

said section, the following: "recorded in the office," so that said section when amended shall read as follows: Section 2001—16. Whenever any of said congregations have complied with the foregoing provisions, the articles of incorporation thereof shall be made out accordingly, be signed by the president and secretary in the presence of two witnesses, who shall sign their names thereto, and acknowledged before some notary public or other person authorized by law thereto and filed in the office of the secretary of state, and recorded in the office of the register of deeds in the county or counties where such corporation may own real estate.

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

Approved March 9, 1901.

No. 70, S.]

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CHAPTER 43.

AN ACT to amend sections 1379—13, 1379—18, 1379—19, 1379—21, 1379—24, 1379—31, of the revised statutes for 1898, relating to drainage districts.

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

Hearing when had; duty of court as to petition; deeds not made in good faith; findings; appointment of commissioners. SECTION 1. Section 1379—13 of the revised statutes of 1898 is hereby amended by adding after the word petitioners, in the twenty-sixth line of said section, the following: "and judgment shall be entered against said petitioners for the amount of said costs." So that said section when amended, shall read as follows: Section 1379—13. The circuit court in which such petition shall be filed may grant a hearing thereon at any general or special term, and adjourn the hearing from time to time or continue the case for want of sufficient notice or for other good cause. At the hearing on any such petition all parties through or upon whose lands any of the proposed work may be constructed or whose lands may be damaged or benefited thereby

may appear and contest the necessity or utility of such work or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto. The court shall hear and determine whether or not the petition contains the signatures of a majority of the owners of lands within said proposed district who are of lawful age, and who represent one-third in area of the lands proposed to be affected by said work, or the signatures of the owners of more than one-half of such lands; and the affidavit of any three of more of the signers of said petition that they have examined it and are acquainted with the locality of said district and that said petition is so signed may be taken by the court as *prima facie* evidence of the facts therein stated; and the oath or affidavit of any person before such court, giving the age of such party, and his or her ownership of such lands, to be named therein by proper description, shall be sufficient evidence to the court of such facts; provided, that all deeds made for the purpose of establishing or defeating the prayer of said petition, and not made in good faith and for a valuable consideration shall be taken and held to be a fraud, and the holders thereof shall not be considered as the owners of the land described therein. If the court after hearing any and all competent evidence that may be offered for and against the said petition, shall find that the same has not been signed as herein required the said petition shall be dismissed at the cost of the petitioners; and judgment shall be entered against said petitioners for the amount of said costs; but if it shall appear that the petition has been so signed the court shall so find, and if it shall further appear that the proposed drain, ditch, levee or other work is necessary, or will be useful for the drainage of the lands proposed to be drained thereby, and the public health or welfare will be promoted by the construction thereof the court shall so find, and shall appoint three competent persons as commissioners to lay out and construct such proposed work. In case the land to be affected shall be situated in different counties not more than two of the commissioners shall be selected from any one of such counties. If the court shall find against the petitioners the petitions shall be dismissed and the petitioners shall pay the costs.

Filing of report; notice of hearing; publication; remonstrance; hearing; other issues; findings; district a body corporate; powers of commissioners; revision of confirmation. SECTION 2. Section 1379—18 of the revised statutes of 1898 is hereby amended by adding after the word "made" in line thirty-nine of said section the following: "If the finding be against the validity of the proceedings the same shall be dismissed at the cost of the petitioners," and by adding at the end of said section the following:

