

charged with a less amount of taxes on account of an undervaluation, shall be charged in addition to all other taxes with an amount equal to such deficiency, which amount shall be carried out and collected as other taxes.

SECTION 4. The said commissioners, before proceeding to the discharge of their duties, shall severally take and subscribe an oath or affirmation, faithfully and impartially to discharge their duties under this act; they shall be entitled to receive four dollars each for every day in which they shall be actually employed in the discharge of their said duties, in addition to their actual expenses; the same with all other expenses connected with the making of the application and the subsequent proceedings, to be audited and allowed as a county charge by the county board of supervisors, and to be paid in the same manner as other county charges are paid; if, however, the decision of the commissioners is adverse to the city, town or village making the appeal, such city, town, or village shall reimburse the county for all expenses so paid.

Oath and compensation of commissioners.

SECTION 5. This act shall apply to the action or decision of any county board made or taken during the year 1879, as well as to future actions or decisions, and shall take effect and be in force from and after its passage and publication.

Application of these provisions.

Approved March 15, 1880.

[No. 192, S.]

[Published March 20, 1880.]

CHAPTER 292.

AN ACT to amend chapter one hundred and seventy-one of the private and local laws of 1868, entitled an act to incorporate the Wisconsin river improvement company, and to amend chapter two hundred and ninety-eight of the laws of 1878, amendatory thereof.

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

SECTION 1. For the purpose of facilitating and cheapening the driving and floating of logs and timber and lumber in the Wisconsin river, the Wisconsin river improvement company is hereby authorized to erect and maintain a dam or dams on the said Wisconsin river at such places on said river between the head of Grandfather Bull falls and the mouth of Eagle river as may seem advisable for the purpose of flooding and creating reservoirs of water for driving purposes.

Location of dam.

**Slides and
flooding gates.**

SECTION 2. The said company shall build suitable slides and chutes in said dam or dams for running logs and timber over the same, and shall keep the same in repair. Suitable and sufficient gates shall be provided to discharge water through the same for flooding purposes, and the same shall be kept open at all times when the river is in a driving stage, and when it is not necessary to hold the water in reserve for the purpose of driving or flooding logs, timber or lumber below said dam or dams. Such flood gates shall be kept in repair by said company, and constructed in such manner as to be shut or open, as the case may require, to obtain the greatest possible beneficial use of the water for flooding purposes.

**May purchase
dams, etc.**

SECTION 3. The said Wisconsin river improvement company is hereby authorized to acquire by gift, grant, purchase or otherwise, any dam or dams already built on said rivers between the points aforesaid, and have, use and hold the same for the purposes aforesaid.

Control of dams

SECTION 4. The control of said dam or dams, the slides and gates of the same, shall belong to the said company, but always subject to the provisions of this act.

**May consoli-
date with other
companies.**

SECTION 5. The said company is hereby empowered to consolidate with any other company or association created for the purpose of improving the navigation of said river, or running or driving logs thereon, upon such terms and conditions as may be agreed upon by said company and such other company, corporation or association as may desire such consolidation.

May fix tolls.

SECTION 6. The said company is hereby authorized to divide its improvements into sections for log driving purposes, and fix tolls for the use of each of such sections and in adjusting such tolls, may take into consideration the amount expended in the construction or acquisition, and maintaining any such dam or dams by it constructed or acquired, for the use of its said improvements, and the probable benefits to the navigation of each such section by the waters held and stored by means of such dam or dams, shall be considered in fixing such tolls, provided the same shall be reasonable and proportionate to the benefits.

Capital stock.

SECTION 7. The board of directors may, at any special meeting called for that purpose, diminish the capital stock of said corporation an amount not exceeding fifty per cent., provided that such reduction shall not be valid without the written consent of the holders of a majority of such stock.

SECTION 8. The said corporation shall have authority, and is hereby authorized by its officers, agents and servants to enter upon any land or premises for the purpose of exploring, surveying, locating or determining when, and the places where improvements should be made, and to enter upon, take possession of, use, occupy and enjoy any property, lands and premises along the banks of said Wisconsin river, and for the purpose of making the improvements contemplated in its charter or any of them; and for the convenient operation of the business of said company, may improve the said river by removing obstructions, breaking jams, deepening, widening and straightening the channel, closing up chutes, side cuts and side channels, so as to confine the waters of said river in one main channel, and in case the owner of the property so taken and entered upon, and said company, cannot agree as to the value of the premises so taken by said company, for the purpose of acquiring such title and right, said company may file a petition praying for the appointment of commissioners of appraisal by the circuit court or the judge thereof, of the county in which the real estate described in said petition is situate, which petition must be signed and verified by the attorney or some authorized officer of said corporation, and shall contain a description of the land sought to be acquired, the name of the parties who own and occupy said real estate, as near as may be, and if such persons are infants, their age, as near as may be, and if they are persons of unsound mind, or unknown, these facts shall be stated, with such other facts as shall be deemed fit, which petition shall be filed in the office of the clerk of the circuit court of the county in which such real estate is so situated, which shall be the commencement of a suit in said court. Upon the filing of said petition, the said court or a judge thereof shall make an order prescribing the notice to be given of the time and place of hearing said petition, which shall state the filing of such petition, the object thereof, and shall contain a description of the lands described in the petition, and shall be addressed to the parties named in said petition, and to all persons interested in said lands, so far as known, and may be served personally, or at the usual abode of such owners and parties interested, not less than five days before such hearing, or by publication in some newspaper to be designated by said judge or court, not less than ten days before the date fixed for the hearing

May take possession of land for improvements.

