

waukee, as revised and amended, and any other provision or provisions of said charter which are inconsistent with the provisions of this act, shall not apply to the contract or contracts to be made and entered into for the purposes and under the provisions of this act.

SECTION 13. This act shall take effect and be in force from and after its passage and publication.

Approved April 13, 1891.

No. 117, S.]

[Published April 16, 1891.

## CHAPTER 224.

AN ACT to provide for the extension and preservation of a certain system of drainage in Racine and Waukesha counties.

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

SECTION 1. Whenever it shall be made to appear to the presiding judge of the circuit court in either of the counties of Racine or Waukesha, in this state, by the verified petition of fifteen or more freeholders interested therein, that any system of drainage heretofore or hereafter constructed under and in accordance with the terms and provisions of chapter 169, of the laws of Wisconsin, for the year 1887, is in need of repair or is liable to become inoperative or suffer injury or interference if not cared for, the presiding judge for the county wherein such system is located, shall appoint three commissioners, to be known as drainage commissioners, in the manner, for the term, and subject to the conditions as to qualifications, duties, removals, etc., hereinafter set forth.

Presiding judge of circuit court may appoint drainage commissioners.

SECTION 2. Upon receiving such petition the presiding judge shall make an order fixing a time and place when and where the appointment of the commissioners prayed for will be made,

Hearing of petition for appointment.

which place shall be as convenient as possible to the location of the drainage district over which the persons to be appointed will exercise control. Notice of the time and place, when and where such appointment will be made, shall be given to all parties interested, by the publication of a copy of such order, in a newspaper printed and published in such county for at least three successive weeks prior to the time fixed for such appointment. The presiding judge shall attend at the time and place so fixed, and being first satisfied of the due publication of such notice, he shall hear the parties interested concerning such appointment, and shall appoint three persons as commissioners as aforesaid.

**Term of office  
of commis-  
sioners.**

**SECTION 3.** The first member of such commission so appointed shall hold his office until the second Tuesday in February next succeeding the date of his appointment; the second member, until the same day in the second February succeeding his appointment; and the third member until the same day in the third February succeeding his appointment; and all of said commissioners shall hold their said offices until their respective successors are appointed and duly qualified. The removal of any member of the commission from the county in which the drainage system is located, shall render his office vacant. Vacancies arising from any cause other than expiration of the term of office may be filled by the presiding judge, without notice, at any time; the commissioner so appointed to hold his office for the balance of the unexpired term. The regular annual appointment required because of the expiration of the term of office, shall be made by the presiding judge, at the circuit court rooms in such county, on the first Tuesday in February in each year, at ten o'clock in the forenoon. All commissioners, excepting those first appointed and those appointed to fill vacancies, shall hold their offices for the term of three years, or until their successors are appointed and duly qualified.

**How to qualify**

**SECTION 4.** Each commissioner shall, before entering upon the duties of his office, take and subscribe an oath that he will support the constitution of the United States and of the state of Wisconsin, and will faithfully discharge his duties as such commissioner, to the best of his ability;

and shall execute a bond running to the clerk of the circuit court of the proper county, and his successors in office, as obligees, and to be filed with said clerk for the benefit of the parties interested, in the amount and with sureties to be approved by the court, or the 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. Upon the due qualification of each commissioner the said clerk shall issue to him a certified copy of the order of his appointment.

SECTION 5. The commissioners so appointed shall have general control over such system of drainage, shall cause such repairs and improvements to be made from time to time as circumstances may require; shall determine the manner in which, and the points at which, lateral drains, constructed by parties interested, and owning lands assessed for the original work, may intersect the main ditches or drains; shall prevent persons not the owners of lands assessed for the original work, from in any way interfering with the main ditches or drains, unless admitted to the benefits of such system, in the manner hereinafter provided; shall assess the cost and expense of all work connected with the maintenance and preservation of such drainage system, on the tracts, lots, easements, interests or corporations included in the assessments of benefits for the original work, and in the same proportionate rates as such original assessments were made; shall collect and apply all sums so assessed; shall certify all sums so assessed, due and unpaid, to the town clerk of the town in which the lands or interests assessed are located, specifying in such certificate, the correct description of the land or corporation assessed, the name of the owner or corporation, and the amount due; shall make a detailed verified report to the presiding judge of the circuit court for their county, on the second Tuesday in February, of all their receipts and disbursements as such commissioners, and of the time in days and fractions thereof spent by them in the doing of such work, and of their actual money expenses as such commissioners. Such report shall spe-

