

CHAPTER 39.

[Published March 30, 1867.]

AN ACT to amend chapter 352 of the general laws of 1864, entitled "an act to provide for a tract index."

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

Time to procure index books extended.

SECTION 1. That chapter 352 of the general laws of 1864, entitled "an act to provide a tract index," is hereby amended, by adding a new section, to stand as section 4, and shall read as follows: "Section 4. The provisions of sections one and three of the abovenamed chapter, are hereby extended to June, 1867, and December, 1867, respectively."

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved March 23, 1867.

CHAPTER 40.

[Published April 1, 1867.]

AN ACT to encourage the cultivation of cranberries.

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

Dams may be built over streams, &c.

SECTION 1. It shall be lawful for any person or persons owning or occupying lands within this state adapted to the culture or growing of cranberries, to build and erect, keep up and maintain such dam or dams upon and across any stream, ditch, sluice, slough or any other body of water, as shall be necessary for the purpose of flowing said marsh land.

Drains may be dug.

SECTION 2. It shall also be lawful for any such person or persons to dig, construct and keep open upon, across and through any lands below said marsh land, all such drains and ditches as shall be or become necessary for the purpose of draining and carrying off the water from such marsh land whenever it shall be desirable so to do.

SECTION 3. Whenever any damage shall be suffered by or occasioned to the owner or owners of any land or lands which shall be overflowed by reason of the building, keeping up and maintaining of any such dam, or to the owner of any lands below said dam, by reason or on account of the digging, constructing and keeping open any such drain or ditch as is by section two of this act authorized to be made, the person or persons so building, keeping up and maintaining such dam, or digging, constructing and keeping open any such drain or ditch, shall be liable to the persons whose lands are so injured for the full sum of damages so sustained by the means aforesaid, to be ascertained and determined as hereinafter provided.

Damage to lands to be paid.

SECTION 4. Whenever any person shall claim damages, sustained by him by reason or on account of the flowage or ditching of his land in the manner and for the purpose hereinbefore provided, and shall be unable to agree with the person or persons whose liability to pay the same is by this act declared, upon the amount to be paid to him or them in satisfaction of the damages resulting or to result to the person or persons so claiming damages, then the question of compensation shall be submitted to arbitrators in the following manner, to wit: The person or persons claiming damages shall select one disinterested arbitrator, and give notice thereof to the person or persons from whom such damages are claimed, who shall also, within ten days after the receipt of such notice, select one disinterested person, not of kin to any of the parties interested in keeping up and maintaining said dam or dams, ditch or ditches, drain or drains, to act as arbitrator, and shall also give notice thereof to the claimant and to each of the persons so selected as arbitrators.

If parties cannot agree, arbitrators to be appointed.

SECTION 5. It shall be the duty of the persons so selected as arbitrators, upon being so notified that they have been so selected, to appoint a time within twenty days thereafter when and a place where they will meet to consider and determine the amount of damages which the complainant ought to have and receive; and for that purpose they shall agree upon an indifferent third person as an arbitrator to act with them, and the three arbitrators so chosen shall be and they are hereby empowered to go upon and view the premises, and hear proofs and allegations of the parties in inter-

Arbitrators to view premises and make statement of damages awarded.

est; and the said board of arbitrators, or any two of them, shall make duplicate statements of the proceedings had by them, and of the amount by them ordered to be paid to the party so complaining, and deliver to each party to said controversy one copy thereof.

Damages to be paid within twenty days unless appeal be taken.

SECTION 6. It shall be the duty of the party required by any such award or determination of said arbitrators to pay any sum of money as damages as before provided, to pay the same within twenty days after the delivery to him of a copy of said award, unless the opposite party shall within ten days after the delivery of said copy appeal to the circuit court of the county in which said injury or some part thereof shall accrue, from the award as is hereinafter provided, and unless the party required to pay the said sum shall himself appeal to said court from said award in like manner.

How appeal may be taken and action tried.

