

CHAPTER CXXXIV.

An Act to amend an act entitled "An act to amend an act entitled an act to incorporate the Mississippi and Rum River Boom Company," approved May twenty-first, eighteen hundred and fifty-seven, approved March eighth, eighteen hundred and sixty-two; and to amend an act entitled "An act to incorporate the Mississippi and Rum River Boom Company," approved May twenty-first, eighteen hundred and fifty-seven.

March 9, 1867

SECTION 1.—Amends original act by inserting number of directors.

3.—Directors—how elected.

4.—Officers of company—how chosen—to give bonds.

5.—Term of office—vacancies, how filled.

6.—Meetings, how called.

7.—Meetings, how regulated—compensation.

8.—Duties of officers.

9.—Election of directors, how regulated

10.—Powers of company.

11.—Regulates rate of boomage.

12.—When boomage becomes due.

13.—Defines powers of corporation.

14.—Duties of persons owning logs.

15.—Lumbermen to regulate opening of booms.

16.—Penalty for interfering with booms.

17.—Amends section one of original act.

18.—Legislature to regulate boomage after certain time.

19.—How net profits to be expended.

20.—Company may increase capital stock.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That all of said first mentioned act after the enacting clause be stricken out, and the following inserted:

No of directors

SEC. 3. The number of directors shall be five, who shall be elected at such times and in such manner as the by-laws of said company shall direct.

SEC. 4. The directors shall elect one of their number president, and one as vice president of said com-

Officers of com-
pany to give
bonds

pany, and shall choose a secretary and a treasurer, each of whom shall give bonds to the said company in such sum as the by-laws shall prescribe, to be approved by said directors, and conditioned for the faithful performance of his duties. A code of by-laws shall be made by the stockholders of said company, which may be altered or amended at any meeting of said stockholders, by a majority vote of the entire stock of said company.

Term of office

SEC. 5. All officers of said company shall hold their offices for the full term of one year, and until others are chosen and qualified, unless sooner removed in accordance with the by-laws of said company. There shall be an annual meeting of the stockholders of said company at such time and place as shall be prescribed by the by-laws thereof; the president of said company shall be president of said meeting, and the secretary of said company the secretary thereof. If any of the aforesaid officers shall be absent from said meeting, then, in such case, the stockholders present, voting by shares, shall proceed to elect *pro tempore*. If at any time a vacancy shall occur in any office, then the directors shall fill such vacancy for the remainder of the term, and until a successor to said office shall be elected and qualified.

Meetings how
called

SEC. 6. The president, or any three directors, or any number of stockholders representing a majority of the stock of said company, may at any time call a meeting of the stockholders of the company, by giving notice thereof in the manner following: Such notice shall be in writing, and shall be signed by the president, or three directors, or by such stockholders as are hereinbefore authorized to call said meeting, and shall designate the time and place of such meeting, and shall be given by delivering a copy thereof personally to each stockholder, or by leaving such copy at his usual place of abode with some person of suitable age and discretion, at least three days prior to the time designated for such meeting; or by publishing said notice once in some newspaper printed and published in Hennepin county, at least six days prior to the time designated for such meeting.

SEC. 7. The meetings of the board of directors shall be regulated by the by-laws of said company, and the

directors shall fix the compensation of the officers of said company. Compensation

SEC. 8. The secretary and treasurer shall perform such duties as the board of directors shall prescribe. Duties of officers

SEC. 9. Every share of stock shall be entitled to one vote, which may be cast by the shareholder or by proxy, at any meeting of the stockholders; and at any such meeting for the choice of directors, the five stockholders having the highest number of votes shall be elected; and at any meeting of the board of directors for the choice of president and vice president, the director having the highest number of votes for the office of president shall be elected president, and the director having the highest number of votes for the office of vice president shall be elected vice president. Voting—how regulated

SEC. 10. The Mississippi River Boom Company is hereby authorized, empowered and required to construct, maintain and keep in good repair any boom or booms on the Mississippi river at such points as they may deem advisable, between the mouth of Crow river and the head of Nicollet Island, above the Falls of Saint Anthony; and said company is further authorized and required to receive and take the entire control and management of all logs and timber which are to be conveyed to any point on the Mississippi river below the mouth of Bassett's creek in the county of Hennepin, as follows, to wit: Powers of company