"The said order of confirmation may, at the same or any subsequent term of the said court, be revised, modified or changed, in whole or in part, on petition of the commissioners after such notice as the court may require to parties adversely interested. The court may also permit the commissioners to present and file a supplemental report as to any matters which, pursuant to the provisions of section 1379—15 might have been included in the original report presented by them, and after reasonable notice given to parties adversely interested in such manner as the court shall direct, the court may, upon the hearing in the matter, make such order as the case may require. So that said section, when so amended, shall read as follows: Section 1379—18. Upon the filing of such report the court shall make and enter an order fixing a time and place when and where all persons interested may appear and contest the confirmation thereof, and the clerk of said court shall cause notice of the time and place of such hearing to be given to all parties interested by the publication of a notice thereof and of the amount of benefits and damages assessed and awarded in said report, which notice shall contain a description of all lands affected, for at least three successive weeks prior to the day set for such hearing in one or more newspapers published in said county, and by serving a copy of such notice on each of the persons or corporations affected thereby who reside in any of the counties out of which the proposed district is formed at least twenty days before the day of hearing, in the same manner that a summons is required to be served by the provisions of sections 2636 and 2637 of the statutes of Wisconsin for 1898. Any owner of lands or any person or corporation affected by the work proposed may appear on the day set for hearing said report and remonstrate against the whole or any part of the proposed work. Such remonstrance shall be verified by affidavit, and shall set forth the objections of the affiant, whether they go to the jurisdiction of the commissioners or the court or not or whether they rest on any other fact, as that some lands are assessed too high or too low or improperly, or that lands are assessed which ought not to be, or that lands should be assessed which are not assessed, or that the plans for said proposed work should be changed, or that the boundaries of said district should be altered so as to include or exclude certain lands, or by any persons or corporation to whom damages are allowed that they are inadequate, or by any person or municipality that the public health or welfare will not be promoted by the proposed work. The circuit court for said county or the presiding judge thereof may fix a time at any term or appoint a special term for hearing the objections, and, on demand of any person or

corporation assessed for benefits or awarded damages, may frame an issue in said matter, impanel a jury and take its verdict upon the trial of such issue, whether the amount of damages awarded by the commissioners is adequate and whether the assessment of benefits to any remonstrant, demanding the review by a jury, is too high; and the jury may assess the same. All other issues arising on remonstrance shall be tried by the court if the court finds that the report requires modification the same may be referred to the commissioners who may be required to modify it in any respect. In any case between the commissioners and any remonstrant the court may award and apportion the costs; costs awarded against the commissioners shall be paid out of the funds realized from the assessment made. If the finding be against the validity of the proceedings the same shall be dismissed at the cost of the petitioners. If the finding be in favor of the validity of the proceedings the court, after the report shall have been modified to conform to the findings, or if there be no remonstrance, shall confirm the same, and the order of confirmation shall be final and conclusive, the proposed work shall be established and authorized and the proposed assessments approved, subject to the right of appeal to the supreme court. And upon the entering of such order of confirmation of record said district is hereby declared to be organized as a drainage district by the name mentioned in said petition and with the boundaries fixed by the order confirming the report of said commissioners, to be a body corporate by said name, with the right to sue and be sued, to adopt and use a corporate seal, and to have perpetual succession; and the commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authorities of such drainage district, exercise the function conferred upon them by law, and do all things and perform all acts necessary to the construction and preservation of the proposed work; and all proceedings required prior to the entry of such order of confirmation shall be deemed and are hereby declared to be necessary to the formation of said body corporate. The said order of confirmation may, at the same or any subsequent term of the said court, be revised and modified or changed, in whole or in part, on petition of the commissioners after such notice as the court may require to parties adversely interested. The court may also permit the commissioners to present and file a supplemental report as to any matter which, pursuant to the provisions of section 1379—15 might have been included in the original report presented by them, and after reasonable notice given to parties adversely interested in such manner as the court may direct, the court may, upon the hearing in the matter, make such order as the case may require.

Judgment against petitioners; costs; hearing. SECTION 3. The said revised statutes of 1898 are further hereby amended by adding a new section after section 1379—18 to be designated as section 1379—18a, as follows: In case the petition or proceedings are dismissed as provided in sections 1379—16 or 1379—18, a judgment shall be entered against the petitioners and in favor of the commissioners for the costs, expenses and liabilities incurred in said proceedings, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings, or have received costs or successful contests therein. Before any such judgment is entered, said commissioners shall file with the clerk of the circuit court in which said proceedings were instituted an itemized statement of such costs and expenses, duly verified, upon which an order may issue requiring said petitioners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners for the amount of said costs and expenses. Notice of the hearing of said order shall be given to said petitioners by mailing to each a copy thereof at least twenty days prior to the time set for hearing and by publication of the same in one or more newspapers published in the county, where the proceedings are pending, at least three successive weeks, prior to the day set for such hearing.

