

is false, and that such defendant received no actual notice in such cause, but such order, judgment or decree, may be set aside or re opened, for such reasons as would be sufficient, provided service was had in this state.

SEC. 6. This act shall not be construed so as to prevent any plaintiff from proceeding against any absent defendant, as heretofore allowed, at the same time, or before, or after the proceedings under this act. How construed.

SEC. 7. This act shall immediately after its passage be printed by the state printer, and when so printed, shall take effect and be in full force.

Approved October 2d, 1856.

CHAPTER 112.

Published November 10.

An Act to secure the enlargement and immediate completion of the improvement of the navigation of the Fox and Wisconsin Rivers, and the payment of the scrip and other evidences of indebtedness issued by the State on account of the same, and for the protection of the settlers on the even sections, etc.

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

SECTION 1. The Fox and Wisconsin Improvement Company, a corporation created by an act of the legislature of the state of Wisconsin, July 6th, 1853, are hereby authorized and required, to make all the dams, locks, canals, feeders, and other structures, and to do all the dredging and other work, and furnish all materials necessary to complete the improvement of the navigation of the Fox and Wisconsin rivers, and the canal connecting the same, and to re-construct the locks at the Portage and Rapide Croche, and cause the same to be re-constructed at Depere, all in a substantial and workmanlike manner, so that all the locks, dams, and other works between Green Bay and the Wisconsin river shall be equal or superior in strength, capacity, kind and quality, of materials and workmanship to the best works of the kind heretofore constructed between Green Bay and Lake Winnebago; and that du- Fox and Wisconsin Rivers improvement.

ring ordinary low water, steamboats drawing four feet of water shall pass with facility from Green Bay to Lake Winnebago; and that boats drawing three and a half feet of water shall pass with facility from Lake Winnebago to the Wisconsin river; and that such boats suited to said locks may meet and pass each other in said Portage canal, and at suitable and convenient places in the other canals, and in the channel of the river, as contemplated in the report of D. C. Jenne, chief engineer, to the directors of said company, dated September 15th, 1856, a copy of which is appended to the report of the select committee of the assembly, of which J. Stark is chairman, and which is on file in the office of the secretary of state, and is here referred to as the general plan of such enlarged works of improvement. Nothing herein contained shall be construed to release any contract or obligation of any person, persons or corporation from the maintenance, repair and construction of the said works at Depere. Said company shall commence the construction of the new locks and dams required to secure the navigation herein provided for, within ninety days after the passage of this act, and shall complete the same, and the canals connected therewith, and all works already commenced; upon the contemplated plan, within two years, and shall complete the enlargement and construction of the remaining works, and the necessary dredging of the river, within three years after the passage of this act; such new and enlarged works shall be so constructed as not to impair the existing rights of the lessees of any water power upon such improvements, and so as to do no unnecessary damage to property along the line of said improvement. Said company are further required, within six months after the passage of this act, to pay all principal and interest due upon the outstanding unpaid evidences of indebtedness issued on the part of the state, on account of the improvement of said Fox and Wisconsin rivers, and thereafter to pay the interest and principal upon all such evidences of indebtedness promptly, as the same shall, from time to time, fall due. They shall also, as soon as practicable, perfect the title of the settlers upon the even numbered or alternate sections of the improvement grant to whom they have sold lands in such even numbered sections. If it shall be found necessary hereafter to change the plan of the work recommended in said report of D. C. Jenne, the same may be done

struction
new locks,

pay out-
standing in-
debtedness.

change
of work.

with the approval of the governor of the state; ; but in no event shall any change reduce the size or capacity of the improvements, or impair the character or quality of the work, or the materials used.

