

shall, in case of sickness or absence of the inspector of buildings, perform all the duties imposed by law or the ordinances of such city upon such inspector of buildings, and shall likewise be subject to the same liabilities and penalties.

SECTION 9. The inspector of buildings shall have power to discharge the deputy for cause, but then only as provided by the civil service rules governing civil service employes.

SECTION 10. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SECTION 11. This act shall take effect upon passage and publication.

Approved July 15, 1919.

No. 270, S.]

[Published July 22, 1919.

## CHAPTER 571.

AN ACT to create chapter 32 of the statutes, relating to eminent domain; to amend subsection (2) of section 23.11, sections 31.15, 43.26, subsection 1 of section 903, sections 925—97, 925—154, 925—168, subsection 1 of section 927, subsection 1 of section 927—1, sections 959—61, 959—62, 959—64, 959—113, 1226b, 1379—32, 1777a, 1777e, 1778h, 1786f, subsection (3) of section 1828, sections 1863a and 1872 of the statutes and section 3 of chapter 288, laws of 1899; to repeal sections 31.14, 40.12, 605, 606, 607, 694c, 694d, 694e, 896 to 902, inclusive, 925—159 to 925—164, inclusive, 925—166, 925—167, 925—170, 925—171, 926L to 926s, inclusive, 926—6, 959—63, 959—65 to 959—68, inclusive, 959—89, 1379—33 to 1379—39, inclusive, 1777b, 1777e, 1777d, 1778a, 1778b to 1778g, inclusive, 1778i, 1845 to 1856, inclusive, and 1875 of the statutes; to enact a new section to be numbered 1778d; and to add a new subsection to section 4971 of the statutes.

*The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. There is created a new chapter of the statutes to be numbered and to read:

### CHAPTER 32.

#### EMINENT DOMAIN.

32.01 DEFINITIONS. In this chapter unless the context or subject matter otherwise requires:

“Person” includes the state, a county, town, village, city, school district or other municipal corporation, a board, commission or corporation.

“Property” includes estates in lands, fixtures, and personal property directly connected with lands.

**32.02 WHO MAY CONDEMN; PURPOSES.** The following municipalities, boards, commissions, public officers and corporations may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

(1) Any county, town, village, city including villages and cities incorporated under general or special acts, school district, the state board of control, the regents of the University of Wisconsin, the board of regents of normal schools, or any public board or commission, for any lawful purpose.

(2) The governor and adjutant general for land adjacent to the Wisconsin state military reservation at Camp Douglas for the use of the Wisconsin national guard.

(3) Any railroad corporation, any street or interurban railway corporation, any grantee of a permit to construct a dam to develop hydroelectric energy for sale to the public or for the operation of a street or interurban railway, any Wisconsin plank or turnpike road corporation, any drainage corporation, any interstate bridge corporation, or any corporation formed under chapter 288, laws of 1899, for any public purpose authorized by its articles of organization.

(4) Any Wisconsin telegraph or telephone corporation for the construction and location of its lines.

(5) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public, for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.

(6) Any Wisconsin corporation furnishing gas, electric light or power to the public, for additions or extensions to its plant.

(7) Any Wisconsin corporation formed for the improvement of any stream and driving logs therein, for the purpose of the improvement of such stream, or for ponds or reservoir purposes.

**32.03 WHEN CONDEMNATION NOT TO BE EXERCISED; RAILROADS.** (1) The general power of condemnation conferred in this chapter does not extend to property owned by the state, a municipality, public board or commission, nor to the condemnation by one railroad or public utility of the property of another, unless such power is specifically conferred by law. This chapter does not apply to the acquisition by municipi-

palities of the property of public utilities used and useful in their business, nor to any city of the first class, except that every such city may conduct any condemnation proceedings either under this chapter or, at its option, under other laws applicable to such city.

(2) Any railroad corporation may acquire by condemnation lands which any other railroad corporation has previously acquired in any manner. No such land shall be taken so as to interfere with the main track of the railroad first established except for crossing.

32.04 PETITION. Any person desiring to acquire any property by condemnation shall present a verified petition therefor to the county or circuit judge of the county where such property is situated. Such petition shall contain a description of the property desired to be condemned; the purpose for which it is intended to be used; the names of the parties who own or occupy it or have any interest therein, as near as may be, and if any such persons are infants, their ages as near as may be, and if any are persons of unsound mind or unknown, these facts shall be stated. In case such petition is made by a corporation it shall also state that the petitioner is duly incorporated; that the property described is required for the purposes of such corporation and that it is the intention of the corporation in good faith to use it therefor. If such petition is made for the right of way of a railroad or street railway or interurban railway corporation, it shall also state that the right of way sought to be acquired has been located as required by law and that it has been duly surveyed and staked out, and if a width of more than one hundred feet is desired to be taken across any track it shall specify the width desired across said track and the reasons therefor; and a map showing the route of the line and the lands desired to be taken shall be attached to the petition. If the certificate of the railroad commission is required before the property may be acquired the petition shall state that such certificate has been obtained. If any owner of property desires to institute condemnation proceedings, he shall present his verified petition therefor to the county or circuit judge of the county where the land is situated. Such petition shall describe the land, state the board, commission or corporation against which the condemnation proceedings are instituted, and use to which it has been put or is designed to have been put by the board, commission or corporation against which the proceedings are instituted.

