

SEC. 4. [This act shall take effect from and after its passage.

J. McM. SHAFER,
Speaker of the Assembly.
E. B. DEAN, JR.,
President pro tem. of the Senate.

Approved, April 7, 1852.

LEONARD J. FARWELL.
[Published April 10, 1852.]

An Act to appropriate to THOMAS REYNOLDS out of the Fox and Wisconsin River improvement fund the sum therein named.

Chap 236

The people of the State of Wisconsin represented in Senate and Assembly do enact as follows:

SECTION 1. There is hereby appropriated to Thomas Reynolds the sum of ten thousand and thirty dollars and seventy-nine cents, in full payment for damages for failing to furnish dredge to aid the said Reynolds in the excavation of the Portage canal; said sum to be paid out of the Fox and Wisconsin River improvement fund, and to have precedence of any and all claims upon such fund created subsequent to the time when such damages were sustained by the said Reynolds.

J. McM. SHAFER,
Speaker of the Assembly.
E. B. DEAN, JR.,
President pro tem. of the Senate.

Approved, April 7, 1852.

LEONARD J. FARWELL.

An Act to provide for the draining of Swamp, Bog, Meadow, and other low lands.

Chap 237

The people of the State of Wisconsin represented in Senate and Assembly, do enact as follows:

SECTION 1. Any person owning or possessing any swamp, bog, meadows, or other low land lying in any county within this state, who shall be desirous to drain such land, and who shall deem it necessary in order thereto that a ditch or ditches shall be opened through lands belonging to other persons, in case the owner of any such land shall refuse to permit the opening of such ditch or ditches through the same, may apply to any justice of the peace residing in the town where such land shall lie, for such summons as is herein specified.

May apply for summons.

Proceedings before justice.

SEC. 2. The justice to whom such application shall be made, shall thereupon issue a summons directed to any constable of the said town requiring him to summon the owner of the land to appear before such justice at a time named in the summons not less than six nor more than fifteen days from the date thereof, to answer to such application, defining the same and designating the lands through which it is proposed to open such ditch or ditches. The summons shall be personally served upon the owner of the land if he is a resident of the county, and upon the occupant of the land if the owner is not a resident of the county, and returned like an ordinary summons, or if there be no owner or occupant of the land resident in the county then the justice may authorize some suitable person by endorsement on the back of the summons, to serve the same personally upon the owner of the land wherever he may be, and the person serving it shall make return thereof on oath.

Justice may dismiss or adjourn cause.

SEC. 3. At the time specified in the summons therefor the parties may appear before the justice, and the justice may for any sufficient reason dismiss the application, and he may adjourn the same for any cause shown satisfactory to him, not exceeding three months, or on his motion not exceeding one week.

Jury to be summoned.

SEC. 4. On the appearance day, or in case the application is adjourned, on the day to which it is adjourned, a jury of six men shall be selected by the parties, which shall be composed of men qualified to serve as jurors in a justice's court, and not interested in the premises, and which shall be selected and summoned in the same manner as a jury in a civil cause before a justice of the peace. The jurors shall be required to meet on the premises at a time specified in the venire, not more than twenty days from the date thereof.

How summons served.

SEC. 5. The constable to whom such summons shall be delivered, shall execute the same by summoning such jurors in the same manner and with the like authority as upon venire issued in causes pending before justices of the peace, and shall in like manner make return thereof.

Oath to be administered.

SEC. 6. The justice shall attend at the time and place specified in the venire, and if it appear that due notice has been given as required in the summons, and if six freeholders as above specified shall then and there appear, he shall administer to each of them an oath or affirmation well and truly to examine and certify in regard to the benefits or damage which will result from the opening of the said ditch or ditches; and vacancies in the jury may be

filled by talesmen as in civil cases before a justice of the peace.

SEC. 7. The person applying to have such ditch or ditches opened, shall then deliver to the jury a map of the land through which the same are to be opened, on which map the plan, length, width, and depth of such ditch or ditches shall be particularly designated. The jury shall personally examine the premises and hear any reasons that may be offered in regard to the questions submitted to them, and they may if they think proper vary the plan or dimensions of any ditch so proposed to be opened, but in such case they shall designate on the said map the alterations made by them.

Applicant to present map.

SEC. 8. If after taking all the circumstances into consideration, the jury shall be satisfied that the opening of such ditch or ditches is necessary and proper, they shall certify by inquisition in writing, and if satisfied, they shall further certify by such inquisition the amount of damages which in their judgment will be a just compensation to the owner of the land for the opening of such ditch or ditches through his land, and such inquisition shall be signed by all the jurors and delivered to the justice forthwith.

Jurors to make inquisition.

SEC. 9. Either party may appeal from the decision of the jury to the county court of the county in which the premises are situated, by filing with the justice within ten days after the jury shall have delivered to him their decision, a recognizance of the appellant and sureties approved by the justice, in a sum double the award of the jury, and not less than one hundred dollars, conditioned that the appellant will abide the judgment of the county court, and pay all costs and damages assessed or awarded against him therein, or if the appeal shall be dismissed or discontinued, that he will pay all sums for which he would have been liable if no appeal had been taken, and the interest thereon with costs of appeal. The form of the recognizance and the proceedings in the county court on the appeal, shall be the same as on an appeal of a civil cause from a justice of the peace, as nearly as practicable, and costs shall be awarded for or against either party on the same rule and conditions as on such appeal of a civil cause.

Appeal.

SEC. 10. Upon payment of the damages assessed by the jury, if no appeal shall be taken or awarded in county court on appeal as the case may be, and the costs of such assessment, or if no damage shall have been found, upon payment of the costs of the proceedings, it shall be lawful for the person applying for such summons to enter with his

When may enter on lands.

servants, teams, carriages, and other necessary implements, upon such lands, and then and there to cut and open such ditch or ditches as were designated on the said map according to the plans and dimensions therein specified and adopted by the jury or ordered in county court, not deviating materially from dimensions.

May repair ditch SEC. 11. After such ditch or ditches shall have been opened, it shall be lawful for the said applicant, his heirs and assigns, forever thereafter from time to time as it shall become necessary, to enter upon the lands through which such ditch or ditches shall have been opened, for the purpose of clearing out and scouring the same, and then and there to clear and scour such ditch or ditches in such manner as to preserve the original length, depth, and width thereof.

Penalty for obstructing ditch. SEC. 12. Any person who shall dam up, obstruct, or in any way injure any ditch or ditches so opened, shall be liable to pay to the person owning or possessing the swamp, bog, meadow, or other low lands, for the draining of which such ditch or ditches shall have been opened, double the damages that shall be assessed by the jury for such injury, and in case of a second offence by the same person, treble such damages.

Map to be filed with clerk. SEC. 13. The justices before whom any proceedings shall be had under this title, shall cause the map delivered by the applicant and the inquisition of the jury which he shall certify to have been taken before him, to be filed in the clerk's office of the town where the premises shall be situated, to be kept in said office as a record of the proceedings between the parties: or if an appeal shall be taken, the applicant may cause such map, and a certificate by the clerk of the county court of the decision therein, to be filed in like manner.

J. McM. SHAFER,
Speaker of the Assembly.

E. B. DEAN, JR.,
President pro tem. of the Senate.

Approved, April 7, 1852.

LEONARD J. FARWELL.

[*Published April 29, 1852.*]