

1870, under order of the senate, to appear before the special railroad committee, shall be paid ten cents per mile for the distance actually traveled in going and returning, viz: to Edward Mahony, Milwaukee, twenty and 60-100 dollars; to John Saar, Milwaukee, twenty and 60-100 dollars; to O. E. Britt, Milwaukee, twenty and 60-100 dollars; to D. A. Olin, Racine, twenty five and 60-100 dollars; to O. D. Randall, Sparta, forty dollars; to C. C. Merrill, Sparta, forty dollars; to T. B. Tyler, Sparta, forty dollars; to John T. Hempshill, Sparta, forty dollars; to C. S. Strasberger, La Crosse, forty-six dollars; to L. Lotridge, La Crosse, forty-six dollars; to J. B. Talman, Oshkosh, twenty-eight dollars; to C. F. Barron, Oshkosh, twenty-eight dollars; to Charles Pfenning, Appleton, thirty-six dollars; to J. Wharton, Appleton, thirty-six dollars; to D. L. McCurdy, Fond du Lac, twenty five dollars.

Appropriated. §

SECTION 3. There is hereby appropriated from the general fund (not otherwise appropriated) a sum sufficient to pay the amount to the said sergeant-at-arms and the witnesses in this act named.

SECTION 4. This act shall take effect and be in force from and after its passage and publication.

Approved March 9, 1871.

CHAPTER 64.

[Published March 31, 1871.]

AN ACT to authorize town supervisors to construct drains in certain cases.

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

May make application for drain.

SECTION 1. When a majority of the resident owners on any marsh, swamp, water course or overflowed land within this state shall wish to have a ditch or drain laid out for the purpose of draining any marsh, swamp or overflowed land, or for the purpose of straightening or enlarging any water course, they may make application to the supervisors of the town in

which such lands or water course are located, for that purpose, which application shall be in writing, and shall describe the lands through which such proposed ditch, drain or enlargement is to pass, together with the route of the same as nearly as is practicable, and the said supervisors shall proceed to lay out and establish such ditch or drain, or to deepen, widen or in any form enlarge any water course for the purpose of draining the lands embraced in such petition, if in their judgment such ditch, drain or enlargement is demanded by or will conduce to the public health or welfare.

SECTION 2. Whenever application shall be made to the supervisors of any town by a majority of the resident owners of any swamp, marsh, overflowed lands or water course situated within their town, for the purpose of having any ditch, drain or water course laid out and established as contemplated in section one of this act, the said supervisors shall make out a notice, and fix therein a time when and place where they will meet to examine and decide upon such application. Every such notice shall specify as nearly as practicable the route of the proposed ditch, drain or enlargement of a water course, and the several tracts or parcels of land through which the same may or will pass; and the supervisors shall cause a copy of such notice to be served upon each of the resident owners of the lands through which the proposed ditch, drain or enlargement of a water course may pass, which notice shall be served at least five days before the time appointed for such meeting, and shall be served personally or by copy left at the usual place of abode of each of the owners of such lands, and shall also cause copies of such notice to be posted up in three public places in their town, at least ten days prior to the time appointed for such meeting.

SECTION 3. The supervisors, upon being satisfied by the proofs submitted to them that the notices required in the preceding section have been duly given, shall proceed personally to examine the location where it is proposed to construct such ditch, drain or enlargement of a water course, and shall hear any reasons that may be offered for and against the laying out and construction of such ditch, drain or enlargement, and shall decide upon the application.

Shall give notice of meeting.

Shall examine location.

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Shall cause survey to be made.

SECTION 4. Whenever the supervisors shall decide to lay out and establish any ditch, drain or water course, under the provisions of this act, they shall cause an accurate survey thereof to be made, when in their judgment necessary; shall establish the route over or through which such ditch, drain or enlargement of a water course shall pass, together with the width at the top and bottom and the depth of the same 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 said supervisors, 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 water course, showing the line or route of the same, with its courses and distances, and the sections of land through which it will pass, together with the sections into which they may have, for the purposes of construction, divided such ditch, drain or water course, with specifications setting forth or showing the amount and character of the work required in the construction of each section, separately, which map or plan, and order laying out the same, shall be filed in the office of the town clerk within twenty days after the time fixed by them for deciding upon the application for laying out and establishing such drain or water course; and in case said supervisors shall fail to so file such order and plat within twenty days as aforesaid, it shall be held that they have decided against such application.