32.05 NOTICE OF HEARING. Upon the filing of such

petition the judge shall fix a time and place for the hearing thereon. Notice of such hearing shall be served upon all interested at least twenty days before said hearing or if any party cannot be found then by publication once a week for three weeks in a newspaper to be designated by the judge.

**32.06 GUARDIANS AD LITEM.** If any party interested is an infant or under disability, the judge shall, upon notice to the general guardian, if any, appoint a guardian ad litem for such party. The judge may require security from such guardian ad litem.

**32.07 NECESSITY, DETERMINATION OF.** The necessity of the taking shall be determined as follows:

(1) If the application be by a municipal corporation, the filing of the petition under section 32.04 shall be deemed the commencement of an action for the determination of the necessity of the taking. Within twenty days after the service of notice, as provided in section 32.05, any person owning or interested in any property proposed to be condemned, may serve and file an answer. After the expiration of the time for answering the action may be brought on for a hearing on a three days' notice to all parties who have answered and shall have precedence over all other matters not on trial. The court shall thereupon impanel a jury under section 2544i, and the question of the necessity of the taking shall thereupon be tried as a question of fact. If no answer to the petition is interposed the trial by jury shall proceed ex parte. Costs in such proceedings shall be paid by the municipality. The court may, in its discretion, submit to a single jury the determination of such necessity as to one or more than one or all of the parcels of land sought to be taken for the same purpose. If the jury find that the taking of such lands is not necessary the owner thereof shall recover from the municipality his necessary disbursements and taxable costs not to exceed twenty-five dollars.

(2) If the application be by a board, commission or public officer; or for the right of way for a railroad or a street interurban railway, up to one hundred feet in width, or a telegraph, telephone or electric line, the petitioner shall determine the necessity.

(3) In all other cases, the judge shall determine the necessity.

**32.08 COMMISSIONERS.** If the petitioner be entitled to condemn the property or any portion thereof the judge shall appoint three freeholders, residents of the county, or some adjoining county, commissioners to ascertain the compensation to be made for the property taken, fix the time and place for their first

meeting, and may limit the time of their appointment, which shall not in any case exceed one year.

**32.09 APPRAISAL, NOTICE OF.** Such commissioners shall, before entering on their duties, take and subscribe an oath that they will faithfully and to the best of their ability examine the property and impartially estimate and appraise the value of the same. Whenever requested in writing by the petitioner or any party interested they shall proceed to appraise the property mentioned in the request. They shall give notice of the time and place of meeting to each person interested, which notice shall be served personally or upon the attorney of the party at least ten days before the hearing, or if a party cannot be found and has not appeared in the proceedings then by publication once a week for three weeks in such newspaper as the judge appointing the commissioners shall direct.

**32.10 APPRAISAL, HEARING ON.** (1) The commissioners shall view the property described in the request and hear the evidence produced by the parties and shall determine the value of each parcel, with the improvements thereon, and of each separate estate therein and the damages sustained by the taking, and fix the compensation to be made to each such owner therefor. In fixing the compensation, except in the case of streets or highways, they shall not make any deduction because of any benefit which the parties may derive from the construction of the improvement for which the property is taken, but special benefits to lands adjoining the lands so taken may be allowed in deduction of any damages sustained by the owner to such adjoining land.

(2) In the case of streets or highways, damages and benefits shall be assessed as to each parcel of land and the excess of benefits over damages or damages over benefits shall be stated. Damages and benefits shall be similarly assessed as to the adjoining property of the same owner. No benefits shall be assessed against any lot, parcel or subdivision, every part of which shall be one thousand feet or more distant from the nearest land condemned, and no benefits exceeding five per cent of the assessed value thereof according to the last assessment roll shall be assessed against any lot, parcel or subdivision by reason of any one condemnation proceeding, and no benefits exceeding three per cent of the assessed value thereof according to said assessment roll shall be assessed against any lot, parcel or subdivision the whole of which is more than five hundred feet distant from the nearest land condemned by reason of any one condemnation.

(3) A majority of the commissioners may adjourn from time to time, but not more than twice or for more than sixty days,

unless allowed further time by the judge. A majority of the commissioners, all being present, may determine all matters.