SEC. 2. To enable said company to perform the duties required in the preceding section, all the lands now unsold, granted by Congress in aid of said improvement, as explained by the same body, (and which grants are hereby accepted), are hereby granted to the Fox and Wisconsin Improvement Company, subject, however, to the terms and conditions of said grants by Congress, and to the further terms and conditions following: that is to say: That within ninety days after the passage of this act, the said company shall make a deed of trust to three trustees, to be appointed as hereinafter provided, including and conveying to said trustees, and their successors, all the unsold lands granted to the state of Wisconsin by the several acts and the resolutions of Congress, to aid in the improvement of the Fox and Wisconsin rivers, and all the works of improvement constructed, or to be constructed on said rivers, and all and singular the rights of way, dams, locks, canals, water powers, and other appurtenances of said works, and all rights, privileges and franchises belonging to said improvement, and all the property of said company, of whatever name and description, for the uses, trusts and purposes following, with priority of lien, in the order in which they are named, that is to say:

First. To secure to the state the faithful application of all moneys or property arising from the sale of the lands or water powers, or obtained on the faith of the same; as hereinafter authorized, to the construction and completion of the works of improvement contemplated in this act, as herein provided, and to the payment of all outstanding unpaid evidences of indebtedness issued on the part of the state, for or on account of said improvement, and the interest thereon, in accordance with the terms of this act.

Second. For the payment of any bonds heretofore issued or that may hereafter be issued by said company, for or on account of said improvement.

Third. To secure to the state the application of the proceeds, or such part thereof as shall be necessary, of the lands claimed for the alternate sections along the Wisconsin river, to the improvement of the Wisconsin river upon the plans commenced by the state, by the construction of wing-dams, or upon such other plans as may be hereafter

Lands to be conveyed to trustees, &c

To secure faithful application of moneys.

Payment of bonds.

Wing-dam

adopted by the said company and approved by the governor; *Provided*, That nothing contained in this section shall be construed as granting or conveying to said company any right, title or interest whatever, either present or contingent to section number five, in township number twelve north, of range number nine east, of the fourth principal meridian.

**Proviso.
May issue
bonds.**

SEC. 3. For the purpose of raising funds from time to time for the construction, enlargement and completion of said works of improvement, as required by this act, and for the purchase of materials to be used therein, and the payment of the evidences of state indebtedness above referred to, and interest thereon, and also for the payment and redemption of any outstanding obligations of said company heretofore issued; said company may issue its bonds, countersigned by the said trustees, in sums of not less than five hundred, nor more than one thousand dollars each, at rates of interest not exceeding ten per centum per annum, payable semi-annually; the principal of said bonds payable at a period therein to be named, not exceeding twenty years from their date, and at such place as the company shall designate. The payment of said bonds shall be secured by the deed of trust aforesaid of said lands, works, water powers, property and franchises as hereinbefore provided; subject nevertheless to the prior lien of the state upon said lands and property hereinbefore provided for; which said prior lien shall be referred to in such bonds so to be issued by said company. The faith of the state shall be in no wise pledged for the redemption of said bonds. A portion not exceeding one fourth of the cash proceeds of said lands and water powers, sold and conveyed by said trustees as hereinafter provided, may upon requisition of said company, from time to time, be applied by said trustees to the payment of interest on loans, or to provide for other expenditures, as the exigencies of the company may require.—
In case the said company shall fail to comply with any of the requirements of this act, or to pay the principal or interest of its bonds, issued as herein provided, the said trustees shall sell the said lands, in tracts not exceeding six hundred and forty acres, and shall apply the proceeds thereof to the purposes expressed in this act, in the order of priority of liens designated herein; and if the proceeds of said sales are insufficient to complete the intended works of improvement, pay all the evidences of

**State not hold-
ing, &c.**

**To sell lands
in case com-
pany fail to
comply with
act.**

state indebtedness, and interest thereon, and redeem all the bonds and other obligations of said company, then the said trustees shall sell the water powers created by said improvement, and thereafter all the corporate rights, privileges, franchises, and property of said company in said improvement, and all appurtenances thereto, to pay the same, and the purchasers thereof shall take, hold, and use the same as fully, as they are now held, used and enjoyed by said company, but it is understood that until the failure of said company to comply with the terms of this act, it shall retain possession and control of said works of improvement, and have the right to collect tolls thereon, and rents from the leasees of water powers, and to apply the same to the repair and maintenance of said improvement, and for other purposes. Such sales of the lands, water powers, and corporate rights and property contemplated in this section shall be made upon sixty days notice, published in every county in which a newspaper is published, lying adjacent to the Fox river, Lake Winnebago and the Wisconsin river below Portage City; said notice shall also be published sixty days in the "State Paper" printed and published at the capital of this state. In case of such sales by the trustees for non-compliance by said company as herein required, before all of said evidences of state indebtedness shall have matured, said trustees shall set apart [out] of the proceeds of said lands, water powers and improvements, a fund sufficient to pay the interest on such remaining state indebtedness and to sink and redeem the principal thereof at maturity. Said deed of trust may provide for the safe keeping of moneys which may come into the possession of said trustees, and for the creation of sinking funds for the payment of all liabilities of said company or for the redemption of its bonds before maturity, subject to the provisions of this act.