All logs and other timber coming down the Mississippi river, at the mouth of Crow river; and said company shall drive and convey the same to the main boom of said company near the head of said Nicollet Island, and is further authorized and required to collect and assort all logs coming into said main boom, and when requested by the owners thereof, on sufficient notice being given, to turn the same out of said main boom, and into the ponds at St. Anthony and Minneapolis, at and opposite the head of Nicollet Island, or over the Falls of St. Anthony, pursuant to the direction of the committee named in section fifteen of this act, and shall on like request of the owners thereof, assort and raft with good half inch rigging any logs that may be in said boom or booms, which rafts shall be received by the owners at the place of rafting, when ready for delivery: *Provided, however,* That when the water may

become so low in said river that logs cannot be turned out of said main boom, or rafted, in consequence of the low stage of water, the said corporation shall not be held accountable for the delivery of any logs that may at such time be in said main boom, until there shall be sufficient water to enable said company to raft or turn out the same: *Provided, also*, That said company shall not be liable for any damage caused by any extraordinary rise of water or freshets.

Rate of boomage SEC. 11. Said corporation is entitled to the following compensation, or boomage :

1st. For all logs or timber received by it and delivered into the ponds of Saint Anthony or Minneapolis or delivered in rafts within the limits of said boom; the sum of sixty-five cents for each thousand feet. For all logs or other timber turned over the Falls of Saint Anthony the sum of fifty cents for each thousand feet.

2d. For assorting and rafting any logs or other timber, as hereinbefore required, forty cents for each thousand feet in addition to the above charge.

When boomage due SEC. 12. The amount of boomage and charges specified in the preceding section of this act, shall be deemed to be due whenever the logs or other timber are ready for delivery as above specified, and said corporation shall have a lien and property in all such logs or other timber, so far as to enable it to take, scale and retain a sufficient number or quantity of said logs or other timber to pay the boomage and charges due on the same, and also all charges due on logs or timber of the same mark that may have been previously delivered, and if the said boomage and charges are not paid within five days after the same become due as above, then said corporation is hereby empowered to sell said logs or other timber so taken, scaled and retained in the following manner, viz : at public vendue, by giving twelve days notice of the time and place of such sale, and stating in such notice the marks of the logs or other timber to be sold, and by publishing such notice in a newspaper published in said Hennepin county, at least once in each week for two successive weeks prior to said sale, and may retain out of the proceeds of such sale, the amount due said corporation for boomage, rafting, running and holding said logs or timber, together with all costs and expenses of advertising

and selling the same. The balance of the proceeds of such sale, after paying the charges above specified, the said corporation shall pay to the owner of said logs or other timber or to his order: *Provided*, That whenever the owner of any logs or timber shall, previous to the sale, apply to redeem the same, the said corporation shall deliver the same to him, if rafted in rigging or otherwise, where they lie, upon his paying the amount due thereon, and all costs and disbursements that have been made or incurred in connexion therewith.

SEC. 13. The said corporation shall have the right to enter upon and occupy any land that may be necessary for properly conducting its business as herein authorized and required. And the said corporation may apply to the district court of the county in which such lands lie, in session, or to the judge thereof in vacation, for the appointment of three commissioners to make an appraisal and award of the value of any and all lands, which are the private property of any person which shall be designated in such application, and which said corporation shall have entered upon, possessed, occupied or used, or which it may thereafter enter upon, take, possess, occupy or use for any of the purposes for which, by this act, the said corporation is authorized to enter upon, take, possess, occupy or use lands. Said corporation shall give notice of its intention to apply for the appointment of such commissioners, by publishing the same at least ten days before the time for hearing such application, in at least one newspaper published in the county in which such land lies; but in case no newspaper be published in such county, then a newspaper published in the county of Hennepin aforesaid; and upon an affidavit of publication of the same, the court or judge to whom the application shall be made, shall appoint three commissioners, who shall have cognizance of all cases arising within the limits hereinbefore mentioned, within which said company is authorized to construct and maintain its booms, which shall be designated by said company in such application, and they shall proceed to examine the premises in each case separately, having first given such notice as they may deem reasonable to such owner, guardian, or husband, and at least five days