(4) They shall, within twenty days after last viewing any of the property so taken, unless the time be extended by the judge, file in the office of the clerk of the circuit court of the county, separate reports as to the property of each owner showing the award made for each parcel or separate estate therein. They shall file with the report, proof of the service of notice of hearing or appearance of each party.

(5) They shall be paid such compensation as the judge shall direct, by the party by whom the property is taken.

32.11 APPEAL. Any party to a condemnation proceeding may appeal from the award of the commissioners to the circuit court of the county by filing a notice of appeal in the office of the clerk of such court. Such notice must be filed within thirty days from the filing of the report of the commissioners. The clerk shall thereupon enter the appeal as an action pending in said court with the owner or owners of the property for which the award was made and who are parties to the appeal as plaintiffs and the party by whom the property is taken as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of law relating to actions originally brought therein. It shall be tried by jury unless waived. Costs shall be allowed to the successful party on the appeal. If in favor of the plaintiff they shall be added to the verdict. If in favor of the defendant, they shall be deducted therefrom.

32.12 REPORT TO BE RECORDED; POSSESSION. The report of the commission shall be recorded by the clerk in the judgment book of such court. The person by whom the property is taken may pay to the owners of the property taken or to the clerk of the court for the use of such owners the amounts awarded by the commissioners and thereupon may enter upon, take and use the property for the purposes for which it was condemned. A writ of assistance may be granted by the court or a judge thereof upon twenty-four hours' notice to put such person in possession of the land. If a corporation applies for said writ the court or judge may require security in such additional amount as may be deemed necessary to pay any judgment that may be recovered on appeal. If the person be in possession or be put in possession of the property pending an appeal the owners or parties entitled thereto shall receive the money paid into court on account of the award appealed from without prejudice to the appeal. If the person condemning the property appeals, the money shall only be so withdrawn upon filing a bond to be

approved by the court or judge to repay the amount by which such award may be abated on such appeal with costs.

**32.13 TRIAL OF TITLE.** If any defect of title to or incumbrance upon any parcel of land is suggested upon any appeal, or if any person petitions the court in which an appeal is pending setting up a claim adverse to the title set out in said petition to said premises and to the money or any part thereof to be paid as compensation for the property so taken, the court shall thereupon determine the question so presented. Judgment shall be entered on such determination, with costs to the prevailing party. An appeal from such judgment may be taken as from a judgment in an action.

**32.14 USE, WHEN TO VEST.** When no appeal is taken from any award by the commissioners within the time provided by law, the party condemning the property shall pay the amount thereof into court, or file a receipt therefor in the office of the clerk of the court duly signed by the owners and acknowledged before an officer authorized to take acknowledgments of deeds. After the determination of an appeal, the person condemning the property shall pay into court the amount of the judgment rendered thereon or file a receipt therefor as aforesaid. Upon such payment or the filing of such receipt, the clerk of the said court shall make a minute of such payment or the filing of such receipt at the foot of the record of the report of such commissioners in the judgment book of said court. If the condemnation be for streets, boulevards or highways, an easement for the purpose for which the condemnation was instituted shall thereupon vest in the person condemning without any other or further act, deed or conveyance. In other cases if the person condemning be a municipality, board or commission with power to take and hold real property, the exclusive use of said property shall so vest in such municipality, board or commission in fee simple. If the condemnation be by a public officer or by a board or commission not authorized to take and hold real property such use shall so vest in the state. If the person condemning be a corporation the use of such property shall so vest in such corporation, its successors and assigns so long as used for purposes for which condemnation might be instituted. Said record or a verified copy thereof shall be prima facie evidence of such title in all courts and places.

**32.15 PROCEEDINGS TO PERFECT TITLE, OWNER MAY BRING.** (1) If any person having the power to acquire property by condemnation has entered into the possession of any property and is using the same for a purpose for which condem-

nation proceedings might be instituted but has not acquired title thereto, or if such title is defective, such person may proceed to acquire or perfect such title in the manner provided in this chapter. At any stage of such proceedings the court in which they are pending or the judge thereof may authorize such person, if in possession, to continue in possession, and if not in possession, to take possession and have and use such lands during the pendency of such proceedings and may stay all actions or proceedings against such person on account thereof on the paying in court of a sufficient sum or the giving of such securities as such court or judge may direct to pay the compensation therefor when finally ascertained. In every such case the party interested in such property may institute and conduct at the expense of such person the proceedings to a conclusion if such person delays or omits to prosecute the same.

(2) No injunction to restrain such person in his possession of said lands or his use thereof or the operation thereon of any plant, line, railroad or other structure, shall be granted until such compensation has been fixed and determined.