Sec. 4. The said trustees may, on the requisition of said company, proceed to sell the lands granted by congress in aid of said improvement, and may sell or lease the water powers created by said improvement, in such manner, and upon such terms, as to price, and time and place of payment as the company may direct; but none of said lands shall be sold for less than one dollar and twenty-five cents per acre, and not less than twenty-five per cent of the purchase money for either said lands or water powers shall be paid at the time of sale. All payments for said

To publish
sale of lands.

Sale of lands
and water
powers, &c.

lands and water powers shall be made in cash, or the said evidences of state indebtedness at par.—No deeds shall be made for said lands or water powers to the purchasers thereof, until full payment shall have been made as above. The trustees shall apply all moneys received on such sales, except one fourth thereof, above authorized to be reserved for payment of interest and for other purposes:

Proceeds—to
what applied.

1st. To the payment of the said evidences of state indebtedness, and to the completion of said improvement as far as shall be necessary, and thereafter to the redemption of the bonds of the company in such manner as may be prescribed in the said deed of trust (which bonds shall be cancelled by said trustees and returned to said company,) and said evidences of state indebtedness received on sales of lands and water powers, or redeemed with the proceeds thereof, or otherwise, shall be delivered by said trustees to said company, and deposited by said company with the state treasurer to be cancelled. On receiving the full price of such lands or water powers so sold, in money or state indebtedness as aforesaid, said trustees shall convey the tract or tracts or water power or powers, so sold, by an absolute title in fee simple to the purchaser; which conveyance shall operate as a release or acquittance of the particular tract or tracts or water power or powers, so sold, from all liability or incumbrance on account of said deed of trust, so as to vest in the purchasers a complete and indefeasible title. No sales of said lands, or sales or leases of said water powers shall be made until after the execution and delivery of said deed of trust as above provided.

Before sale
trustees to
make record,
&c.

SEC. 5. Before any sales shall be made of any of said lands, said trustees shall make a record thereof, describing each and every tract of land selected by the state or company, under the act of Congress of August 8th, 1846, and August 3d, 1854, and also under the resolution of Congress of March 3d, 1855; and shall file a certified copy of such record in the office of the secretary of state of the state of Wisconsin, which shall be recorded at the expense of the company, in a book to be provided for that purpose; and shall also file in the office of register of deeds of each county in which any of said lands may lie, a certified list of said lands lying in said counties respectively. The said trustees shall make and keep a record as aforesaid of each and every tract of land sold, with the name of the purchaser, and the price for which the same

was sold, a copy of which record of sales, together with a full statement of the receipts and applications of all moneys which may come into their possession as such trustees, shall be filed in the office of the secretary of state, on the first day of December in each year. Said trustees shall also, as early as practicable, attach to said deed of trust a list of all the lands embraced therein.

SEC. 6. The trustees shall not at any time during the construction of said works of improvement, sell or dispose of any lands, or water powers, to an amount exceeding the sum which shall then have actually been expended upon the said works, and in the payment of interest and principal of said state indebtedness; but may, at the request of said company, sell as the work progresses, so as to meet expenditures actually made on the works of improvement and in the payment of said state indebtedness, as far as the receipts from said sales may go towards their liquidation; and all lands remaining unsold at the expiration of ten years after the completion of said works of improvement, shall be offered at public sale annually until the whole are disposed of, and the avails applied to the payment of the outstanding bonds of said company as aforesaid; or if no such bonds be outstanding, such avails shall be paid to said company.

