

registering turn stiles at certain entrances of the state fair grounds, and to what is known as the grand stand, located therein, then it shall be the duty of state officers to place such stiles at the entrances so selected, within six months from such official action by said board; the cost thereof shall be deducted from the current receipt from said fair.

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

Approved June 19, 1905.

No. 307, S.]

[Published June 22, 1905.

CHAPTER 419.

AN ACT to amend, revise and consolidate the drainage district laws of Wisconsin.

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

Petition for, what to contain. SECTION 1. Whenever a majority of the adult owners of lands within any district of land, who shall represent one-third in area of the lands within said district to be reclaimed or benefited, or whenever the adult owners of more than one-half of the lands within such district desire to construct one or more drains, ditches, levees, or other works across the lands of others, for the promotion of the public health or welfare, and the drainage of said lands, or desire to maintain and keep in repair any such drain, ditch or levee heretofore constructed under any law of this state, such owners may file in the circuit court of any county in which the lands, or any part of them, shall lie, a petition setting forth:

1st. The proposed name of said drainage district.

2d. The necessity of the proposed work, describing the necessity.

3d. A general description of the proposed starting points, routes and termini of the proposed drains, ditches and levees.

4th. A general description of the lands proposed to be included in said district.

5th. The names of the owners of all lands in said district when known.

6th. If the purpose of said petitioners is the enlargement, repair and maintenance of a ditch, levee or other work heretofore constructed under any law of this state, said petition shall give a general description of the same, with such particulars as may be deemed important.

7th. Said petition shall pray for the organization of a drainage district by the name and with the boundaries proposed, and for the appointment of commissioners for the execution of such proposed work, according to the provisions of this and the following sections.

No petition having as many signers as are required by this section shall be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated, and when filed shall together be regarded as one petition having as many signers as there are separate adult signers on the several petitions filed, who own lands within said proposed drainage district. All petitions for the organization of said district filed prior to the hearing on said petition shall be considered by the court, the same as if filed with the first petitions placed on file, and the signatures thereon contained shall be counted in determining whether sufficient land-owners have signed said petition. Said territory need not be contiguous, provided that it be so situated that the public health or welfare will be promoted by such drainage of each part thereof and the benefits of the proposed work in each part will exceed the damages from and costs of said proposed work in each part; and provided further that the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise.

Notice of time and place of hearing. SECTION 2. On such petition being filed, the court or judge thereof shall make an order fixing a time and place of hearing thereon and ordering notice; thereupon the clerk of said court, for the county in which the proceedings are instituted, shall cause twenty days notice of the filing of such petition to be given (1) by posting notice thereof in at least five public places in the district in which said work is to be done, (2) by serving or causing to be served a copy of such notice on each owner of land within said proposed district, residing in any county in which any lands in

said proposed district are situated, either personally or by leaving a copy thereof at his last usual place of abode, with a person of suitable age and discretion to whom its contents shall be explained and (3) by publishing a copy thereof at least once a week for three successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there be no newspaper in any such county such notice may be published in a newspaper published in an adjoining county. Such notice shall state (1) in what court said petition is filed, (2) state briefly the starting points, routes and termini of said drains, ditches and levees, (3) give a general description of the proposed work, (4) give the proposed boundaries of said district (or a general description of all of the lands in said proposed district), (5) give the name proposed for said drainage district and (6) shall also state the time and place by the court fixed, when and where the petitioners will ask a hearing on said petition. If any of the owners of land in said district are non-residents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post office address of such non-residents, if such are known, and if unknown shall state that, upon diligent inquiry their names or post office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said non-resident owners whose post office address is known, within six days after the first publication of the same. The certificate of the clerk of the court, or other public officer, or the affidavit of any other person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing or publication thereof. Personal service of said notice on (or service by leaving at the last usual place of abode of) all owners of lands or easements or interest in lands within said district shall give the court complete jurisdiction, without posting, publication or mailing of said notice.

Special notice; jurisdiction of court. SECTION 3. If it shall be found, before the hearing on a petition for the organization of a drainage district, that one or more owners of land in said district have not been duly served with notice of hearing on said petition the court, or presiding judge, shall not thereby lose jurisdiction. The court or presiding judge in such case shall adjourn the hearing, make an order directing the serving of said notice upon said land owner and fixing the time and manner of service of such notice, which notice shall notify him to appear

at said adjourned time and place and be heard on said petition. Said notice shall be served personally or by leaving at the last usual place of abode of said unserved owners as in section two of this act provided not less than eight days before said adjourned hearing, or published not less than fourteen days before said adjourned hearing, in some newspaper published in the county, in which said owners' lands lie, or if no newspaper be published in said county, then in some newspaper published in an adjoining county. Upon the adjourned day the same proceedings, adjournments, trial, findings and orders may be had as in case of complete service of notice in the first instance. In case of failure to mail said notice as herein required, the court or judge may order the same mailed later and shall adjourn said hearing so that said notice shall be mailed at least fourteen days before said adjourned hearing. In case of failure to publish or post notice, as in this act required, the court or judge may adjourn said hearing for sufficient time to permit the due posting and publication of said notice, and order said notice posted or published as in section one hereof directed. In case of adjournment to permit notice to be given the notice shall state the fact of such adjournment and the time and place of such hearing pursuant to said adjournment.

Ground of contest; appointment of commissioners. SECTION 4. On the day fixed for hearing on such petition all parties owning lands, or any interest or easement in land, within said proposed district, or who would be affected thereby, may appear and contest (1) the sufficiency of the petition, (2) the sufficiency of the signers of the petition, (3) the sufficiency of the notice, (4) the constitutionality of the law and (5) the jurisdiction of the court, specifying their objections to such jurisdiction; and the petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest. The court shall hear and determine whether or not the petition contains the signatures of a majority of the adult owners of lands within the 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 adult owners of more than one-half of such lands and shall determine all questions of law arising on said contest. The circuit court in which such petition shall be filed, or the judge thereof, may adjourn the hearing on said petition from time to time for want of sufficient notice, or to give time to prepare for trial, or for

other good cause. The affidavit of any three or more of the signers of said petition stating that they have examined it and are acquainted with the locality of said district and that said petition is signed by a sufficient number of adult owners of lands in said district, to satisfy section one of this chapter, may be taken by the court or judge as *prima facie** evidence of the facts therein stated. And the affidavit of any petitioner or other land owner before such court, or represented before the court, giving the age of such affiant 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. 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 or presiding judge thereof, 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 or judge shall so find, and order any necessary amendments thereto, and shall appoint three suitable, competent persons as commissioners, and fix their preliminary bond. If the district is situated in two or more counties not more than two of said commissioners shall reside in any one of said counties. Ownership of land within the district shall not disqualify a person from acting as a commissioner.

