

No. 204, S.]

[Published May 7, 1901.]

CHAPTER 287.

AN ACT to require the commissioners of the public lands of the state of Wisconsin to convey to Ephraim Mariner et al., grantees of the Sturgeon Bay and Lake Michigan Ship Canal and Harbor company, certain lands herein described.

Grant of lands to state by United States. Whereas, by act of congress, approved April 10, 1866, the United States granted to the state of Wisconsin, for the purpose of aiding said state in constructing and completing a breakwater, harbor and ship canal, to connect the waters of Green Bay with the waters of Lake Michigan, two hundred thousand acres of public lands, to be selected in subdivisions agreeably to the United States survey, by an agent or agents appointed by the governor of this state, subject to the approval of the secretary of the interior, which lands were by said act made subject to the disposal of the legislature of this state, for such purposes and not for any other; and,

Lands conferred on company. Whereas, the legislature of this state, by chapter 105 of the laws of 1868, accepted such grant of lands and conferred the same upon the Sturgeon Bay and Lake Michigan Ship Canal and Harbor Company; and,

Selection of lands. Whereas, said grant so accepted was selected by agents appointed by the governor of this state, which selections were duly approved by the secretary of the interior and the lands so accepted certified by the proper officers of the United States to the state of Wisconsin on account of said grant, and,

Description of lands. Whereas, there were among the lands so selected the following described lands, which were afterward claimed by the state to be swamp lands under the rule of section [selection] adopted between state and the United States, namely: Southwest quarter of southwest quarter, section one, town twenty-eight north, range nineteen east; northwest quarter of northeast quarter, section seventeen, town twenty-eight north, range nineteen east; northwest quarter of southwest quarter, section one, northwest quarter of northeast quarter, section seventeen, northwest quarter of southeast quarter, section nineteen, southeast quarter of northeast quarter, section twenty-three,

town twenty-nine north, range nineteen east; lot two, section twenty-seven, town thirty-two north, range nineteen east; southeast quarter of northeast quarter, section nine, northwest quarter of southeast quarter, section nine, town thirty-three north, range nineteen east; northwest quarter of northeast quarter, section fifteen, southwest quarter of southeast quarter, section seventeen, southeast quarter of northeast quarter, section nineteen, northeast quarter of southeast quarter, section twenty-one, town thirty-four north, range nineteen east; southwest quarter of northwest quarter, section five, town twenty-seven north, range twenty east; northeast quarter of northeast quarter of section nineteen, town twenty-eight north, range twenty east, northeast quarter of northwest quarter, of section twenty-seven, town thirty north, range twenty east; southwest quarter of southwest quarter, section twenty-seven, town thirty north, range twenty east; southeast quarter of southwest quarter, section thirteen, town thirty-one north, range twenty east; southwest quarter of northwest quarter of section seventeen, town thirty-one north, range twenty east; southeast quarter of northeast quarter of section nineteen, town thirty-one north, range twenty east; southeast quarter of southeast quarter of section nine, northeast quarter of section thirteen, the southwest quarter of southeast quarter of section seventeen, town thirty-three north, range twenty east; southwest quarter of northwest quarter, section twenty-five, town thirty-four north, range twenty east; northeast quarter of northwest quarter of section twenty-five, southeast quarter of northwest quarter of section twenty-nine, town thirty-five north, range twenty east; southeast quarter of northeast quarter of section seven, northeast quarter of northeast quarter of section eleven, town twenty-nine north, range twenty-one east; northwest quarter of northeast quarter of section eleven, southeast quarter of northwest quarter and southeast quarter of southeast quarter of section thirteen, southeast quarter of northeast quarter of section twenty-one, southeast quarter of southwest quarter and south half of southeast quarter, section thirty-one, town thirty-one, north range twenty-one east; northeast quarter of southeast quarter of section twenty-nine, town thirty-three north, range twenty-one east; southeast quarter of southeast quarter of section nineteen, town thirty-four north, range twenty-one east; northwest quarter of northeast quarter and southeast quarter of southeast quarter of section twenty-five town thirty-one north, range twenty-two east; northwest quarter of northeast quarter and northeast quarter of northwest quarter of section three, and northwest quarter of northeast quarter, of section twenty-seven, town thirty-two north, range twenty-two east; southeast quarter

of northeast quarter of section eleven, and northeast quarter of northwest quarter of section thirty-one, town thirty north, range twenty-three east; and,

Completion of canal. Whereas, after such selection and certification the said Sturgeon Bay and Lake Michigan Ship Canal and Harbor Company, subsequently constructed and completed the whole of said canal, and its completion was certified by the governor of the state to said company, and a copy of such certification was deposited in the office of the secretary of state of this state, where it still remains, and the commissioners of the public lands of this state have from time to time conveyed to the said Sturgeon Bay and Lake Michigan Ship Canal and Harbor Company all of the said grant of two hundred thousand acres, except the lands hereinbefore described, and the said Sturgeon Bay and Lake Michigan Ship Canal and Harbor Company has, after selling the most valuable of said lands, sold and conveyed to Guido Pfister and Ephraim Mariner the remaining of said lands, including the lands hereinbefore particularly described; and,