Powers and duties.

cifically set forth all assessments made during the year and the purposes for which the same were made, shall be subject to the approval of the presiding judge and shall be filed and kept in the office of the clerk of said court, subject to examination by the parties interested at any time. All assessments so certified to the town clerk as due and unpaid, shall be entered by him upon the tax list of said town next thereafter to be made, and the same shall be collected as state, county and town taxes are collected, excepting that personal property of individuals shall not be liable for such assessments for improvements on lands. And the said commissioners shall be invested in trust with the title and ownership of such drains, canals or ditches, whether heretofore or hereafter made; and shall be entitled and empowered to bring any and all suits or actions necessary to prevent, or recover damages for, any interference therewith or injury thereto which an individual owner might bring; and may recover from any person or persons making use of any such ditch or ditches, whose lands have not been assessed therefor, the value of such use in addition to any damages otherwise recoverable; and claim for such recovery may be joined with the demand for damages or made in a separate action, as said commissioners may elect.

How lands may be admitted to benefits of system.

**SECTION 6.** Lands not included in the assessment for the original work, may be admitted to the benefits of such system in either of the manners provided by this section, to-wit:

1. Six or more freeholders, owners of wet and overflowed lands, or freehold interests therein, in the county in which the drainage system is located, and which are naturally tributary to said main ditches or drains, or any portion thereof, may apply to the commissioners, by written petition, for a lateral ditch or drain to be laid out and constructed by said commissioners, to drain and reclaim such lands; such petition shall specify as nearly as may be, the location, length and character of such proposed drain, the correct description of the parcels of land through which the same may pass, with the names of the owners of each parcel of the wet or overflowed lands sought to be drained, and by government subdivisions, or other intelligible

descriptions, the lands benefited, with the names of the owners of, or parties interested in each separate parcel. Upon receiving and filing such petition, if the expenses of notice, examination and survey are first guaranteed to them by responsible persons or authority, the said commissioners shall give notice to the parties interested, of the time and place when and where they will meet and decide upon such application, by posting three copies of such notice in as many public places in the town or towns wherein the lands described in the petition are located, at least ten days, and by personally delivering to and leaving at the usual place of abode of each of the occupants of the lands described in the said application, a true copy thereof, at least five days prior to the time so appointed; shall hear the parties interested; shall make personal inspection of the lands described in the application and of the course of such proposed drain; and if in their judgment the public health will be benefited by the drainage and reclamation of such lands, and the costs and expenses attending the laying out and construction of such drain will be less than the benefits resulting to lands or individuals benefited thereby, they shall make and subscribe a report in writing, laying out a ditch or drain as prayed for in such application; in locating such ditch or drain, they shall not be obliged to follow the exact location laid down in the application, but may deviate therefrom, as in their judgment the interest of all parties may require; they shall include in such report a correct description of all lands which in their judgment will be benefited by said work, whether included in the application or not, and what lands or property 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 specify, 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, which report, together with the application, notice, with proof of service and all accompanying papers, shall be filed by said commissioners in the office of the clerk of the circuit court for the county, within twenty days from and after the date of their meeting to decide upon such application. In determining the costs of any lateral drain, so applied for, the commissioners shall add to the actual costs of the same, such sum, to be held and expended for the benefit of the ditches or drains, as will make the assessment of benefits in the lands included in said report equal, as nearly as may be, to the assessments on lands similarly situated, for the cost of the original ditches or drains referred to in this act. Upon the filing of such report, notice of such filing and of the amount of the assessments proposed therein, shall be personally served on each person or corporation whose name is mentioned in the report as owner of the land or other property affected, or charged, by assessments therein, in case such owner shall be a resident of the county wherein said work is to be performed, and by publication in a newspaper published in said county, 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 such lands, or other person or corporation affected by the work proposed, to remonstrate against the whole or any part of the proposed work. Such remonstrance 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 allowed, that they are inadequate, or by any person or municipality that the public will not be benefited by the proposed work. The circuit court for said county, or the presiding judge thereof, may fix a time at any term or appoint a special term for hearing the objections, and, on demand of any person assessed for benefits or awarded damages, may frame an issue in said matter and may empanel a jury and take the ver-