Powers and duties of commissioners. SECTION 5. Before entering upon their duties such commissioners shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of Wisconsin, to faithfully and impartially discharge their duties as such commissioners and to render a true account of their doings to the court by which they are appointed whenever required by law or the order of the court, and shall execute a bond running to the clerk of said court and his successors in office as obligees, to be filed with said clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge, and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as such commissioners and the faithful accounting for and application of all moneys which shall come into their hands as such commissioners. A majority

*Printed in italics in enrolled act.

shall constitute a quorum and a concurrence of a majority in any matter within their duties shall be sufficient to its determination. The commissioners first appointed shall hold their office until the first Tuesday in the second succeeding July following the date of the order organizing such district and until their respective successors are qualified. All commissioners appointed after the first board, excepting those appointed to fill vacancies, shall hold their respective offices for the term of two years and until their respective successors are qualified. Appointments to fill expired terms in the office of drainage commissioner shall be made by the presiding judge of the circuit court of the county having jurisdiction of the drainage district at the court house therein on the first Tuesday of July in each succeeding year or as soon thereafter as possible. Vacancies in the board may be filled by such judge at any time, the commissioners appointed to hold for the residue of the unexpired term. The removal of any commissioner from the county or counties in which lands of such district are situated shall render his office vacant. The commissioners shall keep an accurate record of all moneys collected on account of the work under their charge and of all payments made by them, and shall take vouchers for such payments and shall keep full, accurate and true minutes of all their proceedings. On the first Tuesday of July each year they shall file in the office of the clerk of the court having jurisdiction of the matter an itemized statement of all their receipts and disbursements, and leave said report in such office for examination by parties interested at all times. They shall receive for their services \$3.50 per day and their actual reasonable expenses. They shall at all times be under the control and direction of the court or presiding judge, and shall obey its or his directions; for failure so to do they shall forfeit their compensation and be dealt with summarily as for contempt. Suit may also be brought upon their bonds, in the name of the clerk of the court, and the amount recovered shall be applied to the construction of the work or to the party injured, as justice may require.

Report of commissioners. SECTION 6. Within ten days after said commissioners shall be appointed and qualified they shall meet and organize by electing one of their number secretary, and as soon as may be thereafter, they shall personally examine the lands in said district and make a preliminary report to the court, which report shall state:

(1) Whether said proposed work is necessary, or would be of utility in carrying out the purposes of the petition.

(2) Whether the proposed work would promote the public health.

(3) Whether the proposed work would promote the public welfare.

(4) Whether the total benefits from said proposed work will exceed the cost thereof together with the damages resulting therefrom; and in arriving at this they shall include all benefits and all damages resulting therefrom both within and without said district.

(5) Said commissioners shall in said report fix as near as may be and report to the court the boundaries of said proposed drainage district. Said boundaries shall not be so changed from those in the petition described as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within said changed boundaries.

If said proposed work, as in the petition described, is not best suited to carry out the purposes of the petition the commissioners shall consider and base their report upon the one best suited to carry out those purposes and propose to the court the one by them considered.

Action on report. SECTION 7. Upon the filing of the preliminary report the court or the presiding judge thereof shall by order fix a time and place when and where the same shall be heard at some general or special term of said court, not less than thirty days from the filing of said report. Notice of the time and place of hearing upon said preliminary report shall be given to all interested persons by publishing a brief notice of the filing of said report, including a brief statement of the substance of said report in one or more newspapers published in each county in which any land in said proposed drainage district shall be situated (or if no newspaper is published in said county, in one or more newspapers in an adjoining county) once in each week for three successive weeks prior to the day appointed for hearing thereon. Said notice shall describe all lands by said report included in said district, which were not included therein by the petition, and state that such lands are to be included in said district, and shall describe all lands excluded from said district which were by the petition included therein and shall state that such lands are to be excluded from said district. Upon the day fixed for hearing upon said report, said court may adjourn said hearing for good cause or may proceed to hear, try and determine all issues arising upon said report. Any interested party may appear and remonstrate against said report or any material

part thereof. All remonstrances shall be in writing, be verified on oath, be filed at least five days before the day fixed for hearing, and shall set forth the facts upon which they are based. When lands are added to the district the owners thereof shall be served with said notice as provided for service of notice of hearing on the petition. All issues arising upon said preliminary report shall be tried by the court without a jury. If the court shall find in favor of the remonstrance or if said report be that the proposed work will not promote the public health, and will not promote the public welfare or that the benefits from said proposed work will not exceed the damages and cost of construction, and no remonstrance against said report is filed, the petition shall be dismissed and the costs taxed against the petitioners and judgment entered therefor as in section 11 herein-after provided. But if the preliminary report be that the benefits of said proposed work (or work by the commissioners proposed) will exceed the damages and the cost of construction and that the public health will be promoted thereby, or that the public welfare will be promoted thereby, and no remonstrance thereto is filed, or if on the trial of the issues made on said report the court finds that the benefits will exceed the damages and the cost of construction, and that the public health or the public welfare will be promoted by said proposed work, the court shall make and file such findings in writing and make an order confirming said report, or directing amendment of the report to conform to the findings of said court. And when so amended the court shall by order confirm the same, and direct said commissioners to proceed with said work with all convenient speed. Said findings and order shall be final and conclusive unless appealed from to the supreme court within thirty days after filing thereof. Upon entering of such order of confirmation of said preliminary report of record, said drainage district shall be, and is hereby declared to be organized as a drainage district, by the name mentioned in said petition or such other name as the court shall fix, with the boundaries fixed by the order confirming the report of said commissioners, to be a body corporate by said name fixed in said order, with the right to sue and be sued, to adopt and use a seal, and to have perpetual succession. The commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authority of said drainage district, and shall exercise the functions conferred on them by law, and do all things and perform all acts necessary to the construction and preservation of the proposed work. All proceedings herein re-

quired, prior to the entry of such order of confirmation of record, shall be deemed to be and are hereby declared to be necessary to the formation of said body corporate, but any defect therein falling within the purview of any curative provision herein contained may be cured thereunder.

Commissioners to make second report; data. SECTION 8. As soon as may be after the confirmation of the said preliminary report, or within such time as the court may direct, said commissioners shall proceed to have all necessary levels taken and surveys made, and shall lay out said proposed work, make a map thereof and plans, profiles and other specifications thereof, and report in writing to the court:

First: Whether the starting point, routes and termini of the proposed work and the proposed location thereof, as in the petition contained, are in all respects proper and feasible, and if not, shall report such as are most proper and feasible.

Second: If it be found necessary to change the boundaries of said proposed district, as by them previously fixed, they shall report said proposed change, and if possible, shall report the names, residences and post office addresses of the owner or owners of all lands affected by said change in boundaries, but no such change in boundaries shall be made as to deprive the court of jurisdiction; provided, however, that if the owners of lands adjacent to the district petition to have their lands brought into the district such may be considered the same as original petitioners in making changes in boundaries.

Third: What lands within the district, as by them reported will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement or interest by whomsoever held, the amount of damages which they shall determine will be caused to the same by the proposed work.

Fourth: What lands within the district as by them reported will be benefited by the proposed work and they shall assess against each tract, lot and easement by whomsoever held the amount of benefits which they determine will be caused to the same by the proposed work. The benefits so assessed are herein referred to as "assessment of benefits."

