

CHAPTER 382.

[Published April 7, 1876.]

AN ACT to authorize the owners of the rights to use water from the power created by the dam constructed under "An act of the territorial legislature of Wisconsin," approved February 21, 1848, in the city of Janesville, known as the Monterey dam, to pay judgments recovered for flowage or injury to lands, to create a lien for such payments, to enforce the same by contribution and sale, and for repairs, to bar and foreclose the rights in said dam and water-power of the defendants, against whom such judgments are rendered, in case they fail to pay the same, to adjudge such judgments to be a lien on said dam and water-power, and authorize the sale thereof.

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

In case of recovery of judgment against owners of dam, person having right to use water may pay same.

SECTION 1. In case any owner of lands flowed or injured by reason of the maintenance of the dam across Rock river, in the city of Janesville, known as the Monterey dam, authorized by an act of the legislature of the territory of Wisconsin, approved February 21, 1848, as amended by chapter two hundred and fourteen, of the private and local laws of 1850, shall have recovered or shall recover any judgment against the owners of said dam, for such flowage or injury, or if the compensation to be paid for such flowage or injury, or for the perpetual right to flow or injure any lands by the maintenance of said dam, shall have been or shall be judicially determined by the judgment of any court, and the owners of said dam, against whom such judgment has been or shall be recovered, shall have failed or shall fail, to pay such judgment within the time fixed by the court for the payment thereof, then any owner of, or person having a legal or equitable interest in the perpetual right to draw and use water from the pond created by said dam, or from raceways connected therewith, shall have the right to pay and discharge the judgment or compensation so recovered or determined; and if any such owner or person having such interest in the right to draw and use water shall pay the same, he shall have a claim and lien upon all the rights to draw and use water from said pond and raceways for a just and valuable portion of the amount so paid to discharge such judgment and compensation, and shall be subrogated to all the rights of the owner of such judgment.

SECTION 2. In case any owner of, or person having such interest in, the right to draw and use water as aforesaid, shall refuse or neglect for sixty days after demand made to contribute and pay his just and ratable portion of any such judgment or compensation, recovered or determined as aforesaid, or shall neglect or refuse to pay his just and ratable portion of any moneys heretofore or hereafter expended in repairing and maintaining said dam, then any owner of or person having such interest in the right to draw and use water as aforesaid, who shall have paid such judgment or compensation or for such repairs and maintenance of said dam, shall have a right of action in any court of competent jurisdiction to have the amount to be paid by each owner of and person having such interest in the right to draw and use water as aforesaid, determined, and in case any such owner or person having such interest shall fail to pay the amount so determined as his just and ratable share, within the time limited by the court, then all of the right, title and interest of such owner or person in the right to draw and use water as aforesaid who shall so neglect to pay, may by the judgment of said court be directed to be sold, and the proceeds of the sale be applied to the payment of the amount adjudged to be paid by such owner or person having such interest and the taxable costs of such action.

In case owner of right to draw water refuses to pay his portion of judgment.

SECTION 3. When such judgment or compensation for flowage of or injury to lands, shall have been paid to the land owners as aforesaid, the persons paying the same, their associates and assigns, shall have full right and authority to maintain said dam as against such land owner, at the height the same was when such judgment or compensation was recovered or determined.

Person paying judgment may maintain dam.

SECTION 4. The owners of such dam, against whom any such judgment or determination of compensation has been or shall be recovered or had, may be made parties to the action provided for by section two of this act, and if they shall fail to pay the whole of any such judgment or compensation for flowage of or injury to lands, with interest, and the costs of such action, within such reasonable time as the court may direct, a judgment shall be rendered against such owners, forever barring and foreclosing them of all right, title and interest in and to said dam, and the water-power thereby created, and all their right, title and interest in and to the same shall vest in, and shall

Owners of dam may be made parties to action.

be adjudged to vest in, and to be held and owned by such of the owners of, or persons having such interest in the right to draw and use water as aforesaid, as shall pay such judgment and compensation.

