

CHAPTER CXXX.

[H. B. No. 428.]

AS TO CONDEMNATION OF LOGGING ROAD RIGHT OF WAY.

AN ACT providing for condemnation of right of way for logging purposes and for conveying timber products and declaring an emergency.

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

SECTION 1. Any owner or owners of any timbered lands, or timber, desiring to cut or remove the same to a point wherein the same may be manufactured, transported, by either rail or water, driven, rafted, assorted, boomed or shipped for lumbering purposes and having no practical route for a road or right-of-way whereon to remove or haul said timber, shall have the right to condemn as hereinafter provided, a right-of-way for a logging road, or chute, stream, or watercourse from said lands to any waters, railroad logging road or chute or public highway, by the most direct and feasible route, and shall have the right to condemn the use of any stream, water-course, slough, pond or lake together with sufficient land along the bank or banks thereof, to enable the driving, rafting, booming or handling of such timber for the removal of said timber provided that proceedings to obtain such right-of-way shall conform to the law allowing private corporations to condemn a right-of-way in this state, except as is hereinafter provided.

SEC. 2. Such owner or owners desiring the location Complaint. and establishment of such right-of-way, shall file a complaint with the clerk of the superior court, in the county in which such proposed right-of-way or some part thereof is situated, against all persons owning or claiming an interest in, or lien upon, the land, stream, water-course, slough, pond or lake sought to be condemned, so far as the same can be ascertained from the public record, which complaint shall describe with

reasonable certainty the commencement and termini of such proposed logging road or chute, or water-course, and the route thereof, together with a description of the land or other property sought to be condemned, the particular description of the timber land the product of which it is proposed to haul over said right-of-way, together with an estimate of the amount of timber contained on each tract of land owned separately, to which complaint shall be attached a map showing the said timber lands and the route of the said logging road or chute, or substantially the course of such stream, water-course or slough, or the location of such pond or lake and the description of the property through which such stream, water-course or slough has its course, or upon which such pond or lake is situated, and said complaint be verified and otherwise conform to complaints in civil action, and there shall be filed therewith a bond to [in] the sum of two hundred dollars, payable to the State of Washington, for the use and benefit of all parties to said action, conditioned that such owner or owners will pay or cause to be paid all costs and expenses of said proceedings when ordered to do so by the superior court, which bond shall be signed by two or more good sureties to be approved by the clerk of the superior court.

Bond.

Notice.

SEC. 3. Upon the filing of said complaint, and the filing and approval of said bond, the clerk shall issue and give to such owner or owners for service a notice directed to the defendant in such action requiring them to appear in said cause within twenty days after service upon them of said notice, and show cause why an order should not be entered establishing such right-of-way, said notice to contain the name of the parties to such action, the purpose for which the same is being prosecuted together with a description of the land through which said right-of-way is sought to be condemned. Said notice shall be in substance as follows:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON. . .
IN AND FOR THE COUNTY OF

	vs.	Plaintiff,	}	<i>Notice of proceedings to condemn right-of-way for logging purposes.</i>
		Defendant.		

The State of Washington

To..... the above named defendant,

You are hereby notified that the above named plaintiff has filed in my office a complaint and bond as required by law, and that the object and purpose of this proceeding is to condemn a right-of-way for logging purposes upon, over and across the following land, to-wit: (Here give description of lands by legal subdivisions through which said right-of-way is sought to be condemned) and you are hereby required to appear in said cause within twenty days from date of service of this notice upon you, if served within this state, and within sixty days if served without this state, and show cause why an order shall not be made establishing said right-of-way for logging purposes and ascertain just compensation for all land taken or injuriously affected by reason of the appropriation of said right of way.

Witness my hand and seal of said superior court this..... day of A. D.

.....
Clerk of said superior court.

SEC. 4. Said notice shall be served in the same manner that a summons is served in a civil action, either personally or by publication, and when service has been completed and time expired for appearance, the court shall proceed to hear and determine any objections to said proceedings, and shall when requested by any party to said action appoint not to exceed three commissioners, who shall upon a day to be fixed by the court, in the order appointing them view the lands owned or controlled by the plaintiff, and the lands of the defendants and proposed right-of-way and logging road or chute or water course, and report to the court whether in their opinion there is a necessity for the establishment of such right-of-way and the most practicable route thereof, setting forth an accurate description of such right-of-way sought to be condemned. Such report to be made and filed within such time as may be prescribed by said court and said commissioners shall be under control of said court and shall receive

Service of notice.

as compensation for their services such sum as the court shall deem proper: *Provided, however,* That the court shall have the power to discharge said commissioners at any time and appoint others in their places.

