

all other civil actions not herein provided for an attorney's fee of ten dollars shall be allowed to the party in whose favor judgment is rendered; provided, however, that no attorney fee shall be allowed in any case unless the party who recovers judgment shall appear by an attorney of a court of record.

SECTION 16. This act shall take effect and be in force from and after its passage and publication.

Approved March 30, 1887.

[No. 299, A.]

[Published April 21, 1887.]

CHAPTER 169.

AN ACT to provide for the drainage and reclamation of certain lands in Racine and Waukesha counties.

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

SECTION 1. Whenever fifteen or more owners of wet or overflowed lands, lying adjacent to any one or more of the lakes named herein, shall be of the opinion that such lands will be benefited by the system of drainage, and subject to the assessment hereinafter provided, and who shall be of the opinion, that the public health and welfare will be promoted thereby, shall desire to institute proceedings, for the drainage and reclamation of lands in any such part of either of said counties, either by constructing, extending, opening, enlarging, widening, straightening or deepening water-courses, or removing natural or artificial obstructions therefrom, or by permanently lowering the ordinary level of the water in any or all of the lakes in said counties known as Wind, Muskego, and Eagle lakes, they may apply to the circuit court, for the county in which said work is to be done, or to the presiding judge thereof, by petition for the institution of such proceedings, and for the appointment of five commissioners to be known as drainage commissioners. Such petition

Providing for drainage of lands in Racine and Waukesha counties

shall specify, in general terms, the nature of the improvements desired to be made as near as may be, without preliminary survey, the lands to be benefited thereby, describing the same by government subdivisions or other intelligible description, the benefits to the public health or convenience, and to private property which it is believed will result from such system of drainage, and that such system of drainage is practicable. The petition shall also specify the stream, lakes or water-courses proposed to be dredged, widened, deepened, straightened or altered in course, and the lake or lakes to be lowered, and to what extent, and the principal obstruction or obstructions to be removed; and to the description of the lands shall be given the name of the owner of each tract so far as can be ascertained; and that in the belief of the petitioners, the costs, damages and expenses will be less than the benefits which will result to the owners of the lands likely to be benefited by such system of drainage; and if any town, as a whole, will be benefited by such system of drainage, the petition may so state, setting forth the nature of such benefits. The town board of any town may join in said petition, being thereto first duly authorized by a vote of said town. Such petition shall be verified by the oath of one or more persons, and shall be filed with the clerk of the circuit court for the county wherein such work is to be done. The petition shall be accompanied by an undertaking, signed by two or more responsible persons, to the effect that they will pay the costs of the clerk, if said petition, upon the preliminary hearing thereof, shall be dismissed, and upon such dismissal no other costs shall be allowed.

Filing of petition commencement of action.

SECTION 2. The filing of such petition shall be deemed the commencement of an action in said court affecting all lands or other property that may be benefited thereby, or damaged or interfered with or taken for public use by virtue of this act, and upon such filing the court or presiding judge thereof, shall make an order prescribing the notice to be given of the time and place of hearing the said petition, the object thereof and a general description of the lands described in said petition, which notice shall be given to all parties interested, by publication of the same in

one or more newspapers published in said county, for not less than once in each week for four successive weeks before the date fixed for the hearing. On presenting such petition with due proof of the publication of the notice as required by said order, any person whose estates or interests are to be affected by the proceedings, may show cause against the prayer of the petition. If it shall appear from the petition or otherwise that any persons whose estates or interests will be affected by the proceedings, are infants, idiots or persons of unsound mind, the court or presiding judge may, upon notice to the guardian, if they have any, and if not, without further notice appoint a guardian *ad litem* to act for such person under disability in said proceeding. The court or presiding judge shall hear the parties interested and may adjourn from time to time as shall be convenient, and shall determine and adjudicate whether the system of drainage proposed by said petition is one of public utility beyond any damage to individuals to result therefrom, and whether the public health is likely to be improved thereby, whether any highways of any town will be benefited thereby, and whether such proposed system is of such paramount public benefit as to warrant the proceedings authorized in such case by this act, and whether the costs, damages and expenses will be less than the benefits which will result to the owners of the lands likely to be benefited thereby; and if no sufficient cause is shown against the granting of the prayer of the petition, the court or presiding judge shall if he deem proper, make an order appointing five disinterested and competent freeholders, residents of such county, as commissioners to act in the premises as directed by this act, and by the order of the court or presiding judge, and shall fix therein the time and place for the first meeting of the commissioners; the commissioners shall, before entering upon their duties, take and subscribe an oath that they will support the constitution of the United States, and the constitution of the state of Wisconsin, and faithfully discharge their duties as such commissioners to the best of their ability. Vacancies happening in the commission may be filled by the said court or judge, and the removal of any commissioner from the county wherein he

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Commissioners
to be appointed
by judge.

is appointed, shall vacate his office. And each commissioner shall execute a bond before receiving any money as such commissioner, to be filed with the clerk as obligee for the benefit of all persons interested, in amount and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of his duties as such commissioner, and the faithful accounting for and application of all moneys which shall come to his hands as such officer. The clerk shall upon due qualification of the commissioners, issue to them a certified copy of the order of their appointment.