Fifth: They shall also determine and report to the court the total amount, as near as they can determine, that said proposed work will cost, which cost shall include all incidental expenses, the reasonable cost of organizing said district, the costs of proceeding and all probable damage to lands, both within and

without the district, together with a reasonable attorney fee for the petitioners, which cost will hereinafter be referred to as "cost of construction." If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, or upon any corporation or corporations, the commissioners shall so specify and in their report they shall fix and determine the sums which should be assessed against said tracts, lots and corporations and assess such sum against said tracts, lots and corporations, and if any corporation would in the judgment of said commissioners derive special benefits from the whole or any part of such proposed work, the commissioners, shall so report and assess those benefits and assess against the same its proportionate share of the costs of said proposed work. The word "corporation" wherever in this act contained, shall be construed to include (1) railroad companies, (2) other private corporations of all kinds, (3) towns, (4) cities, (5) villages and (6) other drainage districts. They shall apportion and assess the part of this "cost of construction" not assessed as above, against the several benefited tracts, lots and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot or easement, the sum which they assess against the same for construction. The assessments which together make up the cost of construction as above defined are herein referred to as "assessments for construction."

Sixth: The commissioners shall further report to the court the probable cost of keeping said proposed work in repair after it is completed.

Seventh: In case the purpose of the petition is repairing, enlarging or maintaining a drain, ditch, levee or other work heretofore constructed under any law of this state, it shall be the duty of the commissioners to examine said drain, ditch, levee or other work, and the land intended to be reclaimed or benefited thereby and to report to the court: (a) Whether in their opinion, said levee, drain or ditch, with proper enlargement or repair can be made sufficient to protect permanently said lands from overflow or to drain the same; (b) the probable annual expense of keeping the same in repair; (c) what lands will be benefited thereby, giving accurate description by government or smaller subdivisions, the names of the owners when known, and the cost of all necessary work, with all incidental expenses, and an assessment of such cost on each tract, lot or easement, which assessment shall be apportioned on the

actual benefits to the same. And if any particular part of such cost should be assessed upon any particular tract or lot, they shall so specify, and if any corporation derive a public or special benefit from such work they shall so determine, and report and assess such corporation its equitable portion of such cost; (d) whether the aggregate amount of such cost will exceed the benefits resulting to the lands and interests assessed; (e) whether the proposed district will embrace all of the lands that may be benefited by the enlargement, repair or maintenance of said levee, drain or ditch, and if not, what additional lands will be so affected.

Eighth: They shall include in their said report, said map, plans and other specifications, and file the same with their report.

The commissioners shall not be confined to the points of commencement, routes or termini of the drains or ditches, or the number, extent or size of the same, or the location, plan or extent of any levee, ditch or other work as proposed by the petitioners, but shall locate, design, lay out and plan the same in such manner as to them shall seem best to promote the public health or welfare and to drain or to protect the lands of the parties interested with the least damage and greatest benefit to all lands affected thereby. And any plan proposed by the commissioners, may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just. If the commissioners find that the proposed district as described in the petition filed will not embrace all of the lands that will be benefited by the proposed work or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or to exclude all such lands as the case may be; and the boundaries adopted and reported by them may, upon the hearing of their report as hereinafter provided, upon their application or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

Notice of hearing on remonstrances; how given. SECTION 9.
Upon the filing of said report the court shall make and enter an

order fixing the time and place when and where all persons interested may appear and remonstrate against 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, which notice shall contain a brief description of the lands benefited and damaged, together with the net damage awarded to the several tracts, parcels, easements and corporations to which damages are awarded, and the sum in each case assessed for construction against said several benefited parcels, tracts, easements and corporations. Said notice shall be published for at least three successive weeks, prior to the day set for the hearing in one newspaper published in each county in which said lands, or any part thereof within said district are situate, (and if no newspaper is published in said county, in some newspaper in an adjoining county) and by serving a copy of such notice on each of the persons, or corporations by said report recommended to be assessed or whose lands are by said report recommended to be included in said district and who resides 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 1898; provided, that absence of any such person from said county and the fact that he has no member of his family of suitable age and discretion at his usual place of abode with whom a copy can be left, shall excuse service as in said sections 2636 and 2637 required, whereupon due publication of said notice shall be sufficient service upon him. In case the lands are situated in more than one county the notice published in the county wherein the court having jurisdiction is situated shall contain a description of all the lands in said proposed district the damages awarded to the several parcels thereof and amounts assessed for construction against the several parcels thereof, but the notice published in any other county or counties may contain a description of only the lands situate in said county for which said publication is made together with the damages awarded to and assessments for construction against the several tracts, parcels, easements and interests situate in said county for which publication is made. In case of service of said notice as provided in said sections 2636 and 2637, on all owners of land within the district, said service shall be sufficient and give the court jurisdiction without said publication.

Remonstrance, form of; hearing by court. SECTION 10. Any owner of lands or any easement or interest therein within said

district or any person or corporation affected by the proposed work may appear on the day set for hearing on said report and remonstrance against the whole or any part of the proposed work or any change of the boundaries. 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 whether they rest on any other fact, as that some lands or corporations are assessed too high or too low or improperly, or that lands are assessed which ought not to be assessed, or that lands or corporations should be assessed which are not assessed, or that damages allowed to any parcel, tract or easement in land, or to any corporation are excessive, 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 any persons or corporations to whom damages are allowed may remonstrate because they are inadequate. The circuit court for said county or the presiding judge thereof may fix a time at any term of court or appoint a special term for hearing the remonstrants and, on demand of any person or corporation assessed for benefits or awarded damages, may frame issues in said matter, impanel a jury and take its verdict upon the trial of such issues (1) whether the amount of damages awarded by the commissioners to any remonstrant is excessive or is inadequate and (2) whether the assessment of benefits to any remonstrant, demanding the review by a jury, is too high or too low and the jury may award and assess the same. All other issues arising on any remonstrance, except those of benefits and damages shall be tried by the court. If the court finds that the report requires modification the same may by order of the court be referred back 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 cost. Costs awarded against the commissioners shall not go against them personally but shall be paid out of the funds realized from the assessments for construction. If the finding as to such new parties be against the validity of the proceedings, the same, unless the defect be cured, shall be dismissed as to such parties at the cost of the district and judgment entered for costs in favor of such new parties. If there be no remonstrance, or if the finding be in favor of the validity of the proceedings, or after the report shall have been modified to conform to the findings, the court shall confirm the report and the order of confirmation shall be final and conclusive, the proposed

work shall be established and authorized, and the proposed assessments approved and confirmed unless within thirty days an appeal be taken to the supreme court. The said order of confirmation shall also fix the commissioners' bond. Said order of confirmation may, at the same or at any subsequent term of 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. At any time prior to making the order confirming said report or thereafter the court may permit the commissioners to present and file a supplemental report, or amend their report, as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter make such order as the case may require.

Judgment; expenses, payment of. SECTION 11. In case the petition or proceedings are dismissed as provided in sections 4, 7 or 27 hereof, 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 recovered costs on 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 shall 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 on said order to show cause shall be given to said petitioners, by mailing to each a copy thereof, to their last known post office address, 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. Said notice need not contain an itemized statement of said account. All petitioners shall, among themselves, contribute in the payment of said judgment, in proportion to the number of acres of land they have within the boundaries of the proposed district at the time of filing of said petition.

