

No. 992, A.]

[Published June 26, 1907.

## CHAPTER 380.

AN ACT to authorize Chas. R. Smith, his heirs, associates and assigns, to build and maintain a dam across the Chippewa river on northeast quarter section twenty-three, township thirty-six north, of range seven west, in Rusk county, Wisconsin, for the purpose of improving the navigation of said river, and of creating hydraulic power and using the same.

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

**Location and purpose of dam.** SECTION 1. Chas. R. Smith, his heirs, associates and assigns are authorized to build and maintain a dam across the Chippewa river in Rusk county, Wisconsin, at such place as they may elect on the northeast quarter of section twenty-three, township thirty-six north, of range seven west, for the purpose of utilizing the water power created thereby, and for the purpose of improving the navigation of said river.

**Height; passage of logs, etc.; acquisition of flowage lands.** SECTION 2. The dam so constructed shall not exceed twenty-six feet in height above low water and shall be so constructed and maintained as not to obstruct the running of lumber, timber or logs down said river and over such dam. For the purpose aforesaid the said Chas. R. Smith, his heirs, associates and assigns, are authorized to overflow and set the water back upon and hold it upon all such lands as shall be necessary for keeping up and maintaining such dam and to acquire title to such lands for such purposes by purchase, lease or condemnation; and in case said Chas. R. Smith, his heirs, associates and assigns, are unable to agree with the owners of such lands so necessary for said purposes, for purchase, lease or use thereof, and the right of flowage thereof, or as to compensation to be made for taking or flooding any such lands, then they, the said Chas. R. Smith, his heirs, associates or assigns, may acquire the same by proceedings of condemnation, in the manner provided and set forth in sections 1777 to 1777d inclusive of the statutes, and acts amendatory thereof and supplementary there-

to, the provisions of which said sections are hereby made applicable for the purpose of acquiring any such lands, for the purpose aforesaid under this act.

**Free flood passage.** SECTION 3. Said dam shall be so constructed and maintained as to be capable of permitting the free and uninterrupted passage through or over the same of any or all floods discharged by any flooding dam further up said river for the purpose of assisting in and facilitating the driving of logs and other timber products below said dam authorized by this act, and the owners of said dam shall so maintain and operate it as to permit the free passage of all such floods without substantial impairment of their effectiveness, in assisting in the driving of log and timber products down said river, and shall be liable in damages to any person or corporation injured by failure to comply with this section.

**Fishway.** SECTION 4. The dam so erected shall be provided with a good and sufficient fishway to be approved by the state board of commissioners of fisheries, and said fishway shall at all times be kept in good repair and open for the free and easy passage of fish up and down said stream.

**Repeal and amendment reserved.** SECTION 5. The right is hereby reserved to the legislature to repeal or modify this act at any time.

**Express conditions.** SECTION 6. This act is passed in consideration of, and upon the following expressed conditions:

**Construction time.** 1. The dam herein authorized shall be constructed within four years from the date of the passage of this act.

**Operation.** 2. If so built and constructed it must be maintained and operated continuously, and its maintainance and operation must not be discontinued or cease for any length of time exceeding two years at one time.

**Law observance.** 3. The water power acquired under and by virtue of this act shall not be operated or its operation suspended pursuant to any contract, agreement or understanding, expressed or implied, in violation of any law of this state or of the United States.

**Rentals.** 4. In case the owners thereof desire to let, lease or rent, or furnish any hydraulic power or accumulation of water procured or created under this act, for public purposes or any lawful private purpose, they shall not charge or collect more than a reasonable rental therefor. In case the owners of such dam and the lessee of any part of said hydraulic power or accumulation of water shall be unable to agree upon the price to be paid for the use of the same, they shall submit the matter to arbitration, and for this purpose the owners of such power or accumulation of water shall select an expert engineer, the lessee shall select another expert engineer, and the two engineers so chosen shall select a third, who together shall constitute the arbitrators, and have full authority to determine the price that shall be paid for the use of such power or accumulation of water. Their decision shall be reduced to writing, and signed by a majority of such arbitrators, and shall be final and conclusive upon the parties in interest.

**Arbitration of rentals, pain of forfeiture.** SECTION 7. The refusal of any owner to submit to arbitration as herein provided, the question of the price at which hydraulic power or accumulation of water shall be rented as herein provided, or his failure to furnish such power or accumulation of water at the price fixed by said arbitrators as hereinbefore provided, if such power or accumulation of water is not needed for other use, or his failure to comply with all the conditions of this act, shall terminate and forfeit the franchise hereby granted, and the failure of the lessee of such hydraulic power or accumulation of water to submit the question of price to be paid for the same to arbitration, as hereby provided, or after submission, to pay the price determined by said arbitrators shall work a forfeiture of his lease, if any he had, of such power or accumulation of water.

**Conditioned on filing acceptance.** SECTION 8. This act shall take effect and be in force from and after its passage and publication and the filing in the office of the secretary of state by the person or persons to whom the franchise is hereby granted, of a written acceptance of the conditions herein contained.

Approved June 24, 1907.