In case judgment for flowage or injury to lands shall not be paid by owners, persons recovering judgment may commence supplementary action

SECTION 5. In case any such judgment or compensation for flowage of or injury to lands, recovered or determined as aforesaid, shall not be paid by the owners of said dam, or by any of the owners of, or persons having such interests in the rights to draw and use water as aforesaid within the time limited by the court for the payment thereof, then the person or persons recovering such judgment or in whose favor such compensation is determined, their personal representatives or assigns, may, at their option, instead of abating said dam, commence an action supplementary to the original action in which such judgment or determination of compensation was recovered or had against the owners of said dam, and all of the owners of and persons having such interests in the rights to draw and use water as aforesaid, requiring them, and each and every one of them, to show cause why such owners or proprietors of said dam should not be forever barred and foreclosed of and from all right, title, interest and claim in or to said dam, water-power, franchises and right to draw or use water therefrom, unless they pay the amount of such original judgment and compensation recovered or determined as aforesaid within such reasonable time as the court may designate, and also requiring the defendants in said supplementary action to show cause why a supplementary judgment should not be rendered therein, adjudging that such judgment and compensation recovered and determined as aforesaid, be a lien and charge upon said dam, water-power and the franchise thereof, and upon all rights to draw and use water therefrom, and unless good cause be shown to the contrary, a supplementary judgment shall be rendered for the amount of such original judgment and compensation with interest and taxable costs of both actions, and adjudging that if the defendants against whom said original judgment and compensation was rendered and determined, shall neglect to pay said supplemental judgment within such reasonable time as the court shall direct, the said last mentioned defendants shall be forever barred and foreclosed of and from all rights, title and interest in and to said dam and water-power, and also adjudging the said supplemental judgment to be a lien and charge upon

said dam, water-power and franchises, and upon all rights and interests in rights to draw and use water from said power, and in such case such supplementary judgment shall determine the amount or portion of such supplementary judgment which each of the owners of and persons having such interests in the rights to draw and use water as aforesaid, ought to pay as his or their just and ratable portions thereof; and such supplemental judgment may also adjudge and provide that any of the parties to said supplementary action, their representatives or assigns, may, within such reasonable time as the court may designate, pay the amount so apportioned to him or them, or against his or their respective interests, and that if any such owner of or person having such interest in the right to draw and use water as aforesaid, shall neglect to pay the amount so apportioned to him or against his interest within the time limited therefor, then any other owner of or person having such interest in the right to draw and use water as aforesaid, may, within ten days after the expiration of the time so designated, pay the amount so apportioned to or against the interest of the person so neglecting to pay. All such payments shall be made to the clerk of the court, in which such supplementary action shall be pending, and when any such payment shall be made, said clerk shall give to the person or persons making the same a certificate reciting the rendition of such supplementary judgment and the portion thereof which such person has paid and the interest in and to said water-power and water-rights, which, by reason of such judgment and payment, shall rest in the person or persons making such payment. Such certificate shall be under the seal of said court, and shall be entitled to record in the office of the register of deeds for Rock county, and shall be deemed and held to be a good, sufficient and effectual conveyance to pass and convey to the person to whom it shall be so issued, a good and indefeasible estate and title in and to all of the interest in said water power, and rights to draw and use water, in said certificate, described and thereby intended to be conveyed; and said supplemental judgment may further adjudge and provide, that in case the full amount thereof shall not be paid in the manner hereinbefore provided, within the time designated for the payment thereof by said judgment, the said clerk shall on demand refund to each person so paying the money so

Certificate to be recorded and deemed sufficient conveyance.

paid by him, and that the said dam, water-power, franchises, and all the rights and interests in the rights to draw and use water from said power shall be sold in one parcel, and as a whole, by the sheriff of Rock county, to the highest bidder therefor, and that out of the proceeds of such sale the sheriff shall pay: First, the expenses of the sale; second, the said supplementary judgments to the plaintiffs in said supplementary action, their representatives or assigns, and said sheriff shall bring into court any surplus money to be disposed of as the court may direct. All of the proceedings in said supplementary action shall conform as nearly as may be practicable to the practice and proceedings in the courts of this state as provided by law, and the rules and practice of such courts in foreclosure and other equitable actions, but there shall be no redemption from such sale, and the sheriff making the same shall forthwith execute a deed to the purchaser at such sale, which shall be good and effectual to pass and convey to such purchaser all the right, title and interest of the parties to said supplementary action and judgment in the premises and rights authorized to be paid as aforesaid.

Sheriff to execute deed.

SECTION 6. This act shall take effect and be in force from and after its passage.

Approved March 13, 1876.

CHAPTER 383.

[Published April 7, 1876.]

AN ACT to authorize joint school district number one, of the towns of Wonewoc and Woodland, in the counties of Juneau and Sauk, to borrow money.

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

Commissioners of school and university lands to loan school fund to school district.

SECTION 1. The commissioners of school and university lands are hereby authorized to loan to joint school district number one, of the towns of Wonewoc and Woodland, in the counties of Juneau and Sauk, for the purpose of erecting school buildings in said district, and for no other purpose, out of the school, university or normal school funds, in their charge