dict of the jury upon either of such issues whether the amount of damages awarded by the commissioners is adequate, and whether the assessment of benefits as made by the report to any remonstrant demanding the review by a jury is too high; and the jury may assess the same. All other issues arising on any remonstrance shall be tried by the court or presiding judge. 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 the 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 assessment 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 remonstrance, 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. No other or further notice than that herein provided shall be necessary to subject lands not included in the original application, to the burden of the assessment for such improvements. Upon such order of confirmation being made and filed, the commissioners shall enter upon the construction of the proposed ditch or drain, and shall have entire control of the same. They may divide the proposed work 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 will be undertaken and that proposals for the performance of such work will be received at some time and place to be fixed therein, shall be given by said commissioners by the publication of such notice in a newspaper published in such county, and by posting the same in at least three public places in the town or towns wherein the lands sought to be drained are located, for at least ten days before the time fixed for receiving such bids. The commissioners shall attend at

the time and place fixed in the said notice, and shall publicly open and examine said bids and shall award such work to the lowest responsible bidder. Before advertising for such proposals, the said commissioners shall cause plans and specifications for such proposed work to be prepared and deposited at some convenient place to be mentioned in the notices for receiving proposals. After the confirmation of the report, any person or corporation may pay the whole or any portion of the sum assessed against him, and may receive a receipt for said assessment or any portion of it. 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 of the town wherein the land assessed is located, as properly due and payable for such improvements, and such clerk shall thereupon enter upon the tax list next thereafter to 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 improvements on land. The commissioners may also bring suit in the name of the county for which they are appointed, for their use as 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. In making their original report and estimate, said commissioners will determine and report whether any property rights or interests outside of such county will suffer damage from the doing of said work, and if so, the particular parcels and interests, and the amount of such damage; and the same shall be awarded and paid in the same manner as though such lands were situated within the county where such work is to be performed. If in their preliminary examination and report of assessments they shall have assessed a smaller sum than is needed to complete the work proposed, a further assessment, proportioned upon the first assessment, may be made under the order of the court or presiding judge thereof, without notice, on the

lands benefited to be collected in the same manner as the original assessment.

2. Upon the application in writing of six or more owners of or persons possessed of freehold interest in swamp, wet or overflowed lands which are naturally or may be made tributary to the ditches or drains of any portions thereof, constructed under and in accordance with the provisions of chapter 169, laws of 1887, and which lands were not assessed for the original ditch or drain, representing that they have constructed or are about to construct a ditch or drain particularly describing its course, length and dimensions, to drain and reclaim certain lands, describing the same, that it is necessary that such ditch or drain should terminate or empty its waters into some portion of the drainage system, and requesting the commissioners to fix a gross sum to be paid by the owners of such lands for the privilege of using such original ditch as an outlet, the said commissioners shall make examination of the lands described in such application and shall fix upon and determine what sum shall be paid by such petitioners for the privilege prayed for, which sum shall, as soon as may be, with the cost of such proposed ditch or drain, make the amount to be borne by each acre of the land benefited, equal to the amount assessed as benefits in the construction of the original ditch or drain upon each acre of land similarly situated. Upon the payment of the sum so fixed and determined by petitioners, the said commissioners shall execute and deliver to said applicants, a receipt for the same, together with a certificate setting forth by intelligible descriptions, the lands admitted under such payment to the benefits of such original drainage system. Upon making such payment and receiving such certificate, such applicants shall have the right to intersect such original ditch with their proposed ditch or drain, but only at the point and in the manner directed by the commissioners. The moneys received from such source, shall be held by the commissioners for the benefit of the original ditches or drains and be expended as occasion may require in their repair and maintenance. With their next annual re-

port thereafter made, they shall file in the office of the circuit court clerk, copies of the receipt and certificate delivered to such applicants.

