

No. 149, S.]

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**CHAPTER 331.**

AN ACT to amend section 1797—16 of the statutes, relating to appeals from decisions of the railroad commission.

*The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section 1797—16 of the statutes is amended to read: Section 1797—16. Any railroad or other party in interest being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or service, may commence an action in the circuit court against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order, is unlawful, or that any such regulation, practice or service, fixed in such order, is unreasonable, in which action the complaint shall be served with the summons. The commission shall serve and file its answer to said complaint within ten days after the service thereof, whereupon said action shall be at issue and stand ready for trial upon ten days' notice by either party. All actions brought under this section shall be commenced within ninety days after the rendition of such order and shall have precedence over any civil cause of a different nature pending in said court, and the circuit court shall always be deemed open for the trial thereof and the same shall be tried and determined as other civil actions.

(a) No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court or presiding judge thereof, notice to the commission and any party interpleaded, and hearing; and no injunction shall issue in any proceeding, action or suit in any court, which will have the effect of delaying or preventing any order of the commission from becoming effective, unless the parties to the proceeding before the commission in which such order was made, are also parties to such proceeding, action or suit in such court, or shall have been brought in and made parties in such manner as the court, or the presiding judge thereof, shall by order direct.

(am.) No injunction shall issue suspending or staying any order of the commission or having the effect of delaying or preventing any order of the commission from becoming effective, unless an undertaking shall be entered into on the part of the plaintiff, by at least two sureties, in such sum as the court or the presiding judge thereof shall direct to the effect that the plaintiff will pay all damages which the opposite party may have sustained by the

*delay of prevention of the order of the commission from becoming effective, and to such further effect as such judge or court shall in discretion direct, and no order or judgment in any such proceeding, action or suit shall be stayed on appeal therefrom unless a like undertaking be entered into by the appellant in addition to the undertaking provided in section 3052.*

(b) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, fares, charges, classification, joint rate or rates, regulation, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

(c) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

(d) Either party to said action, within sixty days after service of a copy of the order or judgment of the circuit court, may appeal to the supreme court. Where an appeal is taken the cause shall, on the return of the papers to the supreme court, be immediately placed on the state calendar of the then pending term, and shall be signed and brought to a hearing in the same manner as other causes on the state calendar.

(See c. 773, s. 59.)

(e) In all trials under this section the burden of proof shall be upon the plaintiff to show by clear and satisfactory evidence that the order of the commission complained of is unlawful, or unreasonable, as the case may be, and all actions brought under the provisions of the foregoing section shall be commenced in the circuit court for Dane county.

(f) *Any person not a party to the action, but having an interest in the subject thereof, may apply to the court to be made a party and thereupon the court shall order him to be brought in by the proper amendment.*

Approved May 26, 1913.