Exceptions
may be filed.

SEC. 5. Any person interested may file exceptions to said report within five days after the same shall be filed with the clerk and the court shall proceed to hear and fully determine any objections to said proceedings, or said report, and if it finds that it is necessary for the practical handling and removal of such timber, to have said logging road or chute, stream, water course, slough, pond or lake, and to condemn such right-of-way it shall determine the route thereof sought to be condemned, and shall order the cause set down for trial by jury, unless the parties appearing waive a jury trial and agree that the cause shall be submitted to the court for determination, and when requested by plaintiff shall summon a special venire of jurors to try said case, provided plaintiff shall deposit with the clerk of the court the sum to be fixed by the court, sufficient to pay the expenses of such jury.

Trial of issue.

SEC. 6. Such trial shall be conducted as trials in civil actions and a verdict shall be rendered by the jury, when it is tried by a jury, and a finding by the court when tried before it, assessing and awarding the amount of damages which shall result to any person, firm, corporation, state, county or municipal corporation by reason of the appropriation and use of such lands or other property for said logging purposes, and shall ascertain and award the amount of damages to be paid to such owners, respectively, and to all tenants, encumbrances, or others interested for the taking or injuriously affecting such lands or other property for said logging purposes. Upon the verdict of the jury or finding of the court, judgment shall be entered for the amount of damages awarded to said owner or owners, respectively, and to all tenants, encumbrances or others interested for the taking or injuriously affecting such land or property.

SEC. 7. Judgment shall be entered upon said verdict Judgment.
 or finding appropriating an easement upon said land and other property for said right-of-way for the purpose only of logging or removing timber from the land set forth in said complaint: *Provided, however,* That any one or more persons owning or controlling timber land or timber and entitled to condemn such right-of-way under the provisions of this act may join as plaintiffs in such action. Any person condemning such right-of-way shall have the exclusive use thereof and the right to remove therefrom any improvements or structures placed thereon, subject to the right of any other person or persons to condemn said logging road, chute, stream, water-course or slough, as herein provided: *Provided further,* That any other party owning or controlling timber tributary to any such stream or water-course condemned as aforesaid, and and who has not joined in such condemnation, may have the right to use the same upon paying to the parties owning the right-of-way the proper proportion of the cost of such improvement and the expenses of maintaining the same, to be determined by the superior court of the proper county, if the parties cannot agree.

SEC. 8. This act shall be liberally construed, and the Construction.
 word person, as used herein, shall mean any one or more persons, firm or firms, corporation or corporations, and the words logging road or chute shall include any bridges, tramways, chutes, logging railroads, flumes or landings, whether used for logs, lumber, shingles, shingle bolts, or other timber whatsoever.

SEC. 9. When any logging road or chute, stream or Vacation.
 water-course, slough or lake shall cease to have been used for one year, any party interested may file a motion in such action and upon notice to the owner or person in charge of such timber, obtain an order vacating such right-of-way unless good cause is shown why such logging road or chute, stream, water-course, slough, pond or lake upon such condemned right-of-way should not be vacated. Nothing but an easement

can be acquired by this proceeding and no interest in the land shall pass by the decree of appropriation.

Time of pay-
ment.

SEC. 10. The court at the time of entering the final judgment shall fix a time within which all damages and costs shall be paid, which shall not be less than twenty days except by consent of plaintiff, and may dismiss said cause for failure to make such payment as ordered.

Appeal.

SEC. 11. No appeal shall be taken from the order of the court as to the necessity of the road or chute or the route thereof until after judgment of appropriation shall be entered, but an appeal shall bring before the superior court the propriety and the necessity of such road and the route thereof and justice of the amount of damages of the parties to the appeal: *Provided*, That no party shall be entitled to appeal who has not contested said proceedings and taken and caused to be entered exceptions to the order, findings and judgment of the court.

Construction.

SEC. 12. The construction or improvement of the proposed logging road, chute or water-course shall not be delayed by any appeal provided the amount [of] damages and costs have been paid to the clerk of the court for the use of the parties entitled thereto, and the plaintiff shall have in addition thereto entered into a bond in such sum as the court or judge thereof shall determine, conditioned to pay any and all judgments for costs or damages that may thereafter be rendered in such proceedings, which bond shall be approved by the court or judge thereof.

SEC. 13. All proceedings herein contemplated shall be governed by the practice in civil actions except as herein otherwise provided.

SEC. 14. An emergency exists, and this act shall take effect immediately.

Passed the House March 2, 1899.

Passed the Senate March 9, 1899.

Approved March 14, 1899.