If line is upon town line, supervisors of each town shall lay out drain.

SECTION 5. Whenever it shall appear from the application made to the supervisors of any town, for the laying out of any ditch, drain or enlargement of a water course, that the line or route of such ditch, drain or water course, will be upon or in the immediate vicinity of the line between two towns, the same shall be laid out and established by the supervisors of each of said towns, jointly, either upon such town line or as near thereto as the situation of the ground will admit, and they may vary the same to the one side or the other of such line, as they in their judgment may deem necessary, and the supervisors of any town receiving such application, shall in addition to the notices required by section two of this act, cause a copy of the notice to be served upon each of the supervisors of

such town so adjoining, at least six days prior to the day appointed for such meeting, and it shall be the duty of said supervisors when so notified, to attend at the time and place designated in such notice, and decide upon such application, and for that purpose the assent of a majority of the supervisors of each of the towns shall be necessary, and when so convened, the supervisors of such adjoining towns shall proceed in the examination and determination of all questions arising under such application, the same as is provided by this act for the supervisors of one town, and their proceedings or a duplicate thereof, shall be filed and recorded in the office of the town clerk in each of such towns.

SECTION 6. The order laying out and establishing any ditch, drain or enlargement of any water course under the provisions of this act, or a copy of the record thereof, duly certified by the town clerk of the town where the same is recorded, shall be received in all courts and places, as competent evidence of the facts therein contained, and shall be *prima facie* evidence of the regularity of the proceedings prior to the making of such order.

Order to be received as evidence.

SECTION 7. The supervisors, whenever they shall decide to lay out and establish any ditch, drain or water course, under the provisions of this act, shall divide the same into sections, not less in number than the number of the owners of the lands which will be benefited by the construction thereof, and shall estimate the cost of constructing each section of such ditch, drain or water course separately, and also any damage which any owner of any tract or parcel of land, through which the same has been laid, will sustain by reason of the construction and opening of such ditch, drain or water course, and the cost of such construction and the damage occasioned thereby shall be held to be the total cost of such ditch, drain or water course; the said damage may be ascertained by agreement between the supervisors and the owner or owners of any such piece or pieces of land so damaged, and when not so ascertained and agreed upon, the supervisors shall award to the owner or owners of each parcel of land so damaged such amount for damages as they shall adjudge to be reasonable and just, which award shall be in writing, and shall be filed in the office of the town clerk of their town, and the amount paid out of the town treas-

Shall divide drain into sections.

ury, on the order of the board of supervisors, from the moneys collected as hereinafter provided.

If highway benefited by drain, amount to be paid by town.

SECTION 8. In case where any public highway in the town will be benefited by the construction and opening of any such ditch, drain or water course, the supervisors shall determine the amount of such benefit, which amount shall be paid by the town and applied in the construction, and deducted from the aggregate or entire cost of constructing such ditch, drain or water course, and the supervisors shall then proceed to assess the remainder of such cost of construction, upon the owner or owners of the lands to be directly benefited by the construction of such ditch, drain or water course relatively, upon each piece or parcel of land, in proportion to the benefits to be derived by such piece or parcel of land, from the construction and opening of such ditch, drain or water course, and the same shall be so assessed upon all the owners of the lands so benefited, or upon the land when the owner is not known, whether the said water course when constructed will run through or across the lands so assessed or not, if such lands are in the judgment of the supervisors benefited by such construction, and in case where no amount is assessed against the town, then and in that case, the supervisors shall assess the entire cost of construction upon the lands benefited as hereinbefore provided, but in no case shall the whole amount so assessed exceed the total cost of construction, as defined in section seven of this act.

Proceedings for assessment of benefits and damages.