Assessments, how paid. SECTION 12. At the time of confirmation of such assessments, it shall be competent for the court to order the assessment for construction of new work to be paid in not more than fifteen 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 on which the first installment of the assessments for construction shall become due, not more than five 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 assessment shall be payable at once; and from the time of the entry of said order, and the filing of notice thereof with the register of deeds, assessments for construction of new work and additional assessments and interest thereon shall be a lien upon the lands assessed until paid. Any owner of land, or any corporation assessed for construction, may at any time within thirty days after the confirmation of said report, pay into court the amount of the assessment against his land or any tract thereof or against any such corporation. Said payment shall relieve said lands from the lien of said assessment and said corporation from all liability on said assessment.

Assessments, when due; limit of. SECTION 13. Assessments for keeping any drain, ditch, levee or other work in repair under these provisions shall be due and payable on the first Tuesday of September annually. Commissioners having charge of any completed drain, ditch, levee or other work, shall, on the first Tuesday of June 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, the places where repairs are specially needed and the sum to be assessed against each tract, lot, easement or corporation to pay all necessary repairs. No notice of the filing of such report shall be necessary. All such assessments shall be apportioned on the last assessments of benefits confirmed by the court. Within thirty days after filing such annual report, at a time and place to be fixed by the court or presiding judge, the court or presiding judge shall examine said report, hear all objections to the same, fix and determine the amount of such assessments 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 said-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.

Unpaid assessments, how collected. SECTION 14. In all cases after assessments for construction are confirmed by the court, the commissioners shall within twenty days after such confirmation give notice of the entry of the order of confirmation and of the time when and the place where the assessments may 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 against lands are not paid when due they shall certify the same to the clerk of the town, city or village in which the delinquent lands are situated, as due and unpaid for such work, and such clerk shall enter the same in the tax roll of such town, city or village next thereafter to be made against the land benefited, but in a separate column thereof and the same shall be collected in the same manner in which state, county and town taxes are collected, except only that the personal property of natural persons and all lands other than those against which the assessment shall have been made shall not be liable to seizure and sale therefor.

Sale of lands for assessments, manner of. SECTION 15. Such assessments as are not paid to the commissioners or to the town, city or village treasurer shall be returned by the town, city or village treasurer to the county treasurer in the same manner and at the same time as delinquent taxes, but separately therefrom. The county treasurer shall advertise the same in his lists of lands to be sold for unpaid taxes, and unless paid to him prior to the tax sale he shall sell said lands for the taxes and drainage assessments against the same, treating said drainage assessments the same as unpaid taxes but keeping them separate from the taxes on his record. When he issues certificates of sale of land for taxes and drainage assessments he shall issue a separate certificate for the amount of drainage assessments on the said land. No extra advertising or sale fee shall be added to the certificate of sale for drainage assessment when the land was at the same time sold for drainage assessments as well as for taxes. In case the tax on any land shall be paid and the drainage assessment not paid, said county treasurer shall proceed to sell said land for drainage assessment or assessments in the same

manner in which he would proceed if the taxes thereon were unpaid. The tax certificate and the drainage assessment certificate on the same land may be assigned separately or together, but at the public sale they shall be offered and sold together. After the expiration of three years from the issuing of said certificate a deed shall issue upon any certificate of sale for unpaid drainage assessment, in the same manner and upon the same notice or affidavit of non-occupancy now required for the issuance of tax deeds, which deeds shall be in form substantially the same as tax deeds; provided that no such drainage assessment deed shall cut off or adversely affect any drainage assessment or installment of any assessment falling due after the assessment or installment on which such deed issued, or shall cut off or adversely affect any additional assessment or assessments for repairs that may thereafter be made or fall due. No tax deed shall cut off any drainage assessment, nor shall any drainage assessment deed cut off any tax. The rules of law applying to the collection of taxes and sale of land for taxes, shall, unless in conflict with this act, apply to the collection of and sale of lands for drainage assessments, except that said drainage assessment certificates shall draw ten per cent interest annually. When commissioners shall fail to certify to the town, city or village clerk of the proper town, city or village any one or more drainage assessments for construction or repair or additional assessment against any lands in said district at the proper time, they may certify the same to the town, city or village clerk at any time thereafter, whether in the same or any subsequent year.

Orders confirming assessments, how reported; liens. SECTION 16. Immediately after the entry of any order confirming any assessment for construction or additional assessment the clerk of the court shall make out and certify to the register of deeds in each county where assessed lands are situated, a true copy of the lists of the lands in said county assessed, and the sum assessed against each tract or parcel thereof, or easement therein, and said register shall thereupon enter such order of record and the same shall be notice of the lien of said assessments to all persons. The lien of said assessments shall date from the filing of such certified list with the register of deeds. The register of deeds shall record such certificate and list with him filed, and shall receive the usual fees therefor.

Interest, how collected. SECTION 17. If assessments for the construction of new work shall be payable in installments, each

installment shall draw interest at the rate of six per cent per annum from the date of the order fixing and affirming the assessment until paid, interest payable annually, and in case said interest is not paid when due, its collection shall be enforced in the same manner as are assessments for construction.

Powers of commissioners. SECTION 18. When duly qualified the commissioners may do any and all necessary acts in and about the surveying, laying out, constructing, repairing, altering, enlarging, cleaning, protecting and maintaining any ditch, drain, levee or other work for which they shall have been appointed, including constructing all necessary bridges, crossings, embankments, protections, dams and lateral drains, clearing out and removing obstructions from natural or artificial channels or streams within or beyond the limits of the drainage district, procuring, purchasing or condemning under proceedings similar to the proceedings had under the awarding of damages hereunder, riparian rights, rights of flowage and water powers, and for those purposes may use any moneys in their hands arising from assessments.

Right to go upon land authorized. SECTION 18a. The commissioners, their agents, servants and employes shall have the right to go upon all lands along any drain, ditch, levee or embankment in their district to inspect, deepen, widen and repair the same whenever necessary, doing no unnecessary damage, and shall not be liable for trespass therefor.

Railway right of way. SECTION 19. Said commissioners shall have the right to lay out and construct all necessary drains, ditches and levees across any railway right of way or yards in their district and any railway company whose right of way or yards crosses the line of any proposed drain, ditch or levee shall open its right of way or yards and permit such drain, ditch or levee to cross the same, as soon as said drain, ditch or levee is constructed to such right of way. Every drainage district shall be liable to the railway company whose right of way or yard any of its drains, ditches or levees crosses for the reasonable cost of the culverts and bridges made necessary by said drain, ditch or levee crossing said right of way or yards, but not of more expensive character than the average other culverts and bridges on said division of railway crossing streams or ditches of approximately the same width and depth and within a hundred miles of said district ditches. Upon receiving fifteen

days' notice in writing any railway company across whose right of way or yard any such drain, ditch or levee is laid out shall open its right of way or yards and permit said commissioners and their contractors, agents and employes to construct said drain, ditch or levee across said right of way or yards. For every day that said railway company fails, after the end of said fifteen days, to open their said right of way or yard as hereinbefore required, it shall forfeit twenty-five dollars to said drainage district, to be collected in an action as other forfeitures are collected or set off against any damages that have been awarded to such company. If said railway company fails to open its right of way or yard along the line of said drainage district, drain, ditch or levee, the commissioners may, at any time after the expiration of said fifteen days, open such right of way and yards along the lines of said drains, ditches and levees and construct the same.