SEC. 7. Copies of the lists of lands required by section five of this act to be filed in the offices of the secretary of state and the registers of deeds of the several counties, shall, when certified to be correct by said officers respectively, under their official seals, be received in any court of this state, as evidence that such lands are the lands granted to the state by said acts and resolutions of Congress in aid of the improvement of the Fox and Wisconsin rivers.

SEC. 8. The trustees contemplated in this act, shall be appointed by the governor of this state, with the approval and assent of said company, by a vote of the directors thereof, and any trustee so appointed may be removed by the governor, with the assent and approval of said company, expressed as aforesaid. In case of a vacancy caused by the death, resignation, removal, or refusal to serve or other disability, of any trustee, such vacancy shall be filled by appointment in like manner as above. One of the said trustees shall always be a resident of this state. The acts of a majority of said trustees shall have the same effect as if done by all of them, and they shall have power

to appoint such agents, to make contracts and conveyances, and do other acts in their stead as may be necessary to carry out the objects of this act.

Compensation
of officers.

SEC. 9. The compensation of the trustees appointed under this act, and of all officers and agents of said trustees, or of said company, and all other expenses of the execution of said trust, and of all other purposes of this act shall be at the cost and charge of said company, without charge of any kind upon the treasury of this state.

When the
company shall
have complet-
ed the works,
&c.

SEC. 10. Whenever said company shall have completed the works contemplated in this act, shall have paid all the unpaid evidences of indebtedness issued by the state on account of said improvement, and the interest thereon, and shall have secured the titles of the even sections to the purchasers thereof as hereinbefore provided, then the trustees shall hold the said lands, and the right to sell the said works and franchises of the said company, for the benefit of the other specified trusts; and when all the purposes of this act are accomplished, and not before, the said trustees shall convey to the said company the interest of the state in the said lands, work, and other property herein mentioned. The certificate of the governor of this state that any of the purposes of this act are fully accomplished, shall be evidence thereof, to the said trustees, for the objects of this section.

How con-
strued.

SEC. 11. Nothing contained in this act shall be construed to release or discharge the bonds given by the first members of said company to the state under section two of their act of incorporation; but said bonds, and the provisions of said act of incorporation shall as far as consistent with this act, be held and continued in force for all purposes expressed therein, except only the condition to complete the works of improvement within the time and according to the terms stated in said bonds. Nor shall this act be construed as an acknowledgement on the part of the state that any of the evidences of indebtedness herein referred to, are a just and valid charge against the state treasury. Nor shall the state be liable for any acts or obligations of said company.

Contracts, &c.

SEC. 12. The president, vice president or other officer of said company may execute contracts, agreements, or conveyances which may be authorized by resolutions or by laws of the board of directors or company.

When this act
becomes void.

SEC. 13. This act and all grants herein contained, shall cease and be void unless accepted by said company with-

in ninety days after the passage of this act; and immediately on such acceptance, expressed by a resolution of the board of directors of said company, a copy of which, certified under the seal of the company, by their secretary, shall be filed in the office of the secretary of state; the said deed of trust shall be made as above provided. In case, however, said company shall fail to assent to the provisions of this act, to file said certified copy of their said resolution, or to make the said deed of trust within ninety days after the passage of this act, then this act shall cease to be of force; and it shall be the duty of the governor to select or cause to be selected, the land to which the state become entitled under the resolution of Congress above referred to, approved March 3d, 1855, and to file a list thereof in the office of the secretary of state; and the said company is hereby prohibited in such case from selling or disposing of said last mentioned lands, or any part thereof, or exercising any authority or control over the same.

SEC. 14. For the security of the titles of those portions **To secure titles** of the even or reserved sections of the Fox river grants, which have been sold by said company to the settlers thereon, the first bonds of said company issued in conformity with the provisions of the 3d section of this act, to the amount of \$150,000, shall be deposited with the governor of this state, within three months after the passage of this act, as a pledge for the security of the titles of such settlers; and upon securing said titles, said bonds shall be re-delivered to said company.

SEC. 15. The provisions of the revised statutes relating **Public act.** to trusts, trustees and trust estates shall not be applied to the trusts herein provided for, but this act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed and declared, in all courts and places whatsoever, and shall be in force from and after its passage.

Approved October 3, 1856.