Powers of corporation

Further powers.

personal notice to such owners if resident in the county, and whenever it shall appear to said company, or its officers, that the title of such land is in dispute, or that several parties claim interest therein on account of tax sales, incumbrances of any kind, or otherwise, the said commissioners shall, upon request of said company, give notice to all persons claiming any interest in such land, whether as owners, incumbrancers, or otherwise; and when the person to be notified has no known residence in this state within the knowledge of such commissioners, the notice may be by publication in a newspaper for such length of time as the commissioners shall deem reasonable; and after making such examination, said commissioners, or a majority of them, in each case separately, shall make an appraisalment and award of the value of the land so entered upon, taken, possessed occupied, or used by said company for any of the purposes aforesaid, at the time when the same was entered upon and taken, and shall deliver one copy of their award in each case to said company, and shall file the other in the office of the clerk of the district court of the county in which said lands shall lie, with the costs of the award taxed upon each of said copies; and if neither party shall appeal from said award in the manner hereafter provided, the said district court, on motion of the party in whose favor any award shall be made, for such value as aforesaid, unless such award shall have been previously paid, shall enter up judgment in conformity with such award; and in case either of said commissioners shall die, resign, or decline to act, said court or judge shall appoint another in his stead; and the said company, or any party receiving notice from said commissioners as aforesaid, may, within thirty days after such award shall have been filed with the clerk aforesaid, appeal from the same to said district court, by filing with the clerk thereof a written notice of such appeal; and upon receiving such notice the said clerk shall enter the appeal as a case upon the docket of said court, setting down the owner or owners, and person or persons claiming any interest in said land, embracing all persons so having received such notice from said commissioners as plaintiff, and the said company as defendant; and the said court shall proceed to hear and determine

such case, in the same manner that other cases are heard and determined in such court; and all issues of fact arising therein shall be tried by a jury, unless a jury be expressly waived by both parties; but the appellant shall not be entitled to have the case tried at any term of said court, unless he shall have given notice to the appellee, or his attorney, at least ten days before the first day of the term, that he will demand a trial at such term; but in case the appellee has no known residence in this state, or attorney of record residing therein, no such notice need be given; but in all cases the appellee may waive such notice, in which case the same rule for trial shall apply to it as to other cases in said court. After the hearing of such case, the jury, or if a jury trial be waived, the court, shall assess the value of the land so entered upon, taken, possessed, occupied and used by said company, at the time when the same was entered upon and taken; and after such assessment the court shall proceed to render judgment against said company for the amount of said assessment, in favor of the plaintiff, or plaintiffs in such case; and if the amount so assessed in favor of said plaintiff shall exceed the amount awarded by said commissioners, with interest at the rate of seven per cent. per annum from the time of such award to the time of such assessment by the jury or court, then judgment shall be rendered against said company for costs; and when the appeal shall be taken by the claimant, and it shall not exceed such amount and interest as aforesaid, then judgment shall be rendered in favor of said company for costs; and when the appeal shall be taken by the claimant, and it shall not exceed such amount and interest as aforesaid, then judgment shall be rendered in favor of said company for costs, and against the plaintiff, or plaintiffs, and execution may issue accordingly.

Either party shall be entitled to a change of venue for the trial of such cause, as in other cases pending in said court.

The judgment of the said court may be reviewed on writ of error, as other cases at law. Whenever the commissioners shall make an award as aforesaid, and no appeal shall be taken from the same, or whenever in case of appeal a final judgment shall be rendered,