(3) In case such person or the person through or under whom he claims title has paid to the owner of such lands or to any former owner thereof, or to any other person having any valid mortgage or other lien thereon, any sum of money on account of such lands, such sum with interest thereon from the date of such payment at the rate of seven per cent per annum shall be deducted from the award made by said commissioners to such owners or other person.

(4) In case there shall be a dispute in relation to the payment of any sum as aforesaid or the amount or date of any payment that may have been made, the court or judge thereof shall at the request of any party, award an issue which shall be tried in the same manner of issues of fact in said court and an appeal from the judgment thereon may be taken in the same manner as from any judgment.

**32.16 PROCEEDINGS WHEN LAND MORTGAGED.**  
Whenever any person has acquired title to any property for which it could institute condemnation proceedings and said property is subject to any mortgage or other lien and proceedings have been afterwards commenced by the holders of any such mortgage or lien to enforce the same, the court in which such proceedings are pending may on due notice appoint three commissioners to appraise and value said property in the manner prescribed in this chapter as of the time when such person acquired title. Such appraisal shall be exclusive of the improvements



made by such person or his predecessors. Said appraisal, with interest, when confirmed by said court shall stand as the maximum amount of the incumbrance chargeable to the property so taken and judgment shall be rendered according to equity for an amount not exceeding such appraisal, with interest, against such person and may be enforced as in other cases. On the payment of such amount such person shall hold said property free and discharged from said mortgage or lien. An appeal may be taken from the award of such commission by the plaintiff and tried and determined as an appeal from the commissioners under this chapter and the action to enforce such mortgage or lien shall in the meantime be stayed.

32.17 AMENDMENTS; VACANCIES. The court may at any time amend any defect or informality in any of the proceedings authorized by this chapter and may cause new parties to be added and direct such notice to be given to any party of interest as it deems proper and appoint other commissioners to fill any vacancies which may occur.

32.18 HOW TITLE IN TRUSTEE ACQUIRED. In case any title or interest in real estate lawfully required by any person having the power of condemnation is vested in any trustee not authorized to sell, release and convey the same or in any infant, idiot or person of unsound mind, the circuit court may in a summary proceeding authorize and empower such trustee or the general guardian of such infant, idiot or person of unsound mind to sell and convey the same for the purposes required on such terms as may be just. If such infant, idiot or person of unsound mind has no general guardian, the court may appoint a special guardian for such sale, release or conveyance. The court may require from such trustee or general or special guardian, such security as it may deem proper before any conveyance or release herein authorized is executed. The terms of the same shall be reported to the court on oath. If the court is satisfied that such terms are just to the party interested in such real estate, it shall confirm the report and direct the conveyance or release to be executed. Such conveyance or release shall have the same effect as if executed by one having legal power to sell and convey the land.

32.19 ABANDONMENT OF PROCEEDINGS. If any person instituting condemnation proceedings, shall deem it inadvisable to take the real estate at the price fixed by the commissioners or by a jury upon appeal, it may, within thirty days after filing the award of the commissioners or within thirty days after assess-

ment of damages by the jury, discontinue the proceedings upon such terms as to the court shall seem just.

**32.20 GENERAL PROVISIONS.** Where power of condemnation is given to a state officer or officers the title acquired shall be in the name of the state. Payments of the costs and expenses of such condemnation shall be paid from the appropriation covering the purpose for which the property is acquired.

**SECTION 2.** Subsection (2) of section 23.11, sections 31.15, 43.26, subsection 1 of section 903, sections 925—97, 925—154, 925—168, subsection 1 of section 927, subsection 1 of section 927—1, sections 959—61, 959—62, 959—64, 959—113, 1226b, 1379—32, 1777a, 1777e, 1778h, 1786f, subsection (3) of section 1828, sections 1863a and 1872 of the statutes and section 3 of chapter 288, laws of 1899 are amended to read:

(23.11) (2) Whenever any lands placed by law under the care and supervision of the commission are inaccessible because surrounded by lands belonging to individuals or corporations, and whenever in the opinion of the commission the usefulness or value of such lands, whether so surrounded or not, will be increased by access thereto over lands not belonging to the state, the commission may \* \* \* acquire \* \* \* such lands as may be necessary to construct highways that will furnish the needed access.

**31.15 ACQUISITION OF EXISTING DAMS.** (1) Every domestic corporation lawfully engaged in the business of producing, transmitting, delivering or furnishing heat, light, water, power, or street or interurban electric railway service to or for the public may, for the purpose of developing power and generating energy for public use in and about such business, acquire \* \* \* any dam in or across any navigable waters of this state and all flowage and other rights and property necessary to the maintenance thereof, or any undeveloped water power or dam site upon any such waters within this state, except as provided otherwise in subsection (2).

