

[No. 200, A.]

[Published April 12, 1981.]

CHAPTER 252.

AN ACT to amend chapter one hundred and twenty of the revised statutes, entitled "of rivers and floats."

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

SECTION 1. Section one thousand six hundred of the revised statutes, being a part of chapter one hundred and twenty of the revised statutes, entitled "of rivers and floats," is hereby amended so as to read as follows: Section 1600. Whenever any logs, timber, boards or planks in rafts or otherwise, shall be drifted upon any island in any of the waters of this state or upon the bank or shore of such water or lands adjacent thereto, the owner thereof, his agents or servants, may at any time within eighteen months remove the same on paying or tendering to the owner or occupant of said land the reasonable damages caused by the removal or non-removal of said logs, timber, boards or planks and the expense of advertising the same. And in case it is not practicable to remove said logs, timber, boards or planks without passing over other lands than those upon which the same may be situated, then the owner thereof shall have the privilege to make the necessary roads over said lands, and to pass over the same in removing said logs, timber, boards or planks, on tendering to the owner or occupant of said land the reasonable damages caused thereby. If the owner shall not remove said logs, timber, boards or planks within said time, and pay said damages unless the owner or occupant of said land shall otherwise agree, then said owner or occupant of said land may remove said logs, timber, boards or planks, and shall have a lien on the same for twice the costs of removal and said damages, and may sell a sufficient amount of the same to satisfy said lien and costs, without action, on giving twenty days' notice of such sale, by posting up three notices of such sale in three of the most public places in the town where said logs, timber, boards or planks are situated: provided that at least six months previous to the expiration of said eighteen months, he shall have given notice to the owner thereof, if known, to remove the same, with a description of the marks thereon, if any, the kind and quantity thereof and the place where located; or if the owner is unknown, shall have published such notice in some newspaper published in said county, if there be any;

When owners of logs, timber, etc., drifted on shore, may remove the same.

Payment of damages in passing over other lands.

If owner shall not remove same.

When earlier removal is desired.

if not, then in an adjoining county, once a week for six successive weeks: and provided, further, that if the owner or occupant of the land desires an earlier removal of such logs, timber, boards or planks, than is hereinbefore provided for, such owner or occupant may, upon first giving said six (6) months' notice, in the manner aforesaid, at any time during said period of eighteen months, remove, or cause said logs, timber, boards or planks to be removed, to such secure point in the same stream from which they may have floated to or upon said land, as the same can be the most economically done, and such land owner or occupant shall have a lien, as hereinbefore provided, for twice the costs of such removal and the damages hereinbefore mentioned, and may sell a sufficient amount thereof to satisfy said lien and costs as aforesaid, in the manner, and upon giving the notice, hereinbefore provided for. Whoever shall convert to his own use, without the consent of the owner thereof, any of such logs, timber, boards or planks, except as provided in this chapter, shall be liable to the owner in treble the amount of damages caused thereby.

Refusal to accept tender for damages.

SECTION 2. There is hereby added to said chapter, as section one thousand six hundred *a*, as follows: Section 1600 *a*. If the owner or occupant of said land in any of the cases mentioned in the preceding section, shall refuse to take the tender made, the party making such tender or party in whose behalf the same is made except as hereafter provided, may proceed to remove such logs, timber, boards or planks, or pass over said lands, on filing with the clerk of the circuit court of the county within which said land is situated, a bond, with at least two sureties conditioned to make such removal as soon as practicable, and pay all damages which may be sustained by the owner or occupant of said land by reason of the removal or non-removal as aforesaid, or making roads over said lands and using the same in such removal; said bond shall run to the clerk of said court by his name of office, be approved by the county judge or a court commissioner of the county, and shall specify the description of the lands affected by the removal or non-removal of said logs, timber, boards or planks, the owner or occupant of each description of land, and shall have attached thereto a statement showing the amount tendered as to each description, and a receipt from the said clerk showing that the amount of such tender has been deposited with said clerk for the use of the owner or occupant of said land. A copy of

