

No. 77, A.]

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CHAPTER 47.

AN ACT to amend section 1362, chapter 54, of the statutes of 1898, relating to town drains.

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

Survey; route, etc.; appeal and proceedings. SECTION 1. Section 1362, chapter 54, of the statutes of 1898, is hereby amended by striking out the word "twenty" where the same occurs in the seventeenth line of said section and inserting in lieu thereof the word "forty" so that said section when so amended shall read as follows: Section 1362. Whenever the supervisors shall decide to lay out and establish any ditch, drain or enlargement of a water-course under the provisions of these statutes they shall cause an accurate survey thereof to be made; shall establish the route through which such ditch, drain or enlargement of a water-course shall pass, together with the width thereof at the top and bottom, and the depth thereof at different points along the line on which it is to be constructed, and shall incorporate the same in an order to be signed by them, and shall cause such order to be filed and recorded in the office of the town clerk of their town, and shall also file with such order a map or plan of such ditch, drain or enlargement of a water-course showing the line or route of the same, with the courses and distances and sections of land through which it will pass, together with the sections into which they may have, for the purpose of construction, divided such ditch, drain or water-course, with specifications showing the amount and character of the work required in the construction of each section separately; which map or plan and order laying out and establishing the said ditch, drain or water-course shall be filed in the office of the town clerk within *forty* days after the time fixed by them for deciding upon the application for laying out and establishing the same. In case said supervisors shall decide against such application they shall, within twenty days after the day of hearing thereupon, file in the office of the town clerk of their town the said application and a copy of the notice hereinbefore required, together with the proofs of the service of such notice and the posting

thereof, and also their decision in writing. And any freeholder resident of the town feeling himself aggrieved by the determination of the supervisors, either in laying out and establishing any ditch, drain or enlargement of a water-course or in refusing to lay out and establish the same, may, at any time within fifteen days after the filing of such order or determination, file in the office of the town clerk of the town a notice of appeal from the decision of the supervisors; which notice shall contain a description of the lands through which the proposed ditch, drain or enlargement of a water-course is to pass, as shown by the application in the case, and also the proceedings and determination or judgment of the supervisors thereon, and whether the appeal is taken for the purpose of reversing entirely the determination of the supervisors in the matter or only to reverse a part thereof, and in the latter case shall state what part; and also a notice that he or they will, on a certain day and hour of such day to be named in such notice, which day shall not be less than six nor more than ten days after the date of the filing of such notice in the office of the town clerk, apply to a justice of the peace within the county, naming such justice, for the appointment of commissioners to hear and determine such appeal; and on presentation of such notice by the appellant, his, her or their agent or attorney to the town clerk he shall immediately file the same with the papers in the case in his office, and shall deliver to the person so presenting such notice of appeal a certified copy of the same, which certified copy shall be served personally on at least one of the supervisors of the town at least five days before the day named therein for the appointment of commissioners. And upon the presentation by the appellant, his, her or their agent or attorney of said certified copy of the notice of appeal to the justice of the peace therein named upon the day and hour set forth in such notice, together with proof of service of such copy on at least one of the town supervisors as herein required, and filing with said justice a bond executed by the appellant to the supervisors of the town, with sufficient sureties to be approved by such justice, conditioned to pay all costs arising from such appeal in case the determination or judgment of the supervisors in laying out and establishing or in refusing to lay out and establish such ditch, drain or enlargement of a water-course (as the case may be) shall not be reversed, the said justice shall thereupon enter the matter in his docket and shall proceed to make a list of fifteen disinterested freeholders, residents of the county, not of kin to the resident owners of any

of the lands embraced in the notice of appeal or to the appellant, and from said list so made each party may strike off the names of five persons; and in case no one of the supervisors of the town is present then the justice shall strike from such list the names for such town, and the justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, directing him to summon the five persons whose names were not stricken from such list to meet at a time and place to be specified in said summons to serve as commissioners to hear and determine the matter embraced in such appeal. And the sheriff or any constable to whom such summons shall be delivered shall execute the same by summoning the persons named therein in the same manner and with like authority as upon a venire issued in cases pending before justices of the peace and shall in like manner make return thereof, provided, that if any of the persons so summoned shall fail to attend such justice may enforce their attendance in the manner in which the attendance of jurors in justice's court is compelled; but if it is impossible for any persons summoned to attend or serve or if such justice shall deem it inexpedient to compel his attendance, or any such person shall be found to be unqualified to act, then the justice shall proceed to fill the vacancy by making a list of three persons who possess the prescribed qualifications for each such vacancy, from which list each party shall strike one in the manner hereinbefore provided, the justice striking for the supervisors if none of them are present; and the person or persons whose name or names remain on the list shall be summoned to fill the vacancy or vacancies; the proceedings may be adjourned or held open by the justice until the vacancy or vacancies are filled, but no adjournment shall be taken for more than one week unless by consent of all the parties. The persons summoned as commissioners shall meet at the time and place designated in the summons, and the justice issuing the same shall deliver to such commissioners the certified copy of the notice of appeal on file in his office in the case. The commissioners shall be duly sworn to justly and impartially discharge their duties as such commissioners, and shall proceed to view and examine the lands described in the notice of appeal, and the route of the proposed ditch, drain or enlargement of a water-course, and the determination or judgment of the supervisors in laying out and establishing or in refusing to lay out and establish such ditch, drain or enlargement of a water-course (as the case may be), and shall hear any reasons which may be offered for and against the determination or judgment

of the supervisors in the matter, and may administer oaths and examine witnesses upon any point relating to the subject matter submitted to them and may continue the hearing of the cause from day to day if the circumstances of the case, in their judgment, require such continuance. The decision of such commissioners shall be reduced to writing and signed by them or a majority of them and shall be by them returned to the justice of the peace issuing the summons in the case, together with the certified copy of the notice of appeal to them delivered as herein provided, who shall enter the decision in his docket and file such decision in the office of the town clerk of the town in which the lands described in the notice of appeal shall be located. And if the determination or judgment of the supervisors shall be affirmed by the decision of the commissioners the party appealing from such determination or judgment shall pay all costs and expenses of the proceedings had in the matter; but if such determination or judgment be reversed then and in that case the costs and expenses shall be paid by the town. Each of the commissioners shall be entitled to the sum of one dollar and fifty cents a day for their services, and the justice and constable shall be entitled to such fees as are allowed by law for like services in other cases. When an appeal shall have been made from the determination or judgment of the supervisors refusing to lay out and establish a ditch, drain or enlargement of a water-course and such determination or judgment shall, upon an appeal, be reversed by the commissioners the supervisors shall immediately proceed to lay out and establish such ditch, drain or enlargement of a water-course in accordance with the provisions of this chapter the same as if they had themselves originally determined to lay out and establish such ditch, drain or enlargement.

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

Approved March 29, 1905.