SECTION 9. The supervisors of any town, whenever they shall have determined the entire cost of constructing any ditch, drain or water course, under the provisions of this act, and shall have ascertained the respective proportion or part of such cost in their judgment justly chargeable to each piece or parcel of land benefited by such construction as provided in section seven of this act, shall make out a certificate of such determination or judgment, showing or setting forth the total cost of constructing such ditch, drain or water course, and a description of each piece or parcel of land in their judgment benefited by such construction, together with the amount in money of the part or portion of such cost assessed by them upon and chargeable to each piece or parcel of land so included in such certificate, which certificate shall be signed by said

supervisors, and filed and recorded in the office of the town clerk of their town, within ten days after the filing of the order by the said supervisors, locating and establishing such ditch, drain or water course: *provided, however*, that in case of the laying of a ditch, drain or water course upon or adjacent to a town line as provided in this act, said certificate shall be made in duplicate and filed and recorded in the office of the town clerk of each of the towns affected thereby, and in case no appeal is taken from the decision of the supervisors as shown in said certificate by any person or persons affected thereby, as hereinafter provided, then and in that case, the town clerk in apportioning the annual taxes upon the assessment roll of his town, shall enter upon said roll in a separate column, the amount assessed by the said supervisors upon each piece or parcel of land contained in said certificate, against the land so charged, which tax shall be collected by the town treasurer the same as other town taxes are by law collected: *provided, however*, that in case of a ditch, drain or water course, laid out upon or adjacent to a town line as in this act provided, the town clerk shall add to his assessment roll only such lands embraced in such certificates as are within the boundaries of his town.

SECTION 10. If the owner of any land through which any ditch, drain or water course shall be laid out and established by the supervisors under the provisions of this act, shall not be satisfied with the amount awarded to him for damages by said supervisors, or any owner or owners of land through which the same has been laid out and established shall not be satisfied to pay the sum assessed and charged by the supervisors against his or their land or lands, as shown by the certificate of the supervisors filed and recorded as provided in the preceding section, such owner or owners may at any time within fifteen days after the filing of said certificate in case of a benefit assessed, or within fifteen days after the filing of the award of the supervisors, in case of damages awarded, file in the office of the town clerk of their town a notice of an appeal from the decision of the supervisors, which notice shall contain a description of the land or lands belonging to the person or persons so filing such notice, with the amount of damages awarded to such land or lands, or the

Proceedings on
appeal from as-
sessment.

amount of benefits assessed and charged upon the same, as the case may be, with notice that he or they, the appellant, will on a certain day named in such notice, which day shall not be less than six nor more than ten days after the date at which said notice was filed with said town clerk, apply to a justice of the peace, naming some justice within the county, for a jury to assess and appraise such damages, or to assess and appraise such benefits, as the case may be, which fact shall be shown by such notice, and on presentation of such notice to the town clerk by the party interested therein, or by his, her or their agent or attorney, the town clerk shall immediately file the same in his office, and shall deliver to the person so presenting such notice a certified copy of the same, and upon the presentation of such certified copy to the justice named in such notice, upon the day therein named, by the party, his, her or their agent or attorney, the said justice shall proceed to make a list of eighteen disinterested freeholders, residents of his county, not of kin to any of the owners or occupants of any of the lands embraced in such notice, and from the list so made, each party may strike off the names of six persons, and if no one of the supervisors or the town clerk of the town are present, then the justice shall strike off from such list the names for such town, and the justice shall thereupon issue a precept, directed to the sheriff or any constable of his county, directing him to summon the six persons whose names were not stricken from such list, to meet at a time and place to be specified in said precept, to serve as jurors to appraise the damages sustained by the person or persons named in said notice, or to appraise the benefits to be derived by the person or persons named in the said notice, as the case may be, resulting in either case, from the laying out, construction and opening of said ditch, drain or water course; and the sheriff or constable to whom such precept shall be delivered shall execute the same by summoning such jurors in the same manner and with like authority as upon venire issued in causes pending before justices of the peace, and shall in like manner make return thereof.

Meeting of the jury, and their proceedings.

SECTION 11. The persons summoned as jurors, as provided in the preceding section, shall meet at the time and place designated in the precept, and the jus-