Matters in
petition to be
referred to
commissioners.

SECTION 3. The court or presiding judge shall thereupon make and enter an order referring to said commissioners the matter of said petition, fixing therein the time and place of their first meeting, and the time when they shall report. Thereupon, it shall be the duty of the commissioners to make personal inspection of all lands, streams, drains, lakes, or ponds affected by said petition, and if the expenses of such survey be first guaranteed to them by responsible persons or authority, shall cause a survey to be made to determine the feasibility of the proposed work, and the best manner thereof, and the lands to be benefited or damaged thereby; and they shall report whether in their judgment, any and what drainage, opening, deepening, widening, straightening, altering or extending of drains, streams, lakes or water-courses is necessary, practicable and of public utility and benefit, in excess of any damage of, or to the public, or to individuals which may thereby be caused, and fully report in what such benefit consists; and if they report in favor of such work they shall determine and further report the best and cheapest method of accomplishing the same, the location and character of the work, accurately describing the same, what dams or other obstructions, natural or artificial, it may be necessary to remove or destroy, whether the same are lawfully maintained or otherwise, and whether the course of any natural stream should be altered and how much such proposed work will reduce the water in any of the lakes mentioned in this act. They shall also determine and report what lands will be benefited by said work and by what part thereof and what lands or prop-

erty will be damaged thereby, and shall assess the benefits or damages upon each tract, lot, easement, or interest by whomsoever held. And if any particular part of the work proposed to be done should be assessed upon any particular tracts or lots of land or upon any town, municipality, or corporation, they shall so report; and if any town, municipality or corporation, should in their judgment, bear a part of the expense, or, as such, derive a public benefit from the whole or any part of such proposed work, they shall so report and assess the amount of such benefits.

SECTION 4. Upon the filing of such report, notice of such filing shall be personally served, on each person whose name is mentioned in the report as owners of the land or other property affected, or charged by assessments in said report, and the amount thereof, in case such owner shall be a resident of the county wherein said work is to be performed, and by publication by the clerk of the court in one or more newspapers published in said county, as the court shall direct, for three weeks following such filing, after the expiration of which time and the service of notices as aforesaid, twenty days shall be allowed for any owner of any of such lands, or other person or corporation affected by the work proposed, to remonstrate against the whole or any part of such proposed work. Such remonstrances shall be verified by affidavit, and shall set forth the causes, whether legal or jurisdictional objections, or that any lands are assessed too high or too low, or improperly, or that lands are assessed which ought not to be, or that lands should be assessed which are not assessed, or by any person to whom damages are awarded, that they are inadequate, or by any person or municipality, that the public will not be benefited by the work proposed. The court or presiding judge may fix a time at any term, or appoint a special term for hearing the objections, and, on the demand of any person assessed for benefits or awarded damages, may frame an issue in said matter and impanel a jury and take the verdict of the jury upon the trial of such issue, whether the amount of damages which will be a just compensation therefor, and whether the assessment of benefits, as made by the report to any remonstrant commanding the

Notice of the filing of report to be given owners of land.

review by a jury, is too high, and the jury may assess the same. If the court or presiding judge finds from a hearing duly had, that the report requires modification, the same may be referred to the commissioners who may be required to modify their report in any respect. In any case between the commissioners and any remonstrant the court may award and apportion the costs as the justice of the case may demand, and costs awarded against the commissioners shall be paid out of the fund realized from the assessments made. If the finding of the court or presiding judge be in favor of the validity of the proceedings, the court after the report shall have been modified to conform to the findings, or if there be no remonstrances, the court shall confirm the same, and the order of confirmation shall be final and conclusive and the proposed work be established and authorized, and the proposed assessment approved, subject to the right of appeal to the supreme court as in other actions. If lands not described in the original petition, are included in the report and assessments or awards of damages made thereon, the court or presiding judge shall direct the owners thereof to be notified and prescribe the manner of such notice, and allow the owner to be heard as a remonstrant, as herein provided. If however, a majority of the owners of the land to be charged with the expense of the proposed improvement shall join in a remonstrance in opposition to the system of drainage described in the petition and report of the commissioners, the court shall thereupon dismiss said proceedings, and the original petitioners shall pay the costs of the clerk of the court.

Court or judge may designate work to be first constructed by commissioners.