Appointment of commissioners.

Order of court or judge.

Persons may show cause against granting petition.

Court to hear parties.

of such petition. On presenting such petition to the court or judge, with proof of service or publication of notice as aforesaid, any person whose estate or interests are to be affected by said proceedings may show cause against granting the prayer of the petition. If it shall appear on said hearing that any of such persons are infants, idiots, or persons of unsound mind, the court or judge may, on notice to the guardian, if they have any, and if not, without further notice appoint a guardian ad litem, to act for said minor, idiot, or person of unsound mind in said proceeding, and require him to give security. The court or judge shall hear the parties interested, and may adjourn from time to time as shall be convenient, and shall determine whether said company is entitled to take the whole or any part of the land sought to be acquired, and if no sufficient cause is shown against granting the prayer of the petition, shall make an order appointing three disinterested and competent freeholders, who reside in the county, or some adjoining county, where the premises to be appraised are situated, commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate determined necessary to be taken in such county for the purposes of the company, and may fix therein the time and place for the first meeting of the commissioners. The said commissioners shall, before entering on the discharge of their duties, take and subscribe an oath that they will support the constitution of the United States and the constitution of the state of Wisconsin, and faithfully discharge their duties as such commissioners to the best of their ability. Whenever requested in writing by or on behalf of the company or any person interested in any tract of land described in the petition, but not otherwise, they shall proceed to perform their duties in respect to the land mentioned in such request, and a majority of them may adjourn the proceedings, as to any particular tract of land, from time to time, at their discretion. Upon such request they shall cause notice to be given to each party interested of the time when and place where they will meet to consider the amount of compensation to which the land owner is entitled, which notice shall be personally served on such party or his authorized agent or attorney or guardian ad litem, or by leaving the same at his residence or place of business, with a person of suitable age and discretion, at

least six days before the time of such meeting, and to the attorney or proper agent of the company, when requested to act by any other party, if such party is a non-resident of this state, or his residence is unknown, and he has no authorized agent or attorney in this state known to such commissioners, such notice shall be published in a newspaper as aforesaid, for such length of time as the court or judge appointing said commissioners shall direct. The commissioners shall file proof of serving such notices, or the appearance of such parties before them, either personally or by attorney, with their report, but it shall not be necessary to serve or publish notice of any subsequent meeting held pursuant to the adjournment. The commissioners shall view such of the premises described in the petition as are described in said written request, and hear the allegations of the parties, and shall appraise, ascertain and determine the value of each such tract or parcel of land proposed to be taken, with the improvements thereon, and of each separate estate therein, and the damages sustained by the owner by reason of the taking thereof, and fix the amount of compensation to be made to each of such owners therefor. A majority of the commissioners, all being present, shall be competent to determine all matters before them. The commissioners shall, within twenty days after last viewing any lands so taken, make and file in the office of the clerk of the circuit court of such county, a report of their proceedings concerning such lands, making separate reports in relation to the lands of each distinct owner, setting forth the award made for each tract or parcel thereof, or separate estate therein, to the owner or owners thereof. Said commissioners shall be entitled to such compensation as the court may direct, which shall be paid by said company. Within thirty days after the filing of the report of the commissioners in the office of the clerk of such circuit court, any party may appeal to such circuit court from any award made by the commissioners by filing in the office of said clerk a written notice of appeal. Upon his receiving such notice, the appeal shall be considered an action pending in court, subject to a change of the place of trial, and appeal to the supreme court, as other actions, and shall be entered by the clerk upon the records of the court, by setting down the owner or owners of the land for which such award was made and who are parties to the appeal, as plaintiffs, and the said company as defendant. Such appeal shall be tried by jury, unless a trial

Duty of commissioners.

Majority of commissioners competent to determine.

Parties may appeal.