(2) \* \* \* No award in any condemnation proceedings authorized by subsection (1) shall be effective, and no corporation shall purchase or otherwise acquire any such property until it shall have obtained from the commission a certificate that public convenience and necessity require the acquisition of the same, at the amount fixed by such award or agreed upon with the owner thereof.

**43.26 CONDEMNATION FOR LIBRARY SITE; GIFTS.** Whenever the said board of directors shall certify to the city council, village or town board, that it is unable to acquire the site

selected for a just and reasonable price, and that a just and reasonable price for the site selected does not exceed the amount which may legally be expended therefor, said city council, village or town board shall proceed to acquire such site by condemnation. \* \* \* Should the compensation awarded in the condemnation proceedings exceed one-third of such gift, such proceedings shall nevertheless be valid if, within sixty days after the final award, such excess be provided for by private donation or otherwise; but in case such excess be not so provided for then said proceedings shall, upon motion, be dismissed with costs.

Section 925—97. The city may acquire \* \* \* such lands as may be necessary for the construction and operation of waterworks to supply the city and its inhabitants with water, or for the construction and operation of lighting works to supply it and them with electric or other lighting; provided, that where the waterworks or lighting works are owned by private persons or corporations the expenses of acquiring such real estate shall be paid by such persons or corporations on a proper conveyance being made thereto of such real estate.

Section 925—154. All cities of the first class governed by this chapter shall have the power to \* \* \* acquire lands for streets, alleys, public grounds, parks, cemeteries, sites for school and other public buildings, and lands to be used for purposes of drainage and water distribution and other public municipal purposes not here enumerated. \* \* \*

Section 925—168. When \* \* \* any assessment \* \* \* of benefits and damages is made in condemnation proceedings the city clerk shall transmit the same to the comptroller, who shall thereupon report to the city clerk a list of special taxes to be entered in the tax roll on account thereof, which list shall have set opposite each description against which benefits not offset by damages or an excess of benefits over damages shall have been assessed the amount of such benefits or excess, which amount shall be levied upon the land described as a special tax and be collected the same as other taxes.

(Section 927—1) (1) For the construction and maintenance of waterworks for the supply of any city or village, existing under general or special charter, or the inhabitants thereof with water for protection against fire or for domestic use or sanitary purposes and for the construction and maintenance of lighting works every such city or village and every corporation formed for such purpose under the laws of this state may acquire the title in fee simple to or such easement in or servitude upon all such lands as may be necessary for the construction or main-

tenance of such works and hold and use the same for that purpose \* \* \* Any such city or village, when authorized so to do by ordinance adopted by a vote of a majority of all the members of its common council or board of trustees, after such ordinance has been submitted to a vote of the people and a majority have voted in favor thereof, may purchase or lease the waterworks or lighting works, or both, owned by any corporation in such city or village and having a contract therewith for public service, or purchase or lease the interest of such corporation in such works, or obtain the control of such works by purchasing the stock of such corporation and keeping up its organization, and in any such case such council or board, by a majority vote, may provide for the payment of the purchase price by the issuance of bonds or otherwise in such manner as they may deem for the best interest of the city or village; and in such case such city or village shall provide, by appropriate ordinances, for a nonpartisan management of such works, and to that end may create a board of commissioners to be nonpartisan and elected by the council or board, fix the term of office of the members thereof and their salaries and invest such board of commissioners with appropriate powers. The ordinance or ordinances creating such board of commissioners may provide that all accounts against the light or water department; or both, shall be audited by such commission, and, if approved, shall be paid by orders upon the city treasurer issued and signed by the president and secretary of the commission, and may provide that water rentals and other income of such department may be paid to a bonded cashier or cashiers appointed by such commission, to be turned over to the city treasurer at least once a month; that the city treasurer shall keep as a separate fund all income derived from such waterworks or lighting plant, and of all disbursements therefrom, and such ordinance may confer on such commissioners any or all of the powers provided for in section 925—95e.

Section 959—61. Every city which shall own or possess land beyond its limits for public park purposes and having a board of park commissioners may \* \* \* *acquire* beyond such limits lands for highways and boulevard purposes, to connect said park with some street, highway or boulevard within the limits of such city, and open, widen and extend any street or highway for such purposes. \* \* \*

Section 959—62. Whenever any \* \* \* board of park commissioners of any city which owns lands beyond its limits for public park purposes shall, by unanimous vote, adopt a resolution declaring that it is necessary for the public interest to cause

a boulevard or highway to be constructed to connect such public park lands with some street, highway or boulevard in the city limits or to open, widen or extend any street or highway for such purposes, and to take lands therefor, they shall cause to be made a correct and particular description of the lots or parcels of land proposed to be taken and a plat of the proposed highway or boulevard, and shall file a copy thereof, together with a copy of said resolution, with the register of deeds of the county in which said lands are situated. It shall thereupon be the duty of the city attorney to proceed to condemn such land. \* \* \*