Additional assessments; may borrow money or issue bonds.

SECTION 20. If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction, or if in any year an additional sum is necessary to pay the interest on lawful indebtedness of said drainage district, further or additional assessments on the lands and corporations benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof without notice, which further or additional assessment may be made payable in installments as specified in section 12 hereof, and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court, in said drainage district. The commissioners of said drainage district shall have the same power to borrow money or issue notes or bonds based upon such further or additional assessments herein provided for that is given them by section 23 of this act.

Erroneous assessments, how corrected. SECTION 21. Omission to assess benefits, or to assess for construction, or to make additional assessment, or to make assessment for repairs, or to award damages to any one or more tracts of land or easements in a drainage district, or to assess benefits, or to assess for construction, or to assess for repairs, or to make additional assessments against any corporation which should have been assessed,

shall neither affect the jurisdiction of the court to confirm the report nor to render the benefits assessed, or the assessments for construction, or additional assessments, or assessments for repairs against other lands, or assessment against any corporation voidable, but the commissioners of said drainage district shall thereafter, as soon as they discover the omission, or as soon as notified thereof, either agree with the omitted parties upon the proper assessments and awards of damage or assess such benefits, make such assessments for construction and make such additional assessments against the omitted lands and corporations and award such damages as shall be just and report the facts together with such assessments and awards to the court. The court shall thereupon by order fix a time and place of hearing on such report and therein specify what notice shall be served on the owner or owners of said lands or said corporation, and the time and manner of serving the same. The owner of said lands or easements therein or any such owners or corporations affected, may file a verified written remonstrance against the confirmation thereof, because said assessment is too high or award of damages is too low, which remonstrance shall set forth the facts on which the remonstrant relies as provided in section 10 of this act. The issues arising on such report and remonstrance shall be made up and tried as provided in section 10 hereof. If said failure to assess benefits, assess for construction, make additional assessments, or assess for repairs, or award damages, is brought to the court's attention prior to the confirmation of the report in which the failure occurs, the court shall adjourn the hearing thereon until the omitted lands and corporations are assessed and are served with the notice which the court may order served. This section shall be retroactive and shall apply to failures to assess benefits, failures to assess for construction, failures to assess for repairs, failures to make additional assessments and failures to award damages heretofore in any drainage district occurring. In case of omission to make additional assessments for construction assessed pursuant to section 20 hereof; no notice of such assessment to supply such omission shall be necessary, or trial had thereon.

Void assessments; exempt lands. SECTION 22. Any owner of land or any interest in land within a drainage district who claims that his land in said district is exempt from liability for, or lien of, any assessment for construction or repairs or any additional assessment by said commissioners levied against the same, whether said assessment be the first or any subsequent

assessment, or questions the legality of such assessment, may, at any time, on ten days' notice, or order to show cause, be brought before the court having jurisdiction, and required to show cause why said land should not be bound by all drainage district assessments in any report or reports of the commissioners of said district assessed against the same. The presumption shall be in favor of the regularity of such assessments and they shall stand as valid assessments unless the owner of such land or some interest therein shall show that said assessment is inequitable, or is void because the lands were not subject to assessment in the first instance. On the return day of said notice, or order to show cause, the said owner shall in writing, verified on oath, state the facts on which his claim is based. If he fails to appear and set forth such facts, upon the filing of the proof of service of such notice or order to show cause upon him, when notice is necessary, an order shall be made by the court confirming such assessment or assessments, which order shall be final and conclusive unless appealed from to the supreme court within thirty days. The court may adjourn the hearing on said return day and thereafter, and if on the return day, or adjourned day, a trial is found necessary the court shall fix the time and place of trial and frame all necessary issues as provided in section ten hereof. In case the court decides that such lands could not, at the time said assessments were made, be assessed for drainage purposes, and that said assessment or assessments are void, the commissioners shall levy an additional assessment on all of the assessable lands and corporations in said district, based on the last assessment of benefits approved by the court, to pay the sum lost to the district by reason of the void assessment, or shall pay said sum out of the general funds of said district.

Power to borrow money conferred. SECTION 23. The commissioners may borrow money, not exceeding the amount of assessments for construction, additional assessments and assessments for repairs unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair, or for the payment of any indebtedness they may have lawfully incurred, and may secure the same by notes or bonds bearing interest at a rate not to exceed six per cent per annum, and not running beyond one year after the last installment of the assessment, on the account of which the money is borrowed, shall fall due; which notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of

the principal and interest of such notes or bonds; and the court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by taking up and canceling all of its outstanding notes and bonds as fast as they become due, or before, if the holders thereof will surrender the same, and issuing in lieu thereof new notes or bonds of such district payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, and bearing interest not exceeding six per cent per annum; and the court may, on the petition of the commissioners, order that the collection of any installment of assessments be postponed to such time as the court may deem proper and reasonable.

Bids; work, how let; no graft. SECTION 24. In all cases where the work to be done at any one time under the direction of the commissioners shall, in their opinion, cost to exceed five hundred dollars the same shall be let to the lowest responsible bidder, and the commissioners shall advertise for sealed bids by notice published in some newspaper published in the county in which the petition is filed, and may advertise in one or more newspapers published elsewhere. If there be no newspaper published in the county in which the petition is filed, they shall advertise in some newspaper published in an adjoining county, which said notice shall particularly set forth the time and place when and where the bids advertised for will be opened, the kind of work to be let and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and shall reserve the right to reject any and all bids; and they shall not, during their term of office, be interested directly or indirectly, in any contract for the construction of any drain, ditch, levee or other work in such drainage district, or in the sale of materials therefor, or in the wages of or supplies for men or teams employed on any such work in said district.

Damages, how awarded. SECTION 25. The damages allowed to the owners of lands shall be paid or tendered before the commissioners shall be authorized to enter upon the lands, for damage to which the award is made, for the construction of any drains, ditches or levees proposed thereon. If the owner is unknown or there shall be a contest in regard to the ownership of the lands, or the owner will not receive payment, or there exists

a mortgage or other lien against the same, or the commissioners cannot for any other reason safely pay him, they may deposit the said damages with the clerk of the court, for the benefit of the owner, or parties interested, to be paid or distributed as the court shall direct, and such payment shall have the same effect as the tender to and acceptance of the damages awarded by the true owner of the land. This section shall not, however, prevent said commissioners, their agents, servants and employes going upon said lands to do any and all work found necessary prior to making their assessment of benefits and award of damages, and the trial on their report thereof.