Wrong certification of lands, held. Whereas, subsequent governors of this state have been of opinion that the lands above described were certified to the state in aid of said canal and harbor in error, and that in fact they should have been certified to the state as swamp lands and should still belong to the state as swamp lands, and advised the commissioners of the public lands not to convey the lands hereinbefore particularly described to the said Ship Canal and Harbor Company, but to apply to the land department of the United States to receive a surrender of said lands from the state freed from the grant in aid of the construction of said ship canal and harbor, and certify the same to the state as swamp lands under the swamp land act of 1850; and,

Hearing on wrong certification. Whereas, the attorney general of the state, acting under such suggestion, applied to the commissioner of public lands of the United States to vacate the certification of the lands hereinabove described to the state in aid of the construction of said ship canal and harbor and to rectify them to the state as swamp lands, under the act of 1850, and upon such application the commissioner of the general land office made an order citing all persons who claimed an interest in said lands hereinbefore particularly described to appear before him at his office in Washington and show cause why the prayer of said petition should not be allowed and certification of said

land to the state in aid of said ship canal and harbor be vacated and the said lands certified to the state as swamp lands, and in obedience to such citation the legal representatives of the said Guido Pfister, who had meantime departed this life, and the said Ephraim Mariner appeared before the said commissioner and answered the petition of the state and claimed said lands under the said Sturgeon Bay and Lake Michigan Ship Canal and Harbor Company, setting out their title thereto; and,

Decision on hearing. Whereas, the said commissioner, after the hearing of the case, on the twenty-fifth of September, 1895, rendered a decision, in which he held that the act of the land department in certifying the lands hereinbefore described to the state of Wisconsin, upon its selections, pursuant to the act of congress of April 10, 1866, granting the lands to the state, was a final decision and passed the title to these lands to the state, and exhausted the right and the power of the United States over and in regard to these lands, and denied the petition of said state; and,

Appeal to secretary of interior; decision of. Whereas, the state of Wisconsin appealed from such decision to the secretary of the interior and the secretary of the interior, on the third of June, 1899, made a decision affirming the decision of the commissioner of public lands, and,

Refusal of commissioners of public lands to convey lands. Whereas, Charles F. Pfister and Louise F. Vogel, the legatees under the wills of Guido Pfister and Elizabeth Pfister, his wife are entitled to one-third undivided of said lands, and the said Ephraim Mariner to two-thirds, under the conveyance from the ship canal and harbor company, and the state holds the same as trustee under the grant, by the act of congress of 1866, and its acceptance by act of the legislature aforesaid, without and beneficial interest therein, and under the decision of the commissioner of public lands and the secretary of the interior of right ought to convey the said lands to the said Charles F. Pfister and Louise F. Vogel and Ephraim Mariner, in the proportions to which they are entitled, and they, the said Charles F. Pfister Louise F. Vogel and Ephraim Mariner, have applied to the commissioners of the public lands of the state of Wisconsin, requesting them to convey such lands to them, according to their interests as aforesaid, and the commissioners of the public lands have refused so to do: now therefore,

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

Commissioners of public lands, ordered to convey lands.

SECTION 1. That under the decisions of the commissioner of public lands of the United States, in the case of the state of Wisconsin vs. Elizabeth Pfister et. al. pending before him, rendered September 25, 1895, and the decision of the secretary of the interior of the United States on the appeal of the state of Wisconsin from that decision, rendered June 3, 1899, the claim of the state to hold the lands hereinbefore particularly described, as property of the state under the swamp land act, is not well founded; that such lands in equity ought to be the property of the said Charles F. Pfister, Louise F. Vogel and Ephraim Mariner, and that the state holds the legal title thereto as trustee for them, under the act of congress of April 10, 1866, granting said lands, and the acceptance of such grant by act of the legislature of this state, by chapter 105 of the laws of 1868, and the selection of said lands by the agents of the state on account of said grant, and the certification of said lands so selected, by the United States to the state, on account of such grant, by the act of April 10, 1866, in aid of the construction of said ship canal and harbor, and the acceptance thereof by the state for the purpose of said grant, and it is the duty of the commissioners of public lands of this state, and they are hereby required, upon the passage of this act, to convey said lands to the said Charles F. Pfister, Louise F. Vogel and Ephraim Mariner in fee, by patent reciting the facts, in the proportions of one-third to the said Charles F. Pfister and Louise F. Vogel and two-thirds to the said Ephraim Mariner.

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

Approved May 3, 1901.