SECTION 5. The court or presiding judge may, by order, designate parts of the work to be first constructed by the commissioners. The said commissioners may divide such work, as above designated, into such parts as they may deem best, and may receive proposals for the whole or any part of such work. Notice that such work, so designated to be performed, will be undertaken, and that proposals for the performance of such work will be received by said commissioners, at such time and in such manner and to such extent, as such commissioners shall have determined and the court or presiding judge shall have approved

will be received by such commissioners, shall be given in such manner and for such time, as said commissioners shall deem best, or the said court or judge shall direct. Plans and specifications for said work shall be prepared under the direction of such commissioners, and be subject to inspection by all persons at the office of the clerk of the circuit court, for the county wherein such work is to be performed, prior to the giving of notice, for the receiving of proposals for doing such work, and such work shall be awarded to the lowest responsible bidder. After the confirmation of the report, and the assessment for benefits, any person, corporation, or party interested, may pay the whole or any portion of said sum, so assessed against him, to the person designated by said commissioners to receive the same, and may receive a receipt for said assessment, or any part thereof, as the sum designated by the commissioners in their report, as properly chargeable to such land, and which shall operate as a discharge, so far as the assessment so made shall charge said land or property to the person designated by said commissioners to receive the same. All assessments so made and confirmed, as aforesaid, which shall not have been paid to said commissioners, or the persons designated by them to receive assessments, shall be certified to the town clerk as properly due and payable for such improvements, either in whole or in part, and such clerk shall thereupon enter upon the tax list which shall next thereafter be made, such assessments, so certified, and the same shall be collected as state, county or town taxes are collected, excepting that personal property of individuals shall not be liable for such assessments for improvement on lands. The commissioners may also bring suit in the name of the county for which they are appointed, for their use as such commissioners, in any court having jurisdiction to collect such assessment from any corporation refusing to pay the same, and the judgment in such action may be enforced as in other actions.

SECTION 6. Such commissioners shall keep an accurate account of all moneys collected by them on account of the work and of all payments made on account thereof, and shall take vouchers for such payments. They shall also keep an exact

Duties of commissioners, to keep accounts etc.

account of the time occupied by them in the performance of their duties, they shall as often as once in six months make full report of said matters under oath to the court or presiding judge and the court or presiding judge shall allow them for their services a sum not exceeding three dollars per day each, for the time actually and necessarily employed, of which an accurate account shall be kept and proved by affidavit. They shall at all times be under the control and direction of the court or presiding judge and shall obey such directions, and for failure so to do shall forfeit their compensation and be dealt with summarily as for contempt and may also be removed from office by the court or presiding judge. 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.

Commissioners
to determine
cost of work.

SECTION 7. In their preliminary examination herein provided for, the said commissioners shall determine as near as may be, from the surveyor's measurements and estimates, the cost of constructing the work described in the petition, and such cost together with their estimate of damages suffered by the several persons owning lands affected or interests therein, or modification thereof, upon remonstrance, together with the estimated expenses of the proceeding and costs, shall constitute the entire cost of constructing such work, to be assessed on the lands benefited; provided, however, that if such assessment prove inadequate to pay the whole cost of such work, a further assessment, proportioned upon the first assessment, may be made under the order of the court or presiding judge thereof, on the lands benefited, and if such estimated cost, so assessed, be more than sufficient to defray the entire cost of such work, the excess thereof shall be ratably repaid to the parties from whom it was collected.

May condemn,
remove or re-
duce dams, etc.
when neces-
sary.

SECTION 8. If the commissioners in their preliminary examination herein provided for, shall find it necessary to condemn, remove or reduce any dam lawfully maintained, or impair any easement or right of flowage or other right, they may negotiate with the owner thereof and make a conditional agreement with such owner for the

amount to be made for such purpose and report such agreement with their report. If they cannot so agree, they shall make their award of damages therefor as hereinbefore provided. Upon the confirmation of the report and in the prosecution of the work, no dam should be removed or reduced or private property invaded or taken until the damages agreed upon, awarded or finally adjudged for such taking, removal, reduction or destruction, shall have been deposited with the clerk of the court for the benefit of the owner of persons entitled thereto, and in case of doubt or dispute as to the parties entitled to receive the same, the court shall adjudicate the same and order payment or apportionment as the right of the case may demand. The acceptance of such money shall operate as a release of all claims to further or other damages, and upon the payment or deposit of such sums as aforesaid, the right to remove or reduce such dams or obstructions as specified in the report, finding or final adjudication, shall vest in the commissioners, and they may enter upon any lands and remove such dam or do necessary work thereupon, with employes or other necessary means, and, if necessary, may move the court or presiding judge, upon three days' notice, for a writ of assistance, to enable them so to do, which writ, if need be, may be granted.

SECTION 9. This act shall be liberally construed to promote the drainage and reclamation of the wet and overflowed lands in Racine and Waukesha counties affected thereby, and in the preservation of the public health, but shall not be construed to authorize the operation of this act outside of the territorial limits of said counties; provided, however, that all tracts, lots, easements or interests against which benefits may be assessed, shall be liable in proportion to the amount of benefits so respectively assessed against them, to any person whose property rights or interests situated outside of said counties, which shall suffer injury by reason of any works done under and by virtue of this act, and such damage shall be ascertained and paid by said court and commissioners in the same manner as though such lands were situated in the county in which such work is performed.

SECTION 10. This act shall take effect and be in force from and after its passage and publication.

Approved March 30, 1887.

Act to be
liberally con-
strued.