SECTION 7. If either party to said award shall not be satisfied with the sum so awarded, he may within ten days after the delivery to him of a copy thereof, as before provided, serve upon either of said arbitrators notice that he appeals therefrom to the circuit court of the proper county, stating the county; whereupon the said arbitrators, or any two of them, shall within ten days thereafter make, under their hands, a full statement of the proceedings had by them and of the award made by them, and file the same with the clerk of the said court, upon the receipt of which it shall be the duty of said clerk to enter upon the calendar of said court an action in which the claimant shall be plaintiff and the party from whom damages are claimed shall be defendant; and thereafter said action shall be deemed at issue in said appellate court, and shall be proceeded with therein according to the rules and practice of said court for the trial of issues of fact, and judgment shall be entered therein in like manner and with like effect as in other civil actions at law.

Upon payment of judgment drain may be maintained.

SECTION 8. If upon the trial of said action judgment shall be had in favor of the plaintiff, and it shall be paid by the defendant within sixty days next succeeding the entering thereof, or in case the same shall within the time aforesaid be removed by either party thereof to the supreme court, then within sixty days next succeeding the affirmance thereof by said last named court, then and in that case the persons so erect-

ing said dam or dams, digging such ditch or ditches, drain or drains, shall have the perpetual right to maintain and keep the same in good condition and repair, and shall not, nor shall their assigns, be liable to the payment of any further damages on account of any such dam, ditch or drain so made as aforesaid.

SECTION 9. In all cases arising under the provisions of this act, in which an appeal from the award of arbitrators shall be taken by the claimant, and no more damages are recovered by the final judgment of the court in the case than were by said arbitrators awarded to him, said complainant shall pay all costs of the appeal, and all such costs as shall accrue in the action subsequent thereto; and in case an appeal shall be taken by any person required by said award to pay damages, and an amount shall be recovered by the final judgment of the court in the case equal or greater in amount than was awarded against him, then and in all such cases such party shall pay all costs of the appeal and those in the action subsequent thereto. Costs.

SECTION 10. The arbitrators provided for by this act shall be entitled to have and receive for their services three dollars per day each, to be paid to them in whole or in part by either party to any proceeding had before them, as they or any two of them shall in and by their award determine: *provided*, that in all cases if either party shall appeal from said award, the party so appealing shall, at the time of serving notice of said appeal, pay to the arbitrator upon whom such notice is served, the amount of the fees of all said arbitrators, and one dollar state tax, which last named sum said arbitrators shall pay to the clerk of the court (*of the court*) to whom their return [is] by this act directed to be made, at the time of making the said return. Per diem of arbitrators, &c.

SECTION 11. Any person claiming damages on account of any dam, ditch or drain authorized by this act to be made, shall recover the same in pursuance of the remedy hereby provided, and not otherwise. Damage to dams &c.

SECTION 12. In all cases arising under the provisions of this act, in which it shall be necessary to serve notice upon any person who may be out of this state, or whose whereabouts shall not be known to the person desiring to serve the same, it shall be lawful to serve such notice upon any agent or employee of the party upon whom such service is to be made, who may Service of notice.

be found within this state, and the service so made shall have the same effect as if it were made upon said party in interest.

SECTION 13. This act shall take effect and become of force from and after its passage and publication.

Approved March 25, 1867.

CHAPTER 41.

[Published March 26, 1867.]

AN ACT to amend section 1 of chapter 305 of the general laws of 1865, entitled "an act relating to evidence, and amendatory of section fifty-one of chapter one hundred and thirty-seven of the revised statutes."

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

Parties may be examined as to conversation, &c.

SECTION 1. Section one (1) of chapter three hundred and five (305) of the general laws of 1865 is hereby amended, by adding thereto the following words: "*provided*, that a party may in all cases be examined as a witness in relation to any conversation, transaction or matter as to which the opposite party has given evidence upon the trial, and which did not occur or take place with or in the presence of such deceased or insane person or persons otherwise legally incapacitated from giving testimony, and in relation to any matter or thing as to which the deposition or testimony of such deceased person, taken in his lifetime, shall be given in evidence upon the trial."

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 26, 1867.