

Conflicting laws repealed. SECTION 8. Section 959—78. Any and all acts or parts of acts in any manner conflicting with the provisions of this act are hereby repealed.

SECTION-9. This act shall take effect and be in force from and after its passage and publication.

Approved June 3, 1905.

No. 224, A.]

[Published June 6, 1905.]

CHAPTER 294.

AN ACT to amend section 1210e of the statutes of 1898, as amended by chapter 354 of the laws of 1903, and to create a new section to be known as 1210ee, relating to special assessments.

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

Stay of proceedings; new assessment; judgment; costs.

SECTION 1. Section 1210e of the statutes of 1898, as amended by chapter 354 of the laws of 1903, is hereby amended so as to read as follows: Section 1210e. If in any action at law for the recovery of damages arising from a failure to make a proper assessment of benefits and damages, as provided by law, or failure to observe any provisions of law, or because of any act or defect in any proceeding in which benefits and damages are assessed, and in any action to set aside any special assessment against property for any of the purposes mentioned in section 1210d, or to set aside any special assessment certificate, special improvement bond, tax sale or tax sale certificate based upon such special assessment, the court determines that such assessment is invalid by reason of a defective assessment of benefits and damages, or for any cause, it shall stay all proceedings in such action until a new assessment thereof be had in the manner herein after mentioned: thereupon the proper city authorities shall proceed *forthwith* to make a new assessment of benefits and damages against the property of the plaintiff 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 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 to such new assessment; and thereupon the court shall direct an issue to be made involving the objections aforesaid, try the same summarily and file an order sustaining or over-ruling the objections of the plaintiff. If by such order such new assessments be held invalid, subsequent assessments may be made in like manner and similar proceedings resorted to to determine the validity of such assessment. When the amount to be assessed against the plaintiff's property has been finally determined by an assessment of benefits and damages, which the court shall hold to be valid, or when an appeal is taken, the court shall make an order, requiring the plaintiff to pay into court, within a time to be fixed by such order, for the benefit of the parties entitled thereto, the amount which, based upon such valid new assessment, he ought to justly pay, or which should be justly assessed against the property in question; upon compliance with said order, judgment shall be entered for the plaintiff with costs. If the plaintiff fails to comply with such order the action shall be dismissed with costs.

When stay of proceedings to be set aside and hearing continued; judgment; costs. SECTION 2. There is hereby created and added to the statutes of 1898 a new section to be known and to read as follows: Section 1210ee. Where, in any action at law or suit in equity for any of the purposes mentioned in sections 1210d and 1210e, of the statutes of 1898, and the various acts amendatory thereof, and the court in which any such action or suit shall be pending shall have stayed proceedings therein, and ordered a new assessment of benefits and damages as therein provided, and a new assessment has been made pursuant thereto which is valid so far as the regularity of the proceedings is concerned, but wherein the plaintiff may feel aggrieved by reason of the amount assessed for benefits and damages, or either of them, such court shall, upon the verified petition of the plaintiff to that effect being presented to it, after notice of not less than ten days, to the opposite party or parties, set aside the stay of proceedings theretofore granted, and proceed with the hearing of said cause, in its regular order, as hereinafter provided. It shall not be necessary for the

plaintiff in any such action to appeal from such assessment of benefits and damages in order to have a determination as to the proper amount thereof, but the court in which any such action or suit may be pending, as set forth in the preceding section hereof, shall have full power and jurisdiction to proceed with the hearing and determination thereof, with the same force and effect as if no stay of proceedings had been granted or a new assessment ordered, according to the law of the land and the procedure of the courts, and render final judgment between the parties. If, upon such hearing and determination the court shall find that the amount assessed for benefits against the property of the plaintiff is too great or the amount assessed for damages is too small, the plaintiffs shall be entitled to recover costs; otherwise the opposing party shall be entitled thereto. And if any balance be found due from the plaintiff upon such hearing and determination, the court shall make an order requiring the plaintiff to pay into court, for the benefit of the party entitled thereto, within the time in said order fixed, the amount which said court shall decide the plaintiff shall justly pay, as a condition for the entry of judgment in his behalf.

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

Approved June 3, 1905.