

CHAPTER 57.

[Published March 6, 1868.]

AN ACT to authorize the Chicago and Northwestern railway company to execute a certain trust.

WHEREAS, In 1859 or thereabouts, the Chicago and Northwestern railway company issued to divers persons aiding in the construction of its railroad from Fond du Lac northerly, convertible land grant certificates, entitling the holders thereof to receive 240 sections or 153,600 acres of land, which the said company should receive on the completion of the first 20 miles of its railroad northerly from the city of Fond du Lac; and

WHEREAS, Such certificates entitled the holder thereof to receive such a proportionate share of said lands as the amount of money for which the same was given and expressed therein bore to \$1,840,000 appraised value thereof; and

WHEREAS, The said company has completed said 20 miles of road and received such lands; and

WHEREAS, The owners and holders of many of these certificates are unknown and cannot be ascertained, therefore, for the purpose of enabling said company to make an equitable disposition of such lands among the holders of such certificates respectively,

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

SECTION 1. The said Chicago and Northwestern railway company may institute and prosecute an action or actions in the circuit court of any county of this state for a division and partition or sale of the lands for which such certificates were issued according to the respective rights of the parties interested therein, and said court may order such partition or a sale of such lands as hereinafter provided, if it shall appear that a partition cannot be made without prejudice to such parties.

Railroad company may prosecute actions in circuit courts.

SECTION 2. If the owners or holders of any such certificates are unknown, such owners or holders may be made party defendants under the style of "the unknown owners of certificates issued by the Chicago

Unknown holders of certificates may be made parties defendant.

and Northwestern railway company, in two hundred and forty sections of land granted by congress to the state of Wisconsin to aid in the construction of a railroad from Fond du Lac northerly to the state line."

Court may order defendants to appear.

SECTION 3. If any of the holders of such certificates or persons having an interest in such lands are unknown, or if either of the known holders thereof or persons so interested or parties defendants reside out of the state or cannot be found therein, and such facts be made to appear to the court in which such action is pending, or to the judge or court commissioner thereof, by affidavit, an order may be made by such court, judge thereof or court commissioner, requiring such person or persons or defendants to appear and answer the complaint by a day certain, in such order to be specified, or stand defaulted, and requiring the summons in such action, together with the following notice thereto, with blanks properly filled, viz; "Take notice, that this action is brought to make a partition or sale of 240 sections, or 153,600 acres of land, which was received by the Chicago and Northwestern railway company for the construction of twenty miles of its railroad northerly from Fond du Lac, and for which land said company issued convertible land grant certificates, and that pursuant to an order, duly made according to law, you are hereby required to appear and answer the complaint in said action, on or before the — day of —, A. D., 186—, or you will stand defaulted. Dated ——— A. D., 186—. To (here naming those who are not served with process)," to be either personally served upon such defendants or published in such paper or papers as shall therein be designated, and for the length of time to be designated in such order, and upon due proof of personal service or publication of such summons and notice as aforesaid, jurisdiction shall be acquired of all such defendants, and upon their failure to appear and answer, as required by said order, they shall stand defaulted.

Form of notice.

When judgment may be entered in default of answer.

SECTION 4. The proof of personal service or of the publication of such summons and notice as required by said order shall authorize the court to proceed to final judgment against all such unknown parties and persons not resident in this state, or not found therein, as shall not appear and answer by the day mentioned in the order, or on such future day as the court may appoint,

in the same manner as provided in other cases of failure to answer the complaint, and all such unknown parties as may appear shall be entitled to be made parties to the action, and they may so be made parties by an order of the court, the judge thereof or any court commissioner thereof, and whereupon the attorney of the plaintiff may insert such party's name in the complaint on file, and he shall thereupon become a party to such suit to all intents and purposes, as if he had been made originally a party therein.

SECTION 5. If in such action the court shall order a sale of such lands, it shall appoint a commissioner for that purpose, and may in its discretion direct such commissioner to receive in payment of such lands so sold, the said certificates at the amount expressed upon the face thereof if tendered for that purpose by the lawful holder thereof, and thereupon said certificates to be cancelled and delivered to the said company: *provided, however*, that such certificates shall not be received in payment upon any purchase or purchases of lands, unless the price therefor bid and to be paid shall be at least twelve dollars per acre in the aggregate: *provided, further*, that the court shall direct and require the payment of such a per centage of the purchase money of each tract and tracts of land sold, to be paid in lawful money, as it shall deem sufficient to pay the cost and expense of such action, or partition or sale, including reasonable attorney, counsel and commissioner's fees; and the said court is hereby authorized and directed to allow the plaintiff in such action a per centage or sum as it shall deem sufficient to pay the costs and expenses of such action or partition or sale, including attorney and counsel fees, and shall also allow such commissioner such per centage or sum as it shall deem sufficient to pay his costs and expenses and for his services.

SECTION 6. If any such lands should remain unsold for want of bidders either in lawful money or for such certificates, and all of such certificates should not be cancelled, the court may in its judgment in such action, or by a further subsequent judgment or order, make [such] provision for the disposal thereof, as shall discharge the said railroad company from its trust or relation thereto, as shall seem meet for the benefit of the persons interested therein, and may, as it seems advisable, place the same

How lands may be sold.

How lands remaining unsold to be disposed of.

in the hands of a commissioner or trustee, or trustees, for division, sale or disposal, or otherwise, as shall seem to the court equitable to the parties in interest, and to give authority to make all necessary transfers or conveyance thereof.

Purchasers to be seized of the lands purchased in severalty.

SECTION 7. The person or persons purchasing any of said lands and surrendering any of such certificates in payment thereof, shall be seized in fee of the premises so purchased in severalty, and the said company shall be forever discharged from any trust or liability in reference thereto, and such commissioner may give to such purchaser or purchasers certificate or certificates of such sale or sales, and of such purchase or purchases, which shall be received in evidence in any of the courts of this state, and shall be *prima facie* evidence of the facts therein contained, and shall be *prima facie* evidence of title in fee of the lands therein described in the person or persons therein named as his or their assigns.

Lands need not be described in subdivisions.

SECTION 8. It shall not be necessary in any advertisement or notice of sale of said lands to describe them by their legal subdivisions into sections or parts of sections, but it shall be sufficient to describe them as two hundred and forty sections or 153,600 acres of land, more or less, granted by congress to aid in the construction of a railroad from Fond du Lac northerly to the state line, being the lands first selected by the Chicago and Northwestern railway company under such grant; but such lands shall not be sold in larger tracts than one section at a time; and *provided further*, at his option, such commissioner may offer and sell at the same time all the tracts of land in any one section.

Law of partition to apply to actions.

SECTION 9. The general provisions of the laws of Wisconsin affecting courts of equity or law in partition cases, shall apply to the action authorized by this chapter, so far as the same are applicable and not inconsistent with the provisions hereof.

SECTION 10. All laws inconsistent with this act are hereby repealed, so far as they contravene the provisions of this act, and no further. This act shall take effect and be in force from and after its passage and publication.

Approved March 2, 1868.