Drainage of enclosed lands; damages and benefits, how apportioned. SECTION 26. When any person or persons owning lands within the district shall present to the commissioners of any organized drainage district an affidavit satisfying such commissioners that he, or they own real estate (describing the same) within said drainage district, and that the same needs drainage and is shut off from access to any public drain (or that, by reason of the slope of the land it is impractical for him or them to drain said real estate to a public drain touching the same) without crossing the lands of other owners, and that he, or they, cannot purchase from the owner or owners of the lands lying between his and their lands and the public drain, to which his or their lands must be drained, a right of way for a private drain thereto, over or along or through the lands of such other owners along a practicable route, or that said right of way cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased, and asking that a drain be laid out from affiant's lands, to a public drain, the said commissioners shall fix a time and place of hearing upon said application, and within thirty days after the filing of said affidavit, shall give notice of the time and place of meeting therefor, by posting notice thereof in three public places in said drainage district at least ten days before the time fixed for hearing thereon, and by serving said notices at least five days before such hearing on the occupants of all the lands through or along which such drain may pass, and upon the owners of said lands, if such owners reside within the district. Such notice shall be served personally or by leaving a copy thereof at the usual place of abode of each occupant, and each owner of said lands, residing in said district, across, through or along which lands it is proposed to lay out such drain. At the time and place fixed by said notice said commissioners shall meet, and if

the facts set out in said application are true and they decide that a drain is necessary, they shall by order lay out said drain as a public drain, and shall assess the benefits which said drain will be to the lands across or along which the same shall be laid, and other lands in the district benefited thereby, and determine and award the damages to said several tracts by reason of the construction of said drain and assess the cost of construction of the same to the benefited lands. Said assessments, determination and award shall be in writing and shall specify the benefits or damages, which they determine that said drain will cause to said several tracts of lands, and each easement therein, across or along which the same shall be laid out. Said order, assessment and determination they shall file and record in their office. Said affiant shall cause notice of said assessment and determination to be served upon each occupant of assessed land and lands across or along which said drain shall be laid, and upon each owner who resides in said district, in the same manner as the previous notice is herein required to be served, within ten days after the making of said order laying out the said drain. The order laying out said drain shall describe the same by describing the line along which the same shall be laid, and give the slope of sides of the same, grades, depths and width of same, and the width of berme thereof. Said order shall be final unless appealed from to the circuit court having jurisdiction of the district, within thirty days after the service of said last notice. Written sworn proof of the service of said several notices shall be filed in the office of the clerk of said court. A copy of said order shall be filed in the office of the clerk of the court within thirty days after the said order is made. Said commissioners shall determine the cost of the said drain; which cost shall include the damages awarded to the properties through or along which said drain shall be laid, together with cost of constructing the same, and all preliminary costs necessary to the laying out of the same, together with the filing fees of the register of deeds. Within eight months after the time for appeal from the order laying out said drain is past, the owner or owners filing said affidavit shall deposit with said commissioners the cost of said drain as by them determined, whereupon said commissioners shall construct said drain, and the same shall become a public drain and part of the system of drains of said drainage district. In case the assessment of benefits against the lands or any easement or interest therein across or along which said drain is laid, shall exceed the damages thereto and no appeal is taken from the said determination of said commissioners (or on appeal

benefits are confirmed) and said cost of said drain is deposited with said commissioners as herein required, said commissioners shall file with the register of deeds of said county a certified statement of their order laying out said drain and of such assessment of benefits, and the lands against which the same are assessed, setting down to each tract the sum assessed against the same, and the register of deeds shall record the same, and thereupon said assessments shall become liens upon said several parcels, tracts and easements in said lands, against which they are assessed. Unless said assessments for construction are paid to said commissioners within one year from the making of said order they shall certify the same to the clerk of said town, the same as an original assessment, to be collected as are other assessments against said lands, by placing the same upon the tax roll of said town. When collected and paid to said commissioners said commissioners shall pay the same to the party or parties who paid for the construction of said drain his or their heirs, personal representatives or assigns in the proportion in which said party or parties originally paid the same. In case two or more persons file said affidavit asking for a drain to be used by them in common, the cost of said drain shall be apportioned to said owners in proportion to the assessment of benefits then in force against their lands benefited thereby. When practicable said drains herein provided for shall be laid out and constructed on the side of public highways.

Drainage of contiguous lands. SECTION 27. Whenever owners of land contiguous to any drainage district formed under these provisions may desire to be admitted to the benefits of said district, they shall file in the office of the clerk of the court having jurisdiction of such district, a petition signed by more than one-half of the adult owners of lands in said new territory which said signers shall represent more than one-third of the lands in said proposed extension or addition, or signed by the owners of more than one-half of the lands in said new territory, together with a description of the lands which they desire admitted to said district, and the names of the owners so far as the same are known or can be ascertained, with a plat showing the original district and the proposed new territory. Upon the filing of such petition the court or judge thereof shall by order fix a time and place of hearing thereon before the court at some general or special term or before the presiding judge thereof and direct that notice of the time and place of such hearing be served upon all of the owners of such lands as are sought to be

admitted to the benefits of said district in the same manner that notice is required to be served on land owners by section two of this act. At the time and place fixed for a hearing on said petition any interested party may appear and contest the prayer of the petition, (1) because insufficient in form or substance, (2) because it has not the required number of signers. The same proofs of ownership may be accepted as provided in section four hereof. If the court or judge shall find said petition insufficient in form or substance the same may be amended. If the court shall find that the petition, including all copies thereof filed prior to hearing thereon, has not the required number of signers the petition shall be dismissed and judgment for costs entered against the petitioners. But if the court or judge finds the petition is in substance sufficient, or if it is amended so that it is in substance sufficient, and also finds that it has a sufficient number of signers the court or judge shall make such findings in writing and refer the petition to the commissioners of the district to which it is sought to admit the new territory. Said hearing may be adjourned to obtain other signers, serve notice on unserved land owners or for other good cause. Said commissioners shall, as soon as possible after said petition is referred to them, examine said lands and make report on them to the court:

First: Whether the public health will be promoted by the proposed work.

Second: Whether the public welfare will be promoted by the proposed work, and

Third: Whether the benefits will exceed the damages and cost of construction of the proposed work.

Said commissioners shall, as soon as possible, file said report with the court. Similar notice shall be given thereon, similar proceedings and hearings had thereon and similar findings made thereon as on the preliminary report provided for in sections six and seven hereof. If the court shall find that the public health will be promoted or the public welfare will be promoted by the proposed work and that the benefits will exceed the damages and cost of construction, the court shall make written findings of those facts and order that said lands, or so much thereof as the court shall direct, be admitted to the benefits of the original drainage district, and it shall thereafter be a part of the original drainage district and the lands therein shall thereafter be chargeable with assessments for the preservation, repair and maintenance of the works in said district in the same manner as are the lands in the original district. After the confirma-

tion of said preliminary report, said commissioners shall proceed substantially as provided in section eight hereof. In fixing the first assessment for construction on such new territory the commissioners shall, in addition to the cost of whatever work must necessarily be done therein, to place such lands on the same footing as to drainage facilities as that enjoyed by the lands in the original district, assess thereon such further sum as will make the amount to be paid on account of each acre of said lands in said new territory equal to the amount paid for the original drainage work of the same kind on account of each acre of the original drainage district similarly situated. If no land in said district is similarly situated, they shall assess thereon such further sum as shall be equitable, which shall be apportioned upon the benefits to such lands in all cases. The additional amount so received shall be held by the commissioners for the benefit of the entire drainage district. Upon filing the report assessing benefits, assessing for construction and awarding damages in the matter of such addition, the same notice shall be served and proceedings had as in case of the report in an original district assessing benefits, assessing for construction and awarding damages. The several orders confirming said reports shall be final and conclusive unless appealed from to the supreme court within thirty days after the rendering and entry thereof. The provisions of this section shall apply to proceedings now pending for the addition of new territory to any drainage district unless the court order such proceedings to proceed under section 1379—28 of the statutes of 1898 until completed.