Section 959—64. At the time of making out the tax roll, next after the filing of \* \* \* any assessment in condemnation proceedings, \* \* \* the town clerk shall enter in said roll a list of special taxes on account of such assessment, which list shall have set opposite each description against which benefits not offset by damages or an excess of benefits over damages shall have been assessed the amount of such benefits or excess, which amount shall be levied on the land described as a special tax and shall be collected the same as other taxes. Such amounts when collected shall be paid over to the city treasurer to be applied in payment of any damages or excess of damages over benefits awarded by such assessment; and in case the amount of such special taxes shall be insufficient to pay all damages or excess of damages over benefits so awarded then the difference shall be paid out of the park and boulevard fund of said city; provided, that any such damages or excess of damages over benefits may be paid out of such park and boulevard fund prior to the collection of such special taxes, to be reimbursed therefrom when collected.

Section 959—113. \* \* \* Every city of the second, third and fourth class, whether incorporated under the general charter or under a special charter, may \* \* \* acquire any lands beyond the limits of such city for public cemetery purposes; provided, that damages may also be allowed to owners of lands adjoining that taken for cemetery purposes.  
\* \* \*

Section 1226b. \* \* \* The supervisors of any town \* \* \* may acquire any gravel pit or stone quarry \* \* \* needed for the purpose of constructing or repairing highways or bridges in the town in which it is situated. \* \* \*

Section 1379—32. Whenever it shall become necessary for any corporation organized under the laws of this state for the purpose of constructing, maintaining and operating drains, ditches, canals or the like for the drainage and for reclaiming wet, submerged, overflowed and swamp lands, in order to promote

the public health or welfare, to acquire any real estate for the purpose of constructing, maintaining, or operating any canals, drains, ditches or the like it may purchase the same with the approval of the court, or may acquire such real estate \* \* \* *by condemnation.*

Section 1777a. 1. Any corporation created and existing under any laws of this state in whole or in part for any or either of the purposes above specified and any corporation owning or controlling dams, booms or improvements designed in whole or in part to accomplish any of the purposes above specified or any municipality or any other corporation organized under the laws of the state of Wisconsin for the purpose of furnishing and supplying electric light and rent to the inhabitants of any city or other municipality, or supplying electric power for other public purposes, shall have the power to overflow all such lands as shall be necessary for its use for ponds and reservoir purposes and to acquire title thereto for such purpose. \* \* \* Nothing in this section shall be construed as granting the right or power to construct or maintain a dam or overflow any land upon or along the Brule River in Douglas county, Wisconsin as repealing or contravening any provision of section \* \* \* 31.30.

Section 1777e. Any corporation formed under this chapter for the improvement of any stream and storing, sorting and delivering thereon saw logs, square and round timber or other timber thereon which shall have taken prior possession of such stream or portion of stream for that purpose shall have the exclusive power to improve such stream or portion thereof by clearing and straightening the channels thereof, cutting canals, closing sloughs, driving piles and erecting piers and other works in the bed or on the banks thereof and by constructing all such booms of all kinds as may be necessary or suitable for the purposes aforesaid; but shall in no case in any manner materially obstruct or impede navigation upon such stream or navigable sloughs thereof or erect any dam or other obstruction below the head of steamboat navigation, but shall leave a free, open and unobstructed passageway, at least eighty feet in width, on at least one side of such stream or navigable slough. Every such corporation shall have all the powers, grants and privileges, including the right to collect toll or boom charges, and have liens therefor, and be subject to all the conditions, limitations and restrictions conferred, imposed or provided by said section 1777 upon corporations for the improvement of streams and driving logs thereon, so far as the same may be applicable, excepting in the cases wherein special provisions relating thereto are herein made.

Such corporations shall have power to acquire the title to lands and easements therein in, upon and contiguous to such streams and sloughs within the limits of its proposed line of piers and booms either by purchase, lease or license or the exercise of the right of eminent domain; and in case it shall be necessary to take, flow or injure lands and property in the construction of the works of improvement hereby authorized such lands and property or easements therein may be acquired. \* \* \* The provisions of sections 12, 13, 14, 15, 16, 18 and 24 of chapter 45 of the private and local laws of Wisconsin for the year 1871, entitled an act to incorporate the Wausau boom company, as the same are amended, shall apply to corporations formed hereunder; provided, this act shall not apply to the Chippewa River or any of its tributaries.