Payment of
damages.

by jury is waived by both parties; costs shall be allowed to the successful party on such appeal, and, if in favor of the plaintiff, be added to the amount of the verdict; if in favor of the defendant, be deducted therefrom, and judgment shall be rendered thereon according to the rights of the parties. The report of the commissioners shall be recorded by the clerk, in whose office the same is filed in the judgment book of such court: and at any time after the making of such award, the said company may pay to the owners of the land so taken, or to the clerk of said court, for the use of such owners, the amounts awarded by the commissioners, and thereupon may enter upon, take and use the land for the purposes for which it was condemned, and may move said court or judge, upon twenty-four hours' notice, that a writ of assistance may be issued to put such company into possession of the same; and said court or judge shall, upon the corporation giving security in such additional amount as the court or judge shall require to pay any judgment which shall be recovered against it on appeal, award such writ. If such company be in possession, or be put in possession of such land, pending an appeal, the owners, or parties entitled thereto, shall be entitled to receive the money paid into court on account of the award appealed from, without prejudice to the appeal taken; but if the corporation shall have appealed, such money shall only be so withdrawn, upon filing a bond in such sum and with such surety as shall be approved by the court or judge to repay the amount by which such award shall be abated, with costs. If such corporation shall omit for the space of sixty days to pay the amount so awarded into court, or to pay into court the amount of any final judgment which shall be rendered upon any appeal from such award, the party interested in such award or judgment may have execution upon said judgment, without motion, or for the amount of such award upon motion. If any defect of title to or incumbrance upon any parcel of the premises shall be suggested in said petition, or if any party to said proceeding, or any person not a party, shall petition the said court, setting up a claim adverse to the title set out in said petition to said premises and to the money, or any part of it, to be paid as compensation for the property so taken, the court shall hear and determine the rights of the parties to said money, and for that purpose may order a reference or an issue to be tried by a jury. Either

Omission of
payment of
damages.

party may except to the decision of the court, and appeal to the supreme court, in like manner as in actions. Either court may award costs to the prevailing party, and render judgment therefor against the other party. When no appeal shall be taken from any award within the time provided by law, and the corporation shall have paid the amount thereof into the court, or filed a receipt therefor, duly signed by the owner, and acknowledged before an officer authorized to take the acknowledgment of deeds, in the office of the clerk of the court, or when, after the determination of such an appeal, the corporation shall have paid into court the amount of the judgment rendered thereon, or filed a receipt therefor as aforesaid, the clerk of said court shall make a minute of such payment, or of the filing of such receipt, at the foot of the record of the report of such commissioners in the judgment book of said court; and thereupon the exclusive use of said premises and every parcel and part thereof, shall vest in such corporation, its successors and assigns, so long as used for the purposes of said company, without any other or further act, deed or conveyance; and said record, or a certified copy thereof, shall be prima facie evidence of such title, in all courts and places. In case such company shall not have acquired title to the lands upon which they have constructed their works or any part thereof, or if at any time after an attempt to acquire title by purchase, eminent domain or otherwise, it shall be found that the title thereby acquired is defective, the corporation may proceed to acquire or perfect such title in the manner hereinbefore provided, and at any stage of such proceedings, the court in which the same may be pending, or the judge thereof, may authorize such company, if in possession, to continue in possession, and if not in possession, to take possession and use such lands during the pendency of such proceedings, and may stay all actions or proceedings against such corporation on account thereof, on its paying into court a sufficient sum, or giving such security as such court or judge may direct to pay the compensation therefor when finally ascertained; and in every such case the party interested in such lands may institute and conduct the proceedings to a conclusion, if the corporation delays or omits to prosecute the case at its cost and expense, but no injunction to restrain the completion or operation of the said works shall be granted until such compensation has been fixed and determined.

Property to
vest in person
or corporation
paying award.

In case of de-
fective title of
corporation.

The court or the judge shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this chapter, as may be necessary, or to cause new parties to be added, and to direct such further notices to be given to any party in interest, as it deems proper, and also to appoint other commissioners in place of any who shall die, or refuse or neglect to serve, or be incapable of serving.

Corporation
may issue
bonds.

SECTION 9. For the purpose of enabling the said corporation to make the improvements contemplated in its charter, and the acts amendatory thereof, the said corporation, by its board of directors, may issue and dispose of its corporate bonds to an amount not exceeding twenty-five thousand dollars in the aggregate, payable at a time to be fixed in such bonds, bearing interest at a rate not to exceed eight per cent. per annum, and to secure such bonds by a trust deed upon all the improvements, rights and franchises of the said corporation under its charter.

May negotiate
and dispose of
same.

SECTION 10. The said corporation is hereby authorized to negotiate and dispose of such bonds, or any part thereof on such terms as may be agreed upon, and at such rates of interest.

Payment of
principal and
interest of
bonds.

SECTION 11. Sufficient of the revenues of the said corporation arising from its said improvements to pay the interest upon such bonds as the same accrues, and to pay the principal thereof, shall be set apart for that purpose as fast as such interest or principal becomes due, and shall be applied to no other purpose.

Preferred stock

SECTION 12. The said corporation, through its board of directors shall have power, and is hereby authorized to issue an amount of preferred stock not exceeding twenty-five thousand dollars, upon such terms and conditions as shall be deemed advisable by such board of directors, which order or determination as to the terms and conditions upon which such stock may be issued, shall be entered of record in the books of the corporation before any such stock shall be issued.

Repealed.

SECTION 13. All acts and parts of acts conflicting with the provisions hereof are repealed.

SECTION 14. This act shall take effect and be in force from and after its passage and publication.

Approved March 15, 1880.