

No. 365, S.]

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CHAPTER 302.

AN ACT relating to legalizing special assessments for street improvements and providing for re-assessments of special taxes in certain cases in all cities of the first and second class in this state.

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

SECTION 1. In case, in any action, now pending or hereafter brought to set aside or vacate any special assessment against property, for opening, widening or extending any street or alley or part thereof, or for grading, graveling, macadamizing, paving or re-paving any street or alley, or part thereof, or making any other improvement thereof, or for constructing any sewer therein, in any city of this state, or to set aside or vacate any special assessment certificate, tax sale or tax sale certificate, based upon such special assessment, the court shall be of the opinion, after a hearing in that behalf had, that such assessment is invalid by reason of a defective assessment of benefits and damages, it shall stay all proceedings in such action until a new assessment thereof is had in the manner hereinafter mentioned. Thereupon, the proper city authorities shall proceed to make a new assessment of benefits and damages against the property of the plaintiff in such action, in like manner as required by law in the case of such original assessment, and such plaintiff shall have the same right to appeal from such new assessment as he or his grantors would have had from such original assessment. If the plaintiff shall desire to contest the validity of such new assessment, he shall, within ten days after its confirmation by the common council, file with the clerk of the court, and serve

Re-assessment for improvements can be had when former one is declared to be invalid—manner of procedure.

upon the defendant's attorneys, his objections in writing to such new assessment, and thereupon the court shall direct an issue to be made up involving the objections aforesaid, which issue shall be tried summarily by the court, and thereupon the court shall file an order sustaining or overruling the objections of the plaintiff aforesaid. When by such order such new assessment of benefits and damages shall be held invalid, subsequent assessments may be had, in the manner and form as hereinbefore provided, and the same proceedings may be resorted to, to determine the validity of such assessments. When the amount to be assessed against the plaintiff's property has been finally determined by an assessment of benefits and damages to which no objections are filed, as aforesaid, or which, if objections are so filed, the court shall hold to be valid and regular, or, when an appeal is taken, upon such appeal, the court shall make an order requiring the plaintiff to pay into court, within a time to be fixed by such order, for the use and benefit of the defendant, or the parties entitled thereto, the amount which, based upon such valid new assessment, he ought justly to pay, or which should be justly and equitably assessed against the property in question, and the court shall, upon the plaintiff's complying with said order, within the time so limited, order judgment for the plaintiff with costs, and in default of plaintiff complying with such order within the time so limited, the action shall be dismissed with costs in favor of the defendant.

Stay of proceedings may be had and an issue of trial made up.

SECTION 2. If, in any action now pending or hereafter commenced, the validity of any special assessment certificate, or tax sale or tax sale certificate, based upon an assessment for any of the purposes mentioned in section 1, of this act, is attacked and sought to be set aside, upon grounds other than those affecting the validity of the assessment of benefits and damages, or in addition thereto, the court after a hearing in that behalf had, shall be of opinion that the same is void by reason of any failure

to observe any provision of law, or by reasons of any act or defect in the proceedings upon which such special assessment certificate, tax sale or tax sale certificate is based, which has intervened to the prejudice of the plaintiff, it shall immediately stay all proceedings in the action, and shall cause an issue to be made up involving the extent of the injury which the plaintiff has suffered by reason of such failure or such act or defect, and such issue shall be tried summarily by the court. In the event that in such action the validity of the assessment of benefits and damages upon which such special assessment certificate, tax sale or tax sale certificate is based, is attacked and such assessment shall be set aside, such issue shall only be tried after a new assessment has been had, as provided by section 1 of this act.

When such issue has been tried and determined, the court shall make an order requiring the plaintiff to pay into court, within the time to be limited in such order, for the use and benefit of the defendant, or parties entitled thereto, the amount which he ought justly to pay, or which should be justly and equitably assessed against the property in question, based upon the finding of the court upon such issue, or in case a new assessment of benefits and damages is had, upon such new assessment and such finding, and upon such payment being made within such time, the court shall order judgment for the plaintiff with costs, but, in the event that the plaintiff fails to pay such amount within the time so fixed by the court, the action shall be dismissed with costs in favor of the defendant.

SECTION 3. No special assessment or certificate thereof or tax-sale certificate based thereon shall be held to be invalid for the reason that any contract which has been heretofore or may hereafter be let, contains on the part of the contractor a guarantee or any provision to keep the work done under such contract in good order or repair for a limited number of

After issue has been tried and determined the court shall make an order.

Contract to keep property in good repair does not invalidate special assessments.

years when such guaranty or provision was inserted therein for the purpose of insuring the proper performance of such work in the first instance. All such provisions in contracts for doing public work, inserted for the purpose aforesaid, are hereby legalized, and all such provisions shall be deemed prima facie to have been inserted for that purpose, unless the time during which the contractor is required to keep the work in good order or repair shall exceed five years.

Repeal and modification of former acts.

SECTION 4. All acts or parts of acts which are inconsistent with this act, or not in harmony with its provisions and operations, are hereby declared to be modified, amended, superseded or repealed, in so far as they interfere with or are at variance with the true intent, meaning and operation of this act.

Does not apply to cities of the 3d and 4th class.

SECTION 5. The provisions of this act shall not apply to cities of the third or fourth class, whether operating under general or special charters.

SECTION 6. This act shall take effect and be in force from and after its passage and publication.

Approved April 19, 1895.