said bond with a copy of said statement and receipt attached thereto, shall be served on the owner or occupant of said land before said logs, timber, boards or planks are removed. Within three days after such service the party upon whom service is made may except to the sufficiency of the sureties named in the bond, in the same manner, and the sureties shall thereupon justify the same, as provided in sections two thousand seven hundred and four, two thousand seven hundred and five and two thousand seven hundred and six of the revised statutes, and at the expiration of said three days the lien and right of lien hereinbefore provided for shall terminate, unless the owner or occupant of said lands shall remove said logs, timber, boards or planks, under the provisions of this act, or unless the owner or occupant of said land shall except to the sufficiency of the sureties in said bond as aforesaid, and such sureties shall fail to justify as above required, in either of which cases the said lien and right of lien shall continue until all sums which may become due the owner or occupant of said land, under the provisions of this act, are paid, which lien may be enforced in the manner hereinbefore provided. The owner or occupant of said land mentioned in the bond, may accept said tender or commence an action on such bond to recover his damages, at any time within two years after notice of the filing of the bond, and no action shall be commenced on said bond by any such owner, or occupant, unless commenced within said two years, and unless said tender is accepted within said two years it shall revert to the party making the same. And in case of acceptance, the clerk of said court shall take a receipt, showing the description of land, as to which the tender has been accepted, and shall attach the same to the bond on file. In case an action is brought on said bond, and the plaintiff does not recover more than the amount tendered, the defendant shall recover costs and the tender, or a sufficient part thereof for that purpose shall be applied to the satisfaction of such costs: provided, however, that the owner or occupant of the land upon whom the copy of the bond is served as aforesaid, may, within ten days after such service, notify the owner of the logs, or his agents, in writing, that he elects to have the damages caused by the removal or non-removal as aforesaid, or by passing over said land in such removal, appraised by commissioners, in which case the owner shall

Expiration of
lien and right
of lien.

Action to re-
cover damages.

When plaintiff
does not re-
cover more than
the tender.

**Commissioners
to appraise
damages.**

before removing the same, have said damages so appraised and the amount thereof tendered to such owner or occupant as hereinafter provided. If no notice is served within said ten days, the owner or occupant of the land shall be held to have elected to rely upon his action upon the bond and to have waived his right to have his damages judicially determined and tendered to him, before the removal. The owner of said logs, timber, boards or plank may at any time apply to the circuit judge of the circuit within which the land is situated, or county judge of the county, on ten days notice to the owner or occupant of any lands affected by such removal or non-removal, for the appointment of commissioners to appraise the damages caused to said lands by such removal or non-removal. At the time and place mentioned in the notice, the judge shall make a list of nine persons residing in the county, from which each party may strike off three, provided that all the land owners or occupants of lands interested shall represent one party and the owners of said articles to be removed joining in the notice, shall represent one party, for the purpose of striking out names from the list; and if either party refuse to strike, or fails to appear, the judge shall strike for such party. The persons whose names remain shall constitute the commissioners to appraise said damages. The judge shall thereupon issue his warrant requiring said commissioners to appear before him on a day named in said warrant to be sworn as such commissioners and within ten days thereafter to appraise the damages to each of the descriptions of land mentioned in the warrant caused by the removal or non-removal of the logs, timber, boards or plank specified therein, and the amount that each of the owners or occupants of said land is entitled, as damages for such removal or non-removal; said warrant may be served by the sheriff or any constable of the county by reading the same to each of said commissioners. At the time and place mentioned in the warrant the commissioners shall attend before said judge and make and subscribe an oath, to fairly and impartially perform their duties as such commissioners. The commissioners shall then proceed to examine the premises mentioned and to appraise the damages caused by the removal or non-removal of the articles mentioned, as to each description mentioned, and shall make return of their determination within the time mentioned in the warrant. Said return shall specify the damages as to each description and the owner or occupant thereof;

**Duty of com-
missioners.**

such return and all the papers shall thereupon be filed in the office of the clerk of the circuit court of the county and the amount of damages so appraised, be tendered to the owner or occupant of the land or deposited with the clerk, and notice be given to such owner or occupant, that such deposit has been made, and thereupon the owner of such logs, timber, boards or plank, may proceed to remove the same, and to pass over the lands for that purpose. All costs of the proceedings for the appraisal by commissioners shall be paid by the owner or occupant of the lands in case a tender has previously been made, and the amount as appraised by the commissioners does not exceed such tender, otherwise the costs shall be paid by the other party. Such costs shall be adjusted by the judge, the same as in case of commissioners appointed by the judge or a justice under chapter fifty-two of the revised statutes.

Payment of
costs of pro-
ceedings.

SECTION 3. This act shall take effect and be in force from and after the first day of June, A. D. 1881.

Approved March 31, 1881.

[No. 201, A.]

[Published April 5, 1881.]

CHAPTER 253.

AN ACT to amend chapter one hundred and ninety-one of the laws of 1879, entitled "an act to authorize William Baker, and others, to build a dam across and otherwise improve the south fork of Yellow river in Taylor county, Wisconsin, for log driving purposes."

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

SECTION 1. Section one of chapter one hundred and ninety-one of the laws of 1879, entitled "an act to authorize William Baker and others to build a dam across and otherwise improve the south fork of Yellow river, in Taylor county, Wisconsin, for log driving purposes," is hereby amended so as to read as follows: William Baker, his associates or assigns, are hereby authorized to build a flooding dam across the south fork of the Yellow river, in section thirty-six (36), town thirty-two (32), range two (2), west, in Taylor county, Wisconsin, and otherwise improve said stream by building dams, clearing the channel of rocks, brush and windfall, so as to facilitate the driving of logs down and out of said stream and to keep said improvements in repair and to operate the same for flooding and other purposes for driving and floating all logs

Location of dam