Section 1778h. \* \* \* In case of rights or easements taken or used by any \* \* \* corporation, *mentioned in section 1778*, after the publication of this act, the proceedings \* \* \* authorized *in chapter 32*, shall not be taken nor other action commenced against the corporation in respect to its rights to use or possess such rights or easements, unless begun within six years after the commencement of the construction of any such line over, along or across any property. Section 1329a of the statutes is not affected by this act, and is continued in full force.

Section 1786f. Any corporation organized for the purpose of constructing, operating and maintaining any bridge over any navigable water separating this from any other state and authorized by congress to erect any such bridge shall have all such rights and powers with respect to entry upon, the purchase, acquisition, appropriation and condemnation of real estate for the construction, operation and maintenance of such bridge, with the necessary approaches, bridges, terminals and appurtenances thereto, having reference to the purposes for which such bridge shall be constructed, operated or maintained, as are possessed by railroad companies under these statutes. \* \* \*

Section 1863a. 1. Any street or electric railway corporation may lay out its right of way not exceeding one hundred feet in width and acquire the same \* \* \* and \* \* \* construct its railway thereon; and may acquire a right of way not exceeding two rods in width, for the purpose of conveying or transmitting electrical current from the power house where the same is generated to the electric or street railway system operated thereby, and for the purpose of furnishing light, heat, and power for public purposes. Wherever such corporation, has constructed its railway on any street or highway under a franchise granted

to it by any town or village board or city council, such corporation shall not, during the term of such franchise, abandon or discontinue any part of such railway on a public street or highway within any town, village or city without the consent of the proper town or village board or city council.

2. For the purpose of cuttings and embankments and of obtaining gravel or other material such railway may take as much more land as may be necessary for the proper construction, operation and security of the road and cut down any standing trees that may be in danger of falling on the road, making compensation therefor \* \* \* and any such street or electric railway corporation may acquire \* \* \* and may hold or use such real estate or other real or personal property as may be necessary for the construction, maintenance and operation of its railroad and of the stations, depot grounds and other accommodations reasonably necessary to accomplish the objects of incorporation; and when reasonably necessary may take and acquire by condemnation or otherwise the right to run its cars over any bridge owned by any city of the second, third and fourth classes, towns and villages, and the approaches thereto on the rails of any other street or electric railway which it may meet, join, intersect or cross.

3. All of the provisions of subsection 6 of section 1828 of these statutes relative to railroad crossings, shall apply to street and electric railways. The commissioners therein named shall have power to determine the place at, and manner in which grade or other crossings shall be made, and on appeal from the determination and award of such commissioners to the circuit court as provided by \* \* \* chapter 32, \* \* \* such court shall have power to review, reverse, modify or affirm such award, both as to the amount of compensation therein provided, and as to the manner of making such crossing, and may make such reasonable provisions as it shall deem necessary for public safety; provided the provisions of section 1808 of the statutes, shall not apply to trains operated by steam at crossings of such electric railways, and provided further that the appeal herein authorized shall not prevent the construction of such crossing in the manner determined by the commissioners, and of the use of the same by the petitioner upon the filing of such determination and award, with the clerk of the circuit court and the payment of the amount of compensation awarded to the railroad company, or to the clerk of the court for its benefit; but the circuit court may in its discretion require the petitioning company to maintain a flagman or other safeguard at such crossing pending the determination of such appeal.



4. Such railways shall have the power to cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damage which shall be done thereto.

5. \* \* \* *The right of condemnation shall not apply to any park or boulevard in any city or village, nor to any street, alley, bridge or viaduct therein, unless the use of such park, boulevard, street, alley, bridge or viaduct shall first be granted, upon such terms and conditions as the proper authorities shall determine, to such street or electric railway company by a franchise duly passed by the board of trustees or common council of such village or city; and nothing herein shall apply to the right of the public or the title of any city or village, in and to any park, boulevard, street, alley, bridge or viaduct within its limits. As far as applicable the provisions of sections 1810, 1811, 1812, 1813 and 1814 of the statutes, relating to the construction and maintenance of fences and cattle guards by railroad companies, shall apply to street and electric railways.*

6. \* \* \* *No street or electric railway corporation shall acquire a right of way for the construction and operation of its right of way or for the transmission of electrical current exceeding one hundred feet in width.*

Section 1872. Every corporation formed under this chapter shall, in addition to the powers conferred on corporations by chapter 85, have power to enter upon any lands for the purpose of exploring, surveying and locating the route of its road, doing no unnecessary damage thereto, nor locating such road through any orchard or garden without the consent of the owner thereof, nor through any buildings or any fixtures or erections for the purposes of trade or manufactures, nor any yard or inclosure necessary to the use and enjoyment thereof, without permission from the owners, and to enter upon, take possession of and use such lands as shall be required for such road to the width of four rods along the line of such road and such other lands as may be necessary for the construction of such road and for the erection of gates, tollhouses and other fixtures, and no other, upon first making payment of such compensation as such corporation may have agreed to pay therefor or as shall be determined and fixed \* \* \* *as provided in chapter 32.*