Benefited lands, how brought into district. SECTION 28. Whenever any lands outside a drainage district are receiving the benefits of the drains of said district, by direct or indirect, natural or artificial connection therewith, the commissioners of said district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for the benefits by them received from the drains, ditches or levees of said district. Upon the filing of said report the court shall order the owners of such lands to be notified of the filing of said report and the contents thereof, and shall require such owners to show cause at a time and place therein, fixed not less than twenty days thereafter, why their said lands should not be brought into said district and assessed for said benefits. At the time and place fixed for hearing said report any of said land owners may appear and remonstrate

against the confirmation of said report. All remonstrances shall be in writing, verified and shall set forth the facts on which they are based. All issues arising on said report shall be tried by the court without a jury. If the court shall find that said lands or any of them are receiving the benefits of any such drain, ditch or levee the court shall so find in writing and shall order said lands to be annexed to and made a part of said district, and benefits to be assessed against the same by the commissioners of said district. Said order shall be final and conclusive unless appealed from to the supreme court within thirty days from the date of entry thereof. Said commissioners shall, after the time for appeal is past, assess against each parcel, tract and easement of and in said annexed lands, reasonable and just benefits, and shall assess against said lands for construction and repairs such sum as shall be just. If lands similarly situated and benefited are found in said district the annexed lands shall be assessed a like sum of benefits and damages as said lands in the said district to which they are sought to be annexed, and a sum for construction of said work which shall be equal to all sums assessed for the complete construction of the drainage system in the district to which they are sought to be annexed against lands having the same assessment of benefits in said district. The commissioners shall file their said report and assessments in court. The court shall by order require said owners to show cause at a time and place therein fixed, not less than twenty days after the service of said order, why said report and assessments should not be confirmed. And on the hearing on said order to show cause if a jury trial is demanded the court shall frame issues on benefits and damages and empanel a jury or adjourn the hearing thereon until some term of court when a jury is in attendance and take the verdict of a jury on such issues. All other issues arising on said report shall be tried by the court. The court shall order all necessary amendments of said report and make written findings of fact and when said report is amended shall by order confirm the same. Said order of confirmation shall be final and conclusive unless appealed from to the supreme court within thirty days from the entry thereof.

Guardian ad litem, how appointed. SECTION 29. In all proceedings in this act provided for, the court shall appoint some reputable attorney as guardian *ad litem** to represent all infants and incompetent persons interested in said proposed work. In case the interests of such infants or incompetents shall appear

*Printed in Italics throughout the section in the enrolled act.

to the court to be adverse to each other the court shall appoint as many different attorneys to be guardian *ad litem* as the circumstances of the case may require. The attorneys so appointed shall appear for and represent their wards in all matters connected with said proceedings and shall be paid such sums as the court may fix out of the moneys in the hands of the commissioners. In case of failure to serve notice upon an infant or incompetent, or assess his or her lands or award them damages in the first instance, said infant or incompetent may be brought into court under the various curative sections of this act, a guardian *ad litem* appointed and the same proceedings had as in case of a competent person. In case of failure to appoint a guardian *ad litem* for any interested infant or incompetent in the first instance, upon that fact becoming known to the court either before or after the hearing, the court may order the infant or incompetent served with a proper notice, a guardian *ad litem* appointed, and proceed as if a guardian *ad litem* had been appointed in the first instance, and if judgment be already rendered may order the infant or incompetent and his guardian *ad litem* to show cause why the lands of said infant or incompetent should not be bound by all orders, findings and judgments theretofore made in said matter.

Damages to lands outside district. SECTION 30. The lands embraced in any such drainage district shall be liable for any and all damages that result to lands lying outside of its boundaries because of the work done in said district. The word "damages" in this section shall be construed to mean such damages and only such damages as could be recovered against natural persons for like injury, resulting from like work. Such damages may be agreed upon between the commissioners and the damaged party subject to the approval of the court, or may be recovered in an action at law.

Conflict between districts, how avoided. SECTION 31. The boundaries of such drainage district shall in no manner conflict with any other drainage district above it or below it, and if through the construction of any proposed ditch, drain or levee increased cost shall be entailed upon a lower district in providing means to carry off the water or remove the sediment flowing from the higher district, the lands in the higher district shall be liable for such increased cost. The amount of such increased cost may be agreed upon between the commissioners of said districts subject to the approval of the court, or may be recovered in an action at law between said districts.

Divided ownership of single tracts; easements. SECTION 32. In case any tract of land in a drainage district assessed for benefits as a single tract is divided in ownership, the commissioners of said drainage district shall apportion the sum to be collected in any year thereafter for construction, additional assessments or repair against said tract in such manner as shall be just and equitable between the several divisions of the divided tract. In case of easements granted in any tract of land, when such easement should bear any portion of said assessment for construction, repair, or additional assessment, the commissioners shall each year, apportion the amount of said assessment to be collected that year justly between the owner of the dominant and servient estates.

Resignations; vacancies. SECTION 33. Any commissioner may resign to the court having jurisdiction over his district and said court may accept his resignation and appoint his successor, who shall serve out the unexpired term of the resigned commissioner. The court shall by appointment fill all vacancies in said commission, however occurring.

Court supervision. SECTION 34. The court shall at all times have supervision of said commissioners, and may at any time require them to make a report on any matter or matters connected with their duties as commissioners, and after due hearing may remove from office any or all of said commissioners for neglect of duty or malfeasance in office or for other good cause. The court or presiding judge may at any time require the commissioners to give new bonds to the clerk of the court and may fix the amount thereof, and said bonds shall be submitted to the court or the presiding judge thereof for approval.

Districts previously organized. SECTION 35. Where drainage districts are in process of organization under the statutes as they have heretofore existed said organization shall be perfected under the laws as they heretofore existed, unless the court otherwise order, but after said organization is completed and corporate authority acquired under said statutes, all further proceedings shall be had under this act where there is any section of this act to apply to such proceedings. All drainage districts heretofore organized under sections of law hereby repealed shall, after the passage hereof, be governed by this act; but nothing herein contained shall in any way render more difficult of collection any bonds or notes by said districts issued.

