &c. after two years.

In case logs, &c. are not rafted with reasonable dispatch.

SECTION 5. Owners of logs and timber shall raft the same with the greatest reasonable dispatch, but if in the opinion of the boommaster, they employ more time than is necessary in rafting out the same, or fail to furnish their due proportion of men to do the same, or to do other work that is necessary for the prosecution of said rafting, or the safety of the logs, then said boommaster, without any liability or responsibility on the part of said company, may let the rafting of the same to some person or company, who shall be entitled to receive and collect for such rafting, not to exceed fifty (50) cents per thousand, board measure, exclusive of drift boomage, material necessary for rafting, or such charges as are provided for in section two of this act. And it is provided, that the expense incurred

Expenses of "catch-marking," &c.

in "catch marking," and other expense that is necessary (in the opinion of said boommaster) for the prosecution of the work, or for the safety of the logs, shall be a *pro rata* lien on all logs in any drive being rafted as above; and any person or company having charge of the same under the direction of the boommaster, may collect the same in the way and manner, to wit: as is provided for boomage in section four of this act; and any person or company so rafting or performing such other work as is necessary for the prosecution of the work or for the safety of the logs, shall have a lien upon any such logs and timber or other materials, and may enforce the collection in the way and manner as is provided for collection of boom charges in section four of this act. And all logs, timber or other materials while in storage in any of the booms of said company, shall be in the exclusive control, care, custody and charge, (except where so rafted as above,) and at the sole risk, liability and responsibility of the owner or owners thereof, (except as provided in section one of this act.) And said company or boommaster shall have no control, care, charge, custody, risk, liability or responsibility thereof, except as is in this section and in section one of this act expressly provided. And it is further provided, that if any person or persons having charge of any drive of logs fail to furnish sufficient trip tenders, (*that*) said boommaster shall employ the same; and it is provided, that the expense so incurred shall be a *pro rata* lien on the drive of logs on which said work is done, and collection made and enforced as is provided in section four of this act.

Control of logs,
&c.

SECTION 6. Said boommaster shall provide suitable boom timber and material for rafting all prize and stray logs, and any person or company rafting logs out of said booms, shall raft said stray and prize logs in a suitable manner, and shall receive for so rafting, the same rate per thousand feet as provided for rafting in section five of this act. And said boommaster at such time as he may deem proper, may sell at the city of Oshkosh the same at public auction, after giving twenty (20) days' notice in some newspaper published in the cities of Oshkosh and Fond du Lac, of the day of sale, and shall divide the proceeds of the sale of said prize logs *pro rata* among the owners of logs and timber rafted by them, after deducting costs of rafting,

Rafting prize
and stray logs.

Sale of same for
charges.

Account of sale, towing, advertising, scaling and selling the same. And *Ac.* it is further provided, that said boommaster shall cause an impartial survey of the stray logs to be made, and the mark of each log and the scale of the same, and the price for which it was sold, entered in a distinct manner in a book to be kept at the office of the said company, in the city of Oshkosh. Said boommaster, officer or agent of said company having charge of the same shall, pay on demand all persons or companies owning said stray logs, the proceeds of the sale of such logs to be sold as aforesaid, after deducting costs of rafting, towing, scaling, advertising and selling the same; and it shall be deemed a misdemeanor, and punishable with a fine not to exceed fifty dollars, for any person to mark a prize log while logs are in said boom.

Company may take lands, &c.

If owners and company cannot agree as to damages, commissioners to be appointed to appraise same.

Award of commissioners.

Appeal.

SECTION 7. In case said company, for the purpose of its said business or organization, shall need any land, or it shall be necessary for the company to occupy any land for such purpose, (the necessity of which the said company shall be the sole judge,) and said company shall be unable to agree with the owner or owners thereof, as to the value of said land, or the damage which such owner or owners sustain by reason of the company or any person under it, occupying said lands for the purpose of its organization, or for rafting, booming, sorting or storing any logs, the said company may have any such lands condemned, as follows: The circuit judge of the (10) tenth judicial district of the state of Wisconsin, may, upon the application of said company, or any of its officers, appoint three commissioners to adjudge the value of such lands, or the damage which the owner or owners thereof may sustain by reason of its being used for the purposes aforesaid; and said commissioners shall file their award or judgment in the office of the clerk of the circuit court of Winnebago county, state of Wisconsin. Such company shall after they have deposited the amount of such award in the office of said clerk of said county, be entitled to occupy and enjoy the said land for the uses and purposes aforesaid. The said company, or the owner or owners of said land, or any parties interested, may appeal from such award to the circuit court of Winnebago county; and in case the said company shall appeal from such award, and shall not reduce the

amount of award, the company shall be liable for the costs of appeal. If the award is decreased, they shall be entitled to costs. If any other person shall appeal, unless the award shall be increased, such person shall pay costs of appeal. If it shall be increased, then appellants shall be entitled to costs of appeal. And the said company shall be entitled to have any lands which they may deem necessary for the uses and purposes of said company, condemned; and upon the payment in full into the office of the clerk of the circuit court of Winnebago county, the value of such lands, as found by such commissioners, or by such court as aforesaid, the title in fee of such lands shall vest in the said company. When title shall vest in company.

SECTION 8. Said company shall keep a book at their office in the city of Oshkosh, in which all marks of logs and timber shall be recorded, that are put in and run from the Wolf river and its tributaries. Mark book.

SECTION 9. Chapter 43 of the private and local laws of the year (A. D.) 1862, entitled "an act to amend an act to incorporate the Wolf river boom company, and to repeal chapters 101 and 540 of the private and local laws of the year (A. D.) 1856," is hereby repealed, and all parts of acts contravening the provisions of this act, are hereby repealed. Repeal.

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

Approved March 23, 1865.

CHAPTER 205.

[Published May 4, 1865.]

AN ACT to incorporate the Depere and New York iron company.

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

SECTION 1. That G. Lee Stout, Nelson Dunham and A. T. Stout, of New Jersey, Latmer Bailey and Walter Lawton, of New York, Samuel L. French, of Massachusetts, and Joseph G. Lawton, of Wisconsin, and their associates, shall be and they are hereby created Corporators.