(1899 ch. 288) Section 3. To acquire \* \* \* such real estate and waterways not navigable as hereinbefore designated, and such other property as may be necessary, for the construc-

tion, maintenance and operation of such improvement or such canal, and of the locks, dams, spillways, buildings and other fixtures reasonably necessary to accomplish the objects of its incorporation. \* \* \* Such corporations shall not acquire any property by condemnation proceedings until at least three-fourths of the owners of the property over which such right of way is proposed to be located, shall have consented, in writing, to the location and construction of such improvement or canal. \* \* \* No such improvement or canal shall be so constructed as to separate the buildings on any farm, or separate such buildings from the nearest highway, except with the consent of the owner of such farm, or unless such improvement follows the course of the stream to be improved.

(Section 903) 1. For the purpose of payment of the expenses, including such excess of damages and all other expenses and costs incurred for the taking of private property and of making any improvement mentioned in \* \* \* section 895 the village board may, by resolution, levy and assess the whole or any part of such expenses, as a tax upon such property as they shall determine is specially benefited thereby, and they shall include in said levy the whole or any part of the excess of benefit over total damages, if any, \* \* \* making therein a list thereof in which shall be described every lot or parcel of land so assessed with the name of the owner thereof, if known, and the amount levied thereon set opposite.

(Section 927) 1. Every village incorporated under special law shall have and possess, and may exercise and pursue all the rights, powers, privileges and procedure conferred, granted or prescribed by sections 870 and 893 of the statutes. The board of trustees of every such village, and the common council of every city of the second and third classes, shall at all times have and possess, and may exercise and pursue all the rights, powers and privileges \* \* \* conferred, granted or prescribed by sections 895, \* \* \* 903 and 904, as well as the powers and privileges conferred by the provisions of their respective charters, and may levy and collect the expense incurred in exercising such rights, powers and privileges, including all damages and costs incurred by the taking of private property, in the manner provided by section 903 or, at their option, in the manner provided by sections 925—190 to 925—197a of the statutes.

(Section 1828) (3) To acquire \* \* \* all such real estate and other property as may be necessary for the construction, maintenance and operation of its railroad and the stations, depot grounds and other accommodations reasonably necessary to

accomplish the objects of its incorporation; to hold and use the same, to lease or otherwise dispose of any part or parcel thereof or to sell the same when not required for railroad uses only, and no longer necessary to its use.

SECTION 3. Sections 31.14, 40.12, 605, 606, 607, 694c, 694d, 694e, 896 to 902, inclusive, 925—159 to 925—164, inclusive, 925—166, 925—167, 925—170, 925—171, 926L to 926s, inclusive, 959—63, 959—65 to 959—68, inclusive, 959—89, 1379—33 to 1379—39, inclusive, 1777b, 1777c, 1777d, 1778a, 1778b to 1778g, inclusive, 1778i, 1845 to 1856 inclusive and 1875 of the statutes are repealed.

SECTION 4. There is created a new section to read: Section 1778d. In case of dispute between any corporation authorized to place poles, wires, pipes or conduits for the operation of telegraph or telephone lines or the transmission of heat, power or electric light, as to the location of such poles, pipes or conduits, the commissioners appointed in condemnation proceedings under chapter 32 may determine the places where such poles may be set or pipes or conduits laid. In no case except where the owner consents shall poles be set in front of or upon any residence property or in front of a building occupied for business purposes unless the commissioners find that the same is necessary. After condemnation proceedings the court may review the determination as to the necessity of the location and as to whether such line or any pole or fixture thereof might be removed to some other point or place.

SECTION 5. There is added to section 4971 of the statutes a new subsection to be numbered and read:

(26) The word "acquire," when used in connection with a grant of power to any person, includes the acquisition by purchase, grant, gift or bequest. It includes the power to condemn in the cases specified in section 32.02.

SECTION 6. Chapters 156, laws of 1872; 55 and 278, laws of 1873; 240, laws of 1876; 205, laws of 1877; 279, laws of 1880; 318, laws of 1882; 306, laws of 1891; 245, laws of 1893; 198, laws of 1895; 251, 357 and 365, laws of 1897; 277, laws of 1907; 90, laws of 1909; 279, 332 and 406, laws of 1911; 58, 276 and 405, laws of 1913; 280, laws of 1915; 551, laws of 1917, are repealed.

SECTION 7. This act shall take effect on passage and publication. It shall not affect condemnation proceedings pending at the time it goes into effect, but such proceedings shall be completed under the previous statutes.

Approved July 15, 1919.