

[Published March 12, 1877.]

CHAPTER 124.

AN ACT relating to the Namakagon and Totogatic Dam Company, and amendatory of chapter 452, of the private and local laws of Wisconsin for 1869, and the several acts amendatory thereof.

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

Amended.

Authority to construct dam.

SECTION 1. Section 11 of chapter 452, of the private and local laws of 1869, as amended by chapter 164, of the private and local laws of 1870, and by chapter 405, of the laws of 1876, is hereby amended to read as follows: Section 11. Said company, for the purpose of improving the several streams and rivers hereinafter mentioned, and the navigation thereof, is hereby authorized and empowered to construct a dam across the Namakagon river, at such point or points as shall be deemed necessary, in town 43, range 6 west; and across the Totogatic river, at such point or points as shall be deemed necessary, in town 42 or 43, range 12 west; and across the Eau Claire river at such point as shall be deemed necessary, in town 44 north, range 10 west; and across the St. Croix river, at such point as shall be deemed necessary, between the mouth of the Eau Claire river and the mouth of Moose river; and across the Yellow river, at four several points thereon, to wit; one at such point in town 40, range 16 west, as shall be deemed necessary; another at such point in town 39, range 14 west, as shall be deemed necessary; another at such point in town 38, range 13 west, as shall be deemed necessary; and another at such point in town 39, range 12 west, as shall be deemed necessary; and across the Clam river at such point as shall be deemed necessary, in town 39, range 16 west; and also one additional dam across the Namakagon river, at such point on section 6, town 41, range 8, as shall be deemed necessary for the purpose of driving logs and other timber on said rivers, and to keep and maintain said dams for the term of fifteen years; *provided*, said company shall keep the gates and sluice ways of each and all its said dams, except the said dam on the Eau Claire river and the dam on the Namakagon in town 43, range 6, open from the 20th day of July until the 15th day of October of each year, so as to allow the free and unobstructed passage

of the waters of each of said rivers through the same as fully and completely as though said dams and each of them had not been erected; and it shall be unlawful for said company to dam up or obstruct the free passage of the waters of either of said rivers, except the Eau Claire and the Namakagon during either of the said months; and in case of a violation of the provisions of this section, the person so offending shall be liable to pay a penalty of one hundred dollars, to be recovered in an action in the name of the state, for each day during which the free passage of the waters of either of the said rivers shall be so obstructed; and for any violation of the provisions of this section by said company, this charter may be annulled and declared forfeited by an action of *quo warranto*.

SECTION 2. Section 13 of said chapter 452, as the same is amended by said chapter 164, and by said chapter 405, is hereby amended to read as follows: Section 13. Whenever the water retained by any or either of the dams, hereby authorized to be constructed, shall be needed or required by any person or persons to be used in sluicing or driving logs or timber down the river, upon which the dam from which the water so required is situated, said company shall permit the use of so much thereof as the superintendent of such dam shall deem necessary; *provided*, the owner or owners of the logs so requiring such water, his, her or their agent thus driving said logs, shall give to the superintendent of such dam written notice of the want of such water three days prior to the time the same is required; *and provided further*, that no owner or owners of logs, his, her or their agent, shall be entitled to give such notice and require such water, until the rear of the drive of their said logs shall be within the flowage of said dam; *and provided further*, that if when the water so held by any or either of said dams is being used in the driving or sluicing of logs or timber, any other drive of logs or timber comes into the flowage of such dam, the superintendent of such dam shall have the right to shut the gates of such dam and retain the water running therein for such reasonable time as will enable the owner or owners of the drive so coming into such flowage, his, her or their agent, with due diligence, to get their logs or timber to said dam to be sluiced. But the superintendent of such dam shall not be required to close the gates thereof and hold the water therein, unless the drive so coming into such flowage shall contain at least 500,000 feet of logs or

Amended.

When water needed to sluice logs.