Assessments of benefits; for repairs, when due; preservation of work; unpaid assessments. SECTION 4. Section 1379—19 of the revised statutes of 1898 is hereby amended so as to read as follows: Section 1379—19. At the time of confirming such assessment it shall be competent for the court to order the assessment of benefits for the construction of new work to be paid in installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work or for the payment of the principal and interest of such notes or bonds of said district as the court shall grant authority to issue for the construction of new work. The court may also by such order fix a date at which the first installment of the assessments for benefits shall become due, not more than ten years after the date of the order, and each of said installments shall draw interest from the date of said order. Unless otherwise provided by said order such assessments shall be payable immediately, and from the time of the entry of said order such assessments and the interest thereon shall be a lien upon the lands until paid. The amount of benefits for keeping any drain, ditch, levee or other work in repair under these provisions shall be due and payable on the first day of September annually. The commissioners having charge of any such com-

pleted drain, ditch, levee, or other work shall, on the first Tuesday in July in each year, file with the clerk of the court having jurisdiction a report in which they shall specify in detail the labor necessary to the preservation and protection of the work under their control and the amount of benefits to be assessed to each tract, lot, easement, servitude or corporation. No notice of the filing of such report shall be necessary. All such assessments shall be apportioned on the first assessment. Upon the filing of such annual report the court shall examine the same, fix and determine upon the amount of such benefits, and cause such adjudication to be entered of record in said court and a certified copy of the same to be delivered to said commissioners. The amount to be collected under the order of said court for the preservation and maintenance of any work as aforesaid shall not in the aggregate amount in any one year to a sum greater than would be produced by a levy of thirty cents per acre on the lands benefited. In all cases after assessments are confirmed by the court the commissioners shall within twenty days after such confirmation give notice of the entry of such order and of the time when and the place or places where the assessments must be paid by publication thereof for at least two successive weeks in one or more newspapers published in the county where the proceedings are pending. If assessments are not paid when due they shall certify the same to the clerk of the town in which the delinquent lands are situated as due and unpaid for such work, and such clerk shall enter the same in the tax list for such town next thereafter to be made against the lands benefited, and the same shall be collected in the manner that state, county and town taxes are collected, excepting only that the personal property of individuals shall not be liable to seizure and sale therefor.

Rate of interest on unpaid assessments. SECTION 5. Section 1379—21 of the revised statutes of 1898 is hereby amended so as to read as follows: Section 1379—21. If assessments of benefits for the construction of new work shall be payable in installments each installment shall draw interest at the rate of six per centum per annum from the date of the order fixing and confirming the assessments until paid, and in case said interest is not paid when due, its collection shall be enforced in the same manner as in case of an assessment as provided for in section 1379—19.

Deficiencies in assessments, how provided for. SECTION 6. Section 1379—24 of the revised statutes of 1898 is hereby amended so as to read as follows: Section 1379—24. If in

the first assessment the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction or repair, or if, in any year an additional sum is required to pay the interest on lawful indebtedness of the said drainage district, a further assessment on the lands benefited, proportioned on the first, shall be made under the order of the court or the presiding judge thereof without notice, to be collected in the same manner as the original assessment.

Drainage laws, how to be construed; defects in organization no bar to collection of assessments. SECTION 7. Section 1379—31 of the revised statutes of 1898 is hereby amended so as to read as follows: Section 1379—31. The provisions of section 1379—11 to section 1379—31 inclusive shall be liberally construed to promote the public health and welfare by reclaiming wet or overflowed lands, building embankments or levees and the preservation of any system of drainage heretofore constructed according to law. The collection of any assessments of benefits made by the commissioners and confirmed by the court shall not be restrained or obstructed by reason of any omission, imperfection or defect in the organization of any district or in any proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within thirty days after the entry of such order, or within thirty days after this act shall take effect. Nothing in said sections shall be construed as repealing or modifying any general or private law relating to the drainage or reclamation of swamp, wet or overflowed lands or any law relating to the preservation of any work thereunder or as affecting any proceedings had or to be had thereunder. The provisions of 3187a of the revised statutes of 1898 are declared not to apply to proceedings regulating the organization and powers of drainage districts.

SECTION 8. This act shall take effect and be in force from and after its passage and publication.

Approved March 11, 1901.