

[No. 202, S.]

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CHAPTER 225.

AN ACT to amend section twelve of chapter eighty-four of the private and local laws of 1864, entitled an act to incorporate the Black river improvement company, approved February 23, 1864.

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

Authority for entering upon and condemning lands.

SECTION 1. Section twelve of said act is hereby amended so as to read as follows: Section 12. That said corporation shall have authority and power, and is hereby authorized and empowered, by its officers, agents and servants, or any or either of them, to enter upon any land or premises for the purpose of exploring, surveying, locating or determining when and the place where said improvements shall be made, and to enter upon, take possession of, use, occupy and enjoy any property, lands and premises along the banks of said Black river, and the lakes near the mouth of the same, and for the purpose of making the improvements hereinbefore mentioned, or any of them, and for the convenient operation of the business of said company, may improve the main east channel, so called, of the said Black river and lakes near the mouth of the same, in the counties of Clark, Jackson, Trempealeau and La Crosse, in the state of Wisconsin, by removing obstructions, breaking jams, deepening, widening and straightening the channel, closing up chutes side cuts and side channels leading from said main river or east channel, and especially to dams and close up the meandered channel at the head of the Black Snake, or western channel of said river, so called, so as to confine the waters of said river in the main or east channel, so called; and in case the owner of said property so taken and entered upon and said company cannot agree as to the value of the premises so taken or required by said company, for the purpose of acquiring such title and right, such company, or the owner of any such lands, 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 situated, which petition must be signed and verified by the owner of such land or his attorney, or the attorney or some authorized officer of said corporation, and shall contain a description of the land sought to be acquired, the names of the parties who own and occupy said real estate, as near as may be, and if any such persons are

Location of improvements.

Owner of land may file petition.

infants, their age, as near as may be, and if any 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 said real estate is 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 such 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 said owners and parties interested, not less than five days before such hearing, or by publication in some newspaper to be designated by said court or judge, not less than ten days before the date fixed for the hearing 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 such persons are infants, idiots, or persons of unsound mind, the court or judge may, upon 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 proper security. The court or judge shall hear the parties interested, and may adjourn from time to time as shall be convenient, 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 or required 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 faith-

Hearing of petition.

Guardian ad litem.

Commissioners to appraise lands.

Duties of same

fully 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, in 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 taken or acquired, 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 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

Majority of
commissioners
to govern.

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 the 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 by which such award was made, and who are parties to the appeal as plaintiff, and the said company as defendant. Such appeal shall be tried by jury, unless a trial 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 three days' 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 but 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

Compensation
of commission-
ers.

Report of
commissioners.

Report to be
recorded.

Failure to pay
award.

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 party may except to the decisions 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 part and parcel thereof, shall rest 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.

Appeal.

Defective title.

In case such company shall not have acquired title to the lands upon which it shall have constructed its 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 or that the proceedings to acquire

is for any cause insufficient or irregular, 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 same 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. The court or the judge thereof 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: *Provided*, that no action, right or right of action, which has already accrued to any person or corporation, shall be affected by the provisions of this act, and no prosecution for any offense, or the recovery of any penalty, forfeiture or damage, or the enforcement of any right now pending, shall be affected by the provisions of this act; but the same shall proceed to trial, hearing and final judgment in the same manner and to the same purpose and effect as though the statute upon which the same is or shall be founded was continued in full force, virtue and effect to the time of such trial, hearing and final judgment: *and provided further*, that this act shall not be construed as in any manner to interfere with or impair any rights which the La Crosse booming and transportation company now have.

No right or action to be affected.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 13, 1880.