Assessments against cities, villages and towns. SECTION 36. Whenever any assessment is made and confirmed against any city, village or town, the sum to be paid by said city, village or town shall be by the clerk of the court at the request of the commissioners, certified to the clerk of said city, village or town, and by said clerk placed upon the next tax roll of said city, village or town among and as part of the taxes to be collected that year, provided that whenever the sum assessed for construction or additional assessment against any city, village or town exceeds one per centum of the assessed value of the property in said city, village or town for the last previous assessment for taxation, as by its assessor and board of review fixed, the court shall, by order, direct that said assessment for construction against said city, village or town be paid in installments. Said installments, except the last, shall each be one per cent of the assessed value of the city, village or town for the year of collection, but not less in any year than one per cent of the assessed value of said city, village or town for the year on which said first installment is computed, and each installment shall bear interest at the rate of six per cent per annum from the date of the entry of the order of confirmation, interest payable annually.

Assessments against lands of corporations, how collected. SECTION 37. Each and every sum assessed for construction, for additional assessment or for repairs against any land or against any corporation, as soon as such assessment is confirmed by the court, shall be and is declared to be a judgment of the circuit court in favor of said drainage district and against said land or corporation, and unless some other method of collection is herein provided shall be collected in the same manner as any other money judgment is collected, provided that whenever said assessment is a lien upon land it shall only be collected out of said land on which it is a lien.

Bridges and grades, how constructed. SECTION 38. The commissioners shall in the first instance construct all bridges and grades on highways that exist across their drains, ditches or levees prior to or at the time of the construction of their drains, ditches or levees. The town in which any drain, ditch or levee shall be crossed by any highway constructed afterward shall build all necessary bridges and grades. Said town shall maintain and repair all bridges and grades made necessary by any drain, ditch or levee dug or constructed by the

commissioners of any drainage district to which this act shall apply.

Petition after five years; re-assessment. SECTION 39. At any time after the expiration of five years from the confirmation of the report of the commissioners provided for in section ten hereof, upon petition of one-fourth of the owners of the lands within a drainage district or of the owners of one-fourth of the lands within said district, setting forth that said original assessment of benefits is inequitable and unjust, the court shall direct the commissioners of such drainage district to re-assess the lands of said district for benefits. On such re-assessments the benefits to said lands shall be assessed according to the actual benefits, without reference to whether, in the original report, they were assessed for benefits or awarded damages. The commissioners shall report said re-assessment to the court, which shall order a hearing thereon. Notice of said hearing shall be given as in the case of original assessment of benefits. The issues thereon shall be made up and tried as provided in section ten of this act. The court shall, on the hearing upon their report hereunder, make an order confirming the same or directing how the same shall be modified and when so modified shall confirm the same. All assessments for construction, additional assessments and assessments for repair shall be based on the latest assessment of benefits by the court confirmed. All assessments for construction shall be levied and assessed against the lands and corporations assessed in proportion to the benefits specified in the report on which said assessment is based. No bonds or other money obligations issued by any drainage district shall be adversely affected by any subsequent change in assessments of benefits.

Commissioners designated public officers; burden of proof. SECTION 40. Commissioners of drainage districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any drainage district or any part of any such report is contested, remonstrated against or called in question the burden of proof shall rest upon the contestant, remonstrant or questioner.

Notice, how waived; agreements authorized. SECTION 41. In case of failure to serve any notice of any proceeding or hearing in this chapter provided for, upon any person or cor-

poration, such person or corporation may appear in open court and waive such defect of service, or may waive it by filing in court or delivering to the commissioners of the drainage district to be filed in court a written waiver of such defect, in which waiver said defect shall be described; which waiver shall be signed by such party and witnessed and acknowledged before a proper officer having power to take acknowledgments of deeds. In case of a city the mayor or clerk by direction of the city council shall execute and acknowledge said waiver; in case of a village the president and clerk by direction of the village trustees shall execute and acknowledge said waiver; in case of a town the town board or a majority of the same shall execute and acknowledge said waiver. When said waiver is filed in court it shall have the same effect as due service upon said omitted party would have had in the first instance. In case of omission to assess any corporation or land that should be assessed for benefits, or construction, or repair, or additional assessment, or to award damages, said omitted party and the owner of omitted land may in writing agree with the commissioners of said district what the assessment should be against said land, or against said corporation, or what said damages should be and such agreement shall be acknowledged and witnessed as provided above for waivers, and be filed in the court and recorded in the office of register of deeds of the county in which said lands lie. The provisions of this section shall be retroactive and apply to drainage districts heretofore organized, and those now in process of organization as well as to districts organized under this act.

Liens, how satisfied. SECTION 42. When any assessment for construction, or additional assessment, or any installment thereof, or any assessment for repairs shall have been fully paid, on demand of any interested party and presentation of a receipt showing that said assessment or installment has been paid, said commissioners shall, in writing, under seal of their said drainage district, satisfy the lien of said assessment. Said satisfaction shall be witnessed and acknowledged so as to entitle it to record and may be recorded in the office of the register of deeds of the county in which said lands or any of them lie. Said commissioners shall keep in their office a complete record of the assessed lands and the assessments against the same and shall on said record mark "paid" any and all assessments and installments that are paid, whether to them or to the town treasurer or county treasurer.

Powers to sell or purchase lands for drainage purposes authorized. SECTION 43. Section 1379—32 of the statutes of 1898 is hereby amended so as to read as follows: 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 in the manner hereinafter provided.

How construed. SECTION 44. The provisions of section one to section forty-three inclusive of this act 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 for construction 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. 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, except as in section forty-five hereof provided. The provisions of section 3187a of the statutes of 1898 are declared not to apply to proceedings regulating the organization and powers of drainage districts.

Pending suits or proceedings. SECTION 45. Except where necessary to the completion of the organization of drainage districts now in process of organization as in section thirty-five provided, and to the making additions thereto under section twenty-seven hereof, the following statutes are hereby repealed: Of the statutes of 1898, sections 1379—11, 1379—12, 1379—13, 1379—14, 1379—15, 1379—16, 1379—17, 1379—18,

1379—19, 1379—20, 1379—21, 1379—22, 1379—23, 1379—24, 1379—25, 1379—26, 1379—27, 1379—28, 1379—30, chapter 43 of the laws of 1901, chapter 50 of the laws of 1901, chapter 70 of the laws of 1903, chapter 116 of the laws of 1903. Where any suit or proceeding shall be pending to determine the validity of any proceeding heretofore had, or which shall have been prosecuted to judgment adverse to such proceedings under the provisions of the statutes in this section mentioned, the provisions of this act shall not apply or in any way affect.

SECTION 46. Except as otherwise in this act provided this act shall take effect and be in force from and after its passage and publication.

Approved June 17, 1905.

No. 307, A.]

[Published June 23, 1905.]

CHAPTER 420.

AN ACT empowering the state board of health to determine the qualifications necessary to examine and license persons qualified to practice the art of embalming and to regulate the practice of embalming dead human bodies.

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

Embalmers' license. SECTION 1. The state board of health is hereby authorized and empowered to determine the qualifications necessary to enable any person to properly embalm dead human bodies and disinfect the premises. The said board, or some member thereof, shall examine all applicants for an embalmer's license and shall issue an embalmer's license to all persons who successfully pass such examination. No person shall embalm any dead human body, unless he or she shall hold a valid, unrevoked and unexpired license from the Wisconsin state board of health authorizing him to practice the art of embalming.

Examination, when held. SECTION 2. Embalmer's examination shall be held at least once a year at such times and places as the said board may designate.