

CHAPTER 111.

DAM ACROSS CEDAR RIVER.

AN ACT to authorize Nicholas B. Brown and his associates to construct a dam across Cedar river, in Linn county.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Dam. That Nicholas B. Brown, John F. Ely, William Greene, and Joseph Greene, or their assigns, be and they are hereby authorized to construct and maintain a dam across Cedar river, at Cedar Rapids, in Linn county.

And be it further enacted,

SEC. 2. Exclusive privilege—proviso—lock. That said Nicholas B. Brown and his associates as aforesaid, shall have the exclusive right and use of the water power created by the erection of such dam: provided, said Brown and his associates as aforesaid, shall, within one year from the passage of this act, construct and build a lock at least forty feet wide, and one hundred and thirty-five feet in length.

SEC. 3. Passage of boats. Said lock shall, after completed as aforesaid, be tended by good and skillful men, at the expense of said Brown and his associates at all times during the day, when necessary for boats and rafts to pass through the same, and said lock shall be kept in good repair, sufficient to enable steam, keel, and flat boats, rafts and other water crafts to pass through said lock at all times without unnecessary delay and free of charge.

SEC. 4. Repealing clause—court may declare void. This act may be repealed by any subsequent general assembly, and upon petition of any person interested, [195] and upon due proof of a material non-performance of any of the requirements and provisions of this act, the same shall be declared void by the district court of Linn county.

SEC. 5. Take effect. This act shall take effect and be in force from and after its publication.

Approved, January 24, 1853.

CHAPTER 112.

STAY OF EXECUTION.

AN ACT allowing and regulating the stay of execution on judgments of the district and justices' court.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Stay—time. That all judgments rendered by justices of the peace on any and all causes of action, except where otherwise specially provided for, on the judgment debtor entering good and sufficient security on the proper justice's docket for the amount of such judgment, interest and costs, there shall be a stay of execution, if the principal sum shall not exceed five dollars, twenty days; if over five and not exceeding fifteen dollars, thirty days; if over fifteen and not exceeding twenty-five dollars, forty days; if

over twenty-five and not exceeding forty dollars, sixty days; and on all sums over forty dollars not more than ninety days.

SEC. 2. Court—stay—appeal not allowed. On judgments upon actions originally commenced in the district court, except where otherwise expressly provided for, on the judgment debtor entering good and sufficient security on the proper court record for the amount of such judgment, interest and costs, there shall be a stay of execution on like sums as those mentioned in the preceding section, the like corresponding times as there provided; provided, that where there has been a stay of execution taken, the party taking such stay, if he have been personally served with process, shall not afterwards be allowed an appeal to the district or supreme courts upon such judgment; provided, the provisions of this law shall extend to decrees rendered upon the foreclosure of mortgages.

[196] **SEC. 3. Judgment—lien—execution—principal.** Where a stay of execution has been taken and the judgment, at the expiration of said stay, shall not be fully paid, it shall be the duty of the proper justice or clerk to render judgment against the principal and bail; provided, that such judgment shall not release any judgment lien, by virtue of the original judgment for the amount then due, and upon the order of the creditor to issue execution against the property of the bail, as also against the property of the principal debtor for the amount due, together with the interest and costs; but in all cases the property, if any, of the principal debtor shall first be taken on execution, and the officer holding the said execution shall return thereon what amount was made from the principal debtor, and how much from the surety.

SEC. 4. Bail—transcript. After judgment against the bail for the stay of execution, the original judgment shall remain in full force for the use of such bail, who may at any time after paying the amount of the judgment against him, with interest and costs, cause execution to be issued on such original judgment for his own use, which shall be so endorsed by the justice or clerk; and if the security be entered in a justice's docket, the bail shall be entitled to the transcript of an original judgment, to be filed in the proper clerk's office, and which shall have the same force and effect as transcripts in other cases.

SEC. 5. Security apprehensive—execution—new bail. Where any bail for the stay of execution shall go before the justice or clerk, by whom such stay has been taken, or the justice or clerk having control of the docket or record in which the stay is entered, and make and file an affidavit that he is apprehensive of being compelled to pay such judgment if execution shall be further stayed, such justice or clerk, on being so requested by the bail, shall forthwith issue execution against the property of the original debtor, which shall be proceeded with as in other cases but if within ten days after levying such execution, and the term of stay shall not have then expired, the principal debtor shall give other and sufficient security for the further stay of execution, and pay, or cause to be paid, or secured, the costs [197] of such execution, the same shall be recalled and stayed, and the subsequent proceedings shall be the same as if no execution had been issued, except that in issuing against the bail, the execution shall be against the property of the person last entering as bail, and no execution shall issue against the first or any intermediate security.

SEC. 6. Security—officer liable. The good and sufficient security before mentioned, is such as may be accepted by the proper justice or clerk; but in all cases where security has been taken as above provided, and shall prove insufficient, the court or officer approving the same shall be liable for

the same on his official bond, unless he has made the security justify under oath in writing, which must be signed and filed with the bond.

SEC. 7. **Limit.** No stay of execution is intended to be herein allowed on judgments against bail as above provided.

SEC. 8. **Lien.** Any judgment on which there is a stay of execution entered becomes a lien on the property of the sureties from the time of entering said stay to the same extent as though they were original defendants in said judgment.

This bill having remained with the governor three days (Sundays excepted) the general assembly being in session, has become a law this 24th day of Jan. 1853.

GEO. W. McCLEARY,
Secretary of State.