Further powers

Further power

Further powers

it shall be the duty of the company, and not before, to pay to the party entitled to the same, the amount of said award or judgment; and in any case where there shall be any lien, incumbrance, tax sale, tax title, or equitable claim to or upon the land, or any part thereof which is the subject matter of such award or judgment, or when more than one person shall be entitled to, or shall set up any claim to such award or judgment, or any part of it, or when the person entitled to receive the same shall not have any known residence within this state, the said company may deposit the amount of such award, where there is no appeal, with the clerk of the court with whom the award in the case shall have been filed; and in case of an appeal and judgment thereon, the company may deposit the amount of such judgment with the clerk of the court in which such judgment shall have been rendered; and the money so deposited, in either case, shall be paid over by order of the court to the person or persons who shall be adjudged by the court to be entitled to receive the same; and whenever the amount of such award or judgment shall have been paid, or tendered, or deposited as aforesaid, an absolute estate in fee simple in such lands, shall be and become vested in the said company, as against all persons so receiving notice from the said commissioners as aforesaid, and all such persons shall be forever barred and excluded from questioning such title so acquired by said company, and the said company shall have full power and authority after entering upon and taking any such lands, to have, hold, possess, occupy, use and enjoy the same for any of the lawful purposes of said company, from the time of such entry until the proceedings contemplated by this act shall have been finally determined, and until said company shall have refused, after demand made, to pay the value thereof, so ascertained as aforesaid.

And it shall not during such time, nor until such refusal, be disturbed in such possession, occupancy, use or enjoyment by any proceedings either in law or equity: *Provided*, That such rights shall not accrue upon Rum river.

SEC. 14. All persons having logs or other timber come into said main boom, shall give at least six days written notice to said company whether they desire

the same turned into said ponds, rafted, or turned over the Falls of St. Anthony; and in case any owner of logs shall notify said company to turn his logs over the Falls, said company shall, upon the payment of the boomage and charges thereon as hereinbefore established, turn such logs loose, unless otherwise directed by the committee named in section fifteen (15) of this act; and it shall construct and maintain a shear boom, so that said logs will run west of the pier at the head of the present dam in the middle of the Mississippi river, below the suspension bridge; but said company shall do no other act or thing in respect thereto.

Removal of logs
—how regulated

SEC. 15. The lumbermen of the second surveyor district who may have cut logs in or above said district, during the previous winter, to the amount of one million feet, and who may meet at the surveyor general's office in said district, at ten o'clock in the forenoon on the first Tuesday of April in each year, shall choose a committee of three persons who shall, for the ensuing season, direct in relation to the driving of said logs and timber, and determine the times of turning out the same from the booms of said company. In voting for said committee, each lumberman shall be entitled to one vote for each million feet of logs so cut by or for him.

Lumbermen to
hold meeting

After said election shall be certified in writing to said company by the president and secretary of said meeting, said company shall, during the ensuing season, drive and turn out logs from said booms at such times as said committee shall in writing direct.

SEC. 16. Any person other than the authorized agents of said company, who shall open, cut, destroy or injure any of the booms of said company, or turn loose or adrift any of the logs or timber therein, shall, on conviction of the same, be punished by fine not less than one thousand dollars, and by imprisonment in the state prison for a term of not less than six months.

Penalty

SEC. 17. Section one (1) of said act entitled "an act to incorporate the Mississippi and Rum River Boom Company," approved May 21st, 1857, is hereby amended by striking out the words "for the period of fifteen years," where they occur in said section, and

Amendment

by adding to said section, at the end thereof, the following words: "and may have a common seal, and alter the same at pleasure."

Rights of Legis-
lature

SEC. 18. The legislature reserves the right to regulate the tolls or charges for boomage and driving of logs, or other timber under this act, after three years.

Net profits

SEC. 19. The net profits of said company, after paying to each stockholder twelve per cent interest per annum on the paid up capital stock owned by him, shall be expended upon the booms and rivers embraced in this charter, for their improvement. There shall be a certified statement of the entire earnings and expenditures of said company filed in the office of the surveyor general of logs and lumber, for the second district of Minnesota, on or before the first day of January of each year, signed by the officers of said company, so classified and arranged as to exhibit the gross amount expended for driving, for turning out of the boom, for improvement of booms, improvement of the river channels and gross amount of all other expenditures not enumerated above.

May increase
stock

SEC. 20. And the said company may increase its capital stock not exceeding one hundred thousand dollars, as fast as the moneys shall have been expended as provided in section nineteen hereof.

SEC. 21. This act is hereby declared to be a public act, and shall take effect from and after its passage.

Approved March 9, 1867.