tice issuing the same shall also be present. The jury shall be sworn justly and impartially to view, examine and appraise the damages to be sustained by the lands embraced in the notice of appeal in the case, or to justly and impartially view, examine and assess the benefits to be derived by the lands so embraced in such notice, as the case may be, and the said jury and justice shall then proceed to view and examine such lands, and shall hear any statements or proofs which may be submitted to them by either party, and may increase or diminish the amount awarded, or the amount assessed by the supervisors, as the case may be, as they may in their judgment consider just and equitable, and in case the jurors are equally divided in opinion on the question, the justice shall have the casting vote, and in case of benefits assessed and charged by the supervisors against the land described in such notice, the jury shall take into the account the other lands to be benefited by the construction of such ditch, drain or water courses, and also the total cost of constructing the same as defined by this act, and shall determine the question in relation to the particular piece or pieces of land embraced in such notice, relatively, with reference to the whole subject matter involved, and an equitable assessment of the total cost of construction upon the lands directly benefited, relatively, upon each piece or parcel of land in proportion to the benefits to be derived by such piece or parcel from such construction, and the jury shall deliver their award or appraisal in writing to the justice, which shall be certified by such justice, and by him delivered to the town clerk of the town in which the land is located, and shall be filed and recorded by such town clerk, and when so recorded, shall in the case of the assessment of benefits to be derived, have the effect to amend the certificate of the supervisors with reference to the particular piece or pieces of land embraced in such appraisal of the jury, and the town clerk in entering said piece or pieces of land so included in the appraisal of the jury upon the assessment roll of his town, as provided in section nine of this act, shall charge such piece or parcel of land with the amount so assessed by the jury, and in all cases of appeal from the decision of the supervisors under this act, where the question submitted to the jury is one of damages, if

the jury shall not find an amount greater than that awarded by the supervisors, and in the case of benefits assessed, shall not find an amount less than that assessed and charged against such land by the supervisors, the appellant shall pay all costs, but if the finding of the jury shall increase the amount of damages awarded, or shall in the case of benefits assessed, diminish the amount assessed upon the land in question, then the town shall pay the costs.

Work to be tendered to owner of land, at price fixed by supervisors.

SECTION 12. Whenever the supervisors shall have laid out and established any ditch, drain or water course, under the provisions of this act, and shall have completed the division of the same into sections, and the award of damages and the assessment of benefits shall have been made and recorded as herein provided, the said supervisors shall offer or tender to each resident owner of the lands on which a tax has been assessed for the construction of such ditch, drain or water course, the work of constructing, in accordance with the specifications and within a reasonable time, to be named by said supervisors, such section or sections of the work as may be located on his, her or their land, at the price estimated by the supervisors for doing such work so tendered, and in case such work so offered or tendered by the said supervisors, shall be accepted by such owner or owners, the supervisors shall enter into a written contract with such owner or owners for the performance of the work so let, and the supervisors may require the party to give security for the full and faithful performance of the contract, if they consider the same necessary. Any sections of the work not so disposed of, the supervisors shall let to the lowest responsible bidder, and for that purpose shall advertise the work to be let, by posting up notices for proposals in at least three public places in the town where such work is located, but no contract shall be awarded for the construction of any section at a price greater than the original estimate made by the supervisors, of the cost of the work on such section, and on completion of the work on any section or sections in accordance with the specifications and to the satisfaction of the supervisors, the said supervisors shall give to the contractor an order on the treasurer of the town for the amount of the work done by such contractor, which order shall be paid by the

town treasurer out of the moneys collected for that purpose as provided in this act.

SECTION 13. Whenever it shall be found by actual trial, or by the finding of a jury summoned under the provisions of this act, that the amount originally estimated by the supervisors is not sufficient to complete the work required in making or constructing any ditch, drain or water course laid out and established by them or by their predecessors in office under the provisions of this act, the said supervisors shall proceed to assess upon the lands directly benefited, such additional amount as may be absolutely necessary to complete such work, which assessment shall be made and certificate filed and recorded and the amount collected in the same manner and form as is provided in this act for the assessment and collection of the original sum.

If estimate is not sufficient to complete work.

SECTION 14. All acts and parts of acts conflicting with the provisions of this act; are hereby repealed.

SECTION 15. This act shall take effect and be in force from and after its passage and publication.

Approved March 9, 1871.

CHAPTER 65.

[Published March 10, 1871]

AN ACT to amend section two of chapter 39 of the private and local laws of 1866, entitled "an act to change the time of holding the circuit court in the tenth judicial circuit," approved February 28, 1866.

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

SECTION 1. There shall be a regular term of the circuit court held in Outagamie county on the first Monday of June, 1871. A grand and petit jury shall be summoned for said term, in the manner provided by law.

Regular term to be held.

SECTION 2. The provisions of chapter 25 of the general laws of 1871 shall not take effect in Outagamie county until the first day of August, 1871.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved March 10, 1871.