Lands admitted to benefits to be deemed part of original drainage district.

**SECTION 7.** Lands admitted to the benefits of the original drainage system, by either of the methods set forth in section 6, of this act, shall, after such admission be deemed to be a part of the territory included in the original drainage district, and shall thereafter be subject to the same assessments and charges for necessary repairs in and maintenance and improvement of, the original ditches or drains, as is the land assessed for such original work under the act aforesaid.

Commissioners' compensation, to keep account of moneys collected.

**SECTION 8.** Such commissioner shall keep an accurate account of all moneys collected by them on account of the work under their charge, and of all payments made by them as such commissioners, and shall take vouchers for such payments. They shall receive for their services the sum of two dollars per day and their actual cash expenses. They shall at all times be under the control and direction of the court or presiding judge, and shall obey such directions, and for a 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.

Dams, how removed or reduced.

**SECTION 9.** If the commissioners in the repair or maintenance of such ditches or drains, 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 paid for such purpose, and report such agreement to the presiding judge. If they cannot so agree they shall apply to the court or presiding judge for permission to condemn the same. The court or presiding judge shall, by order, fix a time and place when and where such application will be heard, of which hearing notice shall be given to the owner of or person interested in such dam or flowage rights, at least ten days prior to

the time so fixed upon. If upon such hearing, the court or presiding judge finds that it is necessary that such dam be removed or flowage rights impaired, an order shall be entered directing the commissioners to determine and report the amount of damages that should be awarded the owner as damages therefor. On the filing of the report by the commissioners thereon, notice of such filing and of the amount of such award shall be served on the owner of such dam or flowage rights, and the same proceedings had therein as to remonstrance, hearing, determination, and appeal herein provided upon the assessments of lands not included in the original drainage district. Upon the confirmation of the report, and in the prosecution of the work, no dam shall be removed or reduced, or private property invaded or taken until the damages upon, awarded or finally adjudged for such removal, taking, reduction or destruction shall have been deposited with the clerk of the circuit court, for the benefit of the owners of or the 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, 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 10. 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 public health, but shall not be construed to authorize the operation of this act outside of the territorial limits of said counties, excepting only in the determination of damages result-

Not to extend  
outside limits  
mentioned.

ing to lands without said counties, which is to be determined and paid in the same manner as though such lands were in the county where the work is to be done.

SECTION 11. This act shall take effect and be in force from and after its passage and publication.  
Approved April 13, 1891.

No. 320, S.]

[Published April 16, 1891.

## CHAPTER 225.

AN ACT relating to the sale of lands for the non-payment of taxes and the expiration of the period of redemption therefrom.

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

Amends sec.  
1172, R. S. 1878.

Publication of  
list of omitted  
lands. Validity  
of deeds.

SECTION 1. Section 1172 of the revised statutes, is hereby amended so as to read as follows: Section 1172. Whenever, by mistake or otherwise, such clerk neglects or fails to include in his published list any such tract or tracts of land, or to publish such list in accordance with the requirements of law, the same may be published at any time within one year after the expiration of said three years, such publication shall be made in the same manner and for the same time as prescribed in the preceding sections, and such clerk shall specify in his notice accompanying such published list, the time when redemption of such lands from such sale will expire which time shall not be less than six, and not more than ten months from the expiration of the full twelve weeks required for the aforesaid publication; and all deeds made in pursuance thereof shall be as valid and effectual as if such publication had been made at the time required in such sections.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.  
Approved April 13, 1891.