

CHAPTER 156.

[Published March 24, 1864.]

AN ACT granting pre-emption rights to occupants of swamp and overflowed lands.

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

Occupants, &c. to have right to purchase land occupied, at minimum prices.

Limit to pre-emption.

Cutting timber.

Person intending to pre-empt, to file with register of deeds, certificate, &c.

SECTION 1. Any resident of the state of Wisconsin, who shall reside upon or be in the actual occupancy, for agricultural purposes, of any of the swamp and overflowed lands now belonging to the state, which have never been offered at public sale, or of any of said lands which may hereafter be patented to the state by the general government, and shall have improvements thereon to the value of ten dollars per forty acres, previously to the first publication of the notice of the sale of said lands, shall have the right to purchase said lands at the minimum price of one dollar and twenty-five cents per acre, whenever the same shall be offered for sale, by proving his or her occupancy of and improvements upon such lands, in the manner hereinafter provided: *provided*, that no one person shall have the right to pre-empt and purchase more than one hundred and sixty acres of such lands to be by him or her settled, in legal subdivisions according to the government survey, and in a compact body; *and provided, further*, that no person claiming the right to occupy any of said lands, under the provisions of this chapter, shall be allowed to cut from said land more timber than is necessary for the use of said land, and that every person claiming the right of pre-emption to any of said lands, in pursuance of the provisions of this chapter, shall forfeit such right of pre-emption, if he or she shall fail to pay for the land so claimed within ten days of the time prescribed by law for the sale of the lands embraced in said claim.

SECTION 2. Any person intending to avail himself or herself of the right of pre-emption, secured by the preceding section of this chapter, shall make or cause to be made a certificate in writing describing the lands claimed as his or her pre-emption right, and certifying that he or she claims the right of pre-emption to such lands; that it is his or her *bona fide* intention to pur-

chase such lands under his or her pre-emption claim, whenever the same shall be brought into market, and that he or she resides upon or is in the actual occupancy, for agricultural purposes, of said lands, and has made improvements thereon to the value of ten dollars per forty acres. Such certificate shall be signed by the person claiming the pre-emption, and the truth of such certificate signed and attested, shall be acknowledged by the party signing the same, before some person authorized to take the acknowledgment of deeds, and the same shall be recorded in the office of the register of deeds of the county in which the lands described in such certificate are situated; and any claimant of unsurveyed or unpatented lands, may describe the same by metes and bounds carefully defined, and in addition to the certificate herein referred to, parol evidence shall be received that said lands are swamp or overflowed lands.

SECTION 3. The registers of deeds of the several counties in the state, shall record such certificates in a book to be kept by them for that purpose, and they shall receive the same fees for recording such certificates as they are authorized to receive for the recording of deeds.

Certificates to be recorded.

SECTION 4. Each and every person who shall have caused a certificate of his or her pre-emption claim to be made, attested and recorded, as provided in section two of this chapter, shall be entitled to the exclusive possession of the lands therein described, until such time as the same shall be brought into market for sale, or until he or she shall have forfeited his or her right to such pre-emption; and such certificate, or the record thereof, or a certified transcript of the record thereof, shall be sufficient evidence of title to enable the person making the same to maintain any action or actions against any person or persons in any court of competent jurisdiction, for any trespass or injury done to such lands, or to any buildings or improvements thereon, or to the timber, grass, grain or other products growing or being thereon, or any proper action or proceeding to recover possession thereof.

Person causing certificate to be recorded, to have possession, &c. of lands described.

SECTION 5. All the lands mentioned in this chapter shall be sold by the commissioners of school and university lands, whenever they shall deem it expedient to do so. Such sales shall be conducted in the manner pro-

Lands to be sold when commissioners deem expedient.

vided by law for the sale of school and university lands, so far as said provisions may be applicable to and not inconsistent with the provisions of this chapter.

Pre-emptor to have right to purchase lands here in described.

SECTION 6. In all cases of pre-emption under the provisions of this chapter, the pre-emptor shall have the right to purchase in virtue of such pre-emption, one hundred and sixty acres of the lands mentioned in this chapter, and so pre-empted, at one dollar and twenty-five cents per acre. Any person having a right of pre-emption to any of the lands mentioned in this chapter, under any of the laws of this state, in force prior to the first day of July, one thousand eight hundred and fifty-seven, unless such right of pre-emption has been forfeited by the neglect of the pre-emptor to comply with the provisions of any such law, shall have the right to purchase such land in the manner provided in this chapter.

Proof that provisions of law have been complied with.

SECTION 7. Every pre-emptor shall, by the affidavit of at least two credible and disinterested persons, prove that he or she has complied with the provisions of this chapter, or of the law of this state in force at the time the pre-emption claim was made. Such affidavit shall be taken before some person authorized to administer oaths, and when completed, shall be filed with the register of deeds of the county wherein such pre-empted lands lie, or of the county to which it may be attached for county purposes. Such register shall on demand of or on behalf of every such pre-emptor, make out a true and complete copy of such affidavit as aforesaid, and of the declaratory statement of such pre-emptor as aforesaid, and over his official signature shall certify to the correctness and completeness thereof, in the same manner as by law required to make copies of the record of deeds, evidence. Copies of such declaratory statement and affidavit, certified as aforesaid, shall be by or on behalf of such pre-emptor filed with the secretary of state, and the whole purchase money paid at least ten days prior to the time appointed for the sale of the swamp and overflowed lands in the county where such pre-empted lands lie. A neglect to comply with the provisions of this chapter, shall be deemed and is hereby declared to be a waiver, surrender and forfeiture of all rights of said lands, in virtue of pre-emption rights.

Copies of statement, &c. to be filed with secretary of state.

Appeals may be taken to circuit court, &c.

SECTION 8. Either the secretary of state, state treasurer or attorney general, or any pre-emption claimant

or the contestant of such claimant, may proceed, by way of appeal, to the circuit court of the county wherein is situated any of said swamp or overflowed lands claimed by pre-emption rights, and in such court have the pre-emption right claim determined by a jury. In all such appeal proceedings, the appellant shall, within sixty days after the copies of the statements and affidavits mentioned in section seven of this chapter are filed with the secretary of state, procure a certified copy thereof from the said secretary of state, and file the same in the circuit court to which the appeal is taken, and the circuit court shall make rules prescribing the mode of procedure on such appeals. If on appeal the right claimed by pre-emption shall be determined against the pre-emption claimant, then in that and every such case the state treasurer shall refund to such claimant, his heirs, executors or administrators, the purchase money paid by him for the lands by him claimed.

SECTION 9. It shall be the duty of the commissioners of school and university lands to adopt, without appraisal or survey, the lines, boundaries and descriptions of the United States survey, as exhibited by the plats and field notes of the swamp and overflowed lands, and which plats and field notes they are hereby required to procure and pay for, as far as may be necessary, out of the proceeds of the sales of such lands; and the secretary of state is authorized to audit the accounts for such plats and field notes, and there is hereby appropriated out of the swamp land fund a sum of money sufficient to pay for the same.

U. S. survey
be adopted.

Auditing of
accounts for plats.

SECTION 10. All acts or part of acts contravening the provisions of this act, are hereby repealed.

SECTION 11. This act shall take effect and be in force from and after its passage and publication.

Approved March 18, 1864.