

No. 217, S.]

[Published April 20, 1897.]

CHAPTER 262.

AN ACT relating to reassessment of invalid special taxes and assessments, and to provide for payment of taxes based on such reassessment.

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

SECTION 1. In all cases where the work of grading, gravelling, planking, macadamizing, paving or repaving any street or alley, or part thereof, the grading, planking, paving, sodding or curbing of any sidewalk, or the paving of any gutter in any city in this state has been done since January 1st, 1894, or may hereafter be done, and any special assessment has been or may hereafter be made, assessed or levied against property for or on account of such work, and such special assessment, or any special assessment certificate, tax sale, tax sale certificate or special improvement bond based thereon, is or may be invalid by reason of failure to make a proper assessment of benefits and damages, or by reason of any failure to observe any provision of law, or by reason of any act or defect in the proceedings upon which such special assessment, special assessment certificate, tax sale, tax sale certificate or special improvement bond, is based, or because the contract for doing the work contains any provision not authorized by law, and which may have tended to increase the contract price for doing the work, the city authorities authorized to make such original assessment of benefits and damages shall proceed to make a new assessment of benefits accruing to and damages sustained by such property from such work as done, in like manner as required by law in the case of such original assessment,

Relating to new assessments for work done for paving, sodding, etc., of streets; duties of the city authorities.

and shall, at the same time, in cases where the contract under which the work was done, contains any provision not authorized by law and which tended to increase the contract price for doing the work, determine and separate the proportion of such contract price justly and equitably chargeable against such property for the doing of such work. The owner of such property shall have the same right to appeal from such new assessment of benefits and damages and from such determination as to the amount chargeable for the doing of such work as he or his grantors would have had from such original assessment. The cost of such work done under such contract in front of such property to the middle of the street at the price fixed in such contract, or up to the amount thereof so determined as aforesaid by the city authorities to be justly and equitably chargeable on account of the doing of such work, as the case may be, not exceeding the amount of the excess of benefits over damages, as ascertained by such new assessment, is hereby made a lien upon such property and a certificate to that effect shall be issued by the proper city authorities to the holder of the invalid special assessment certificate or tax sale certificate upon surrender thereof, or proof that it has been canceled, or to the holder of such special improvement bond where such bonds have been sold by such city, and the excess in the amount of such invalid certificate or special improvement bond over such new certificate, if any, shall be paid to such holder out of the proper fund. The amount of such new certificate shall be carried into the annual tax roll of city taxes, and levied and assessed against such property as a tax, and collected and the proceeds thereof paid to the holder of such new certificate in like manner as is now provided for the assessing, levying, collecting and payment of special assessment certificates against property. In case of an appeal from such new assessment of benefits and damages, or determination of the city authorities, as to the amount of the con-

tract price justly chargeable to the property as aforesaid, or both, the proceedings herein provided for shall take place as if no appeal had been had, but in case the appellant shall succeed, the excess of the amount of such new certificate over the amount with which the property is justly chargeable, as finally adjudged on such appeal, with interest thereon from the time the amount of such new certificate is payable, shall be paid by the city to the appellant, after he has paid the amount of such new certificate.

SECTION 2. In case, in any action now pending or hereafter brought, to set aside or vacate any special assessment against property for any of the purposes mentioned in this act, or to set aside or vacate any special assessment certificate, special improvement bond, tax sale or tax sale certificate, based upon such special assessment, the court shall be of the opinion, after a hearing in that behalf had, that such assessment is invalid by reason of a defective assessment of benefits and damages, it shall stay all proceedings in such action until a new assessment thereof is had in the manner hereinafter mentioned. Thereupon the proper city authorities shall proceed to make a new assessment of benefits and damages against the property of the plaintiff in such action, in like manner as required by law in the case of such original assessment, and such plaintiff shall have the same right to appeal from such new assessment as he or his grantors would have had from such original assessment. If the plaintiff shall desire to contest the validity of such new assessment, he shall, within ten days after its confirmation by the common council, file with the clerk of the court, and serve upon the defendant's attorney, his objections in writing to such new assessment and thereupon the court shall direct an issue to be made involving the objections aforesaid, which issue shall be tried summarily by the court, and thereupon the court shall file an order sustaining or overruling the objections of the plaintiff aforesaid. When

When proceedings shall be stayed when an action brought.

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

Regarding the validity of any special assessment certificate, etc.

SECTION 3. If in any action now pending or hereafter commenced, the validity of any special assessment certificate, special improvement bonds, or tax sale or tax sale certificate based upon an assessment for any of the purposes mentioned in this act, is attacked and sought to be set aside upon grounds other than those affecting the validity of the assessment of benefits and damages, or in addition thereto, the court after a hearing in that behalf had, shall be of the opinion that the same is void by reason of any failure to observe any provision of law, or by reason of any act or defect in the proceedings upon which such special assessment certificate, special improvement bonds, tax sale or tax sale certificate is based, which has intervened to the prejudice of the plaintiff, it shall immediately stay all proceedings in the action, and shall cause

an issue to be made up involving the extent of the injury which the plaintiff has suffered by reason of such failure or such act or defect, and such issue shall be tried summarily by the court. In the event that in such action the validity of the assessment of benefits and damages upon which such special assessment certificate, special improvement bonds, tax sale or tax sale certificate is based, is attacked and such assessment shall be set aside, such issue shall only be tried after a new assessment has been had, as provided by this act. When such issue has been tried and determined, the court shall make an order requiring the plaintiff to pay into court, within the time to be limited in such order, for the use and benefit of the defendant, or parties entitled thereto, the amount which he ought justly to pay, or which should be justly and equitably assessed against the property in question, based upon the finding of the court upon such issue, or in case a new assessment of benefits and damages is had, upon such new assessment and such finding, and upon such payment being made within such time the court shall order judgment for the plaintiff with costs, but in the event that the plaintiff fails to pay such amount within the time so fixed by the court, the action shall be dismissed with costs in favor of the defendant.

SECTION 4. All acts and parts of acts in so far as they are in conflict or inconsistent with the provisions of this act, are hereby repealed.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved April 19, 1897.