timber, if the drive or drives then using such water contains 2,000,000 feet of logs or more; *and provided further*, that no owner or owners of logs or timber, his, her or their agent, having logs in the flowage of any or either of said dams, that could with reasonable diligence have been sluiced or driven at any previous time in that or any previous year, shall have the right to demand or require the use of the water of any or either of said dams as hereinbefore provided when the same is or may be required in the sluicing or driving of any other drive of logs, either above or below said dam, which could not with reasonable diligence have been sluiced or driven before; *and provided further*, that the person or persons, requiring the use of the water of any or either of said dams shall at their own expense furnish help sufficient to raise or shut the gates of such dam, as the case may be; *and provided further*, that no owner or owners of logs shall be entitled to the use of the water retained by any or either of said dams, to enable him or them to get any drive of logs or timber through any thoroughfare above such dam; when the use of such water for such purpose will, in the judgment of the superintendent of such dam, in any way interfere with the sluicing or driving of any other drive of logs or timber on said stream, either above or below said dam, and the said company as compensation for the improvement of said several streams and rivers herein mentioned, and of the navigation thereof in the manner herein provided, are hereby authorized and empowered to demand, receive, levy, sue for, recover and collect toll on all logs or timber sluiced through said dams, or any or either of them, at and for the following rates, to wit: On all logs or timber hauled into the St. Croix river, or coming into the same from any of its tributaries between the east line of range 17, and the point on said river where the range line between ranges 13 and 14 crosses said river, after the building of the dam on said river first specified herein fifteen (15) cents per thousand feet board measure, and on the logs or timber hauled into said St. Croix river or coming into the same from any of its tributaries above said last mentioned point, after the building of the dam on said stream first herein specified the sum of twenty (20) cents per thousand feet board measure, excepting the logs coming into said St. Croix river, out of the Eau Claire river, and upon all logs or timber coming into said St. Croix river out of the Eau Claire river after the building of the dam up-

When water may not be used.

Rates of toll.

on said St. Croix river first herein specified the sum of forty (40) cents per thousand feet board measure; and upon all logs hauled into or coming into said St. Croix river from any of its tributaries as above specified after the building of the dam upon said stream secondly herein specified the sum of ten (10) cents per thousand feet in addition to the sums above mentioned and specified. On all logs or timber hauled into the Totogatic river or coming into said river from any of its tributaries after the building of the dam on said river as herein provided twenty (20) cents per thousand feet board measure. On all logs or timber hauled into the Namakagon river above where the range line between ranges 8 and 9 crosses said river after the building of the dams on said stream as herein provided, twenty-three (23) cents per thousand feet board measure, and for all logs hauled into said river, or coming into the same from any of its tributaries below said last mentioned point after the building of said dams, twenty (20) cents per thousand feet board measure. On all logs hauled into or coming into the Yellow river from any of its tributaries, after the building of the four several dams herein specified, as follows: upon all logs so coming into said river between its mouth and the point where the section line between sections 26 and 27 in town 39 north, range 14, crosses said river, twenty (20) cents per thousand feet, upon all logs so coming into said river between the last mentioned line and the point on said river where the west line of section 10 in town 38 of range 13, crosses said river, thirty (30) cents per thousand feet board measure; upon all logs or timber so coming into said river above said last mentioned line, forty (40) cents per thousand feet; on all logs hauled into Clam river, or coming into the same from any of its tributaries after the building of the dam on said stream herein specified, the sum of twenty (20) cents per thousand feet board measure. And the said company are hereby authorized and empowered to demand and receive the said tolls before they shall be required to permit the use of the water retained by any or either of said dams for the purpose of sluicing or driving any logs or timber on any of said rivers. And in case any logs or timber is sluiced or driven down said rivers, or any or either of them, with the consent of said company or otherwise without the toll thereon having first been paid, the said toll shall be and remain a lien upon all said logs or timber bearing the same

Tolls may be demanded before water is used.

mark until the said toll is paid, which said lien shall take precedence of any and all other liens upon said logs, except liens for labor, and the said company is hereby authorized to seize and take possession of all said logs or timber wherever the same may be and in whomsoever possession the same may be, and to sell at public vendue, in the county where the same are seized, sufficient thereof to pay said toll and the costs and expenses of such seizure and sale. At least two weeks' notice of such sale shall be given by publishing the same for two weeks in some newspaper published in said county, or, if no newspaper be published therein, by posting such notice in three public places in said county, and by mailing a copy of said notice to the person or persons in whose name the marks upon said logs is recorded in the office of the inspector of the 4th lumber district, directed to him or them at his or their place of residence, if known, and if not known, then by depositing said notice with the inspector of said district, which mailing or depositing shall be done at least two weeks before such sale. Said notice shall state the marks upon said logs, the amount of toll due thereon and the time and place of sale. The lien hereby given may also be enforced in the same manner and with like effect as liens for labor upon logs, as provided in chapter 154 of the general laws of 1862 and the acts amendatory thereof, which said laws and the several acts amendatory thereof are hereby made applicable hereunto, except that the statement of the debt or demand therein required to be filed in the office of the clerk of the circuit court may be filed at any time prior to the first day of October in the year in which the last sluicing or driving of said logs or timber shall have been done. The owner or owners of any logs or timber sluiced or driven down any of the rivers mentioned herein, shall be liable for the toll thereon, and any person having a mortgage upon any such logs, at the time the same are sluiced or driven, who shall afterwards sell or take possession of said logs by virtue of said mortgage, shall thereby become liable for the toll due thereon, and said company are hereby authorized to sue for and recover the same from such mortgagee.

How lien may
be enforced.

SECTION 3. This act shall take effect from and after its passage.

Approved March 3, 1877.