

No. 637, S.]

[Published August 11, 1915.]

CHAPTER 517.

AN ACT to repeal section 1379—22m, and to create sections 1379—20a, 1379—22m, 1379—28m, 1379—31v and 1379—32d of the statutes, relating to drainage.

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

SECTION 1. Section 1379—22m of the statutes is repealed.

SECTION 2. There are added to the statutes five new sections to read: Section 1379—20a. In the trial of all contests on benefits or damages arising on any remonstrance under the drainage district law, in addition to other competent evidence, evidence may be introduced showing what benefits are assessed against and what damages are awarded by said report to other lands in the district and such benefits and damages may be compared to determine whether they are equitable and just. Evidence may be introduced of the condition of the various tracts of land in said district and of the cost of further drainage or under-drainage necessary to give any assessed tract the assessment or award which is in contest, a drainage equal to other tracts in said district, and any and all other evidence may be introduced which tends to establish what assessments and award on lands under contest would be equitable and just as compared with other lands in said district.

Section 1379—22m. 1. Between the first and fifteenth day of July of each year, from the time of their appointment, the commissioners shall make and file with the clerk of the circuit court in which said proceeding was instituted an annual report containing (1) an itemized account of their receipts and expenditures during the year ending with the last day of the preceding month (the first report filed hereunder to begin with their last filed account) in which annual report shall be set down the balance on hand at the date of their last prior account, sources and amounts of all of their receipts, the dates, purposes for which made, and amounts of their expenditures, all as they actually have occurred, and the balance on hand on the last day of the preceding month, and the vouchers for said expenditures shall be filed with such account. Such account shall be verified by the oath of one or more of the commissioners, and together with the vouchers, be carefully preserved by the clerk of the court as part of the papers in the proceeding. They shall also include in their said report (2) a statement of all bonds of said district paid during the year just past, (3) all work done in said district during the year just past, specifying

where the same was done and the cost thereof, (4) what bonds of the district have been issued since their last report, (5) what repairs to the works under their care will be necessary during the next coming year, (6) where such repairs are needed and the probable cost of such repairs and of the upkeep of the work, (7) what sum it will be necessary to raise for the incidental expenses of said district for the next succeeding year, and they shall in said report (8) assess against the lands and corporations liable therefor such sums as will cover said necessary repairs, upkeep and incidental expenses, which assessment shall be known as "assessment for repairs" and shall be apportioned on the sum total of all assessments of benefits then in force.

2. Said commissioners need make no other financial report during any year unless by the court or presiding judge thereof required so to do.

3. At any time within twenty days after the publishing of said notice any land owner within said district may file and serve on said commissioners exceptions to said report specifying the items objected to and the grounds of objection. Thereupon the exceptions shall stand for trial before the court and judgment shall be rendered for or against the district with right of appeal as in other cases. Costs may be adjudged to the commissioners against the party filing exceptions if they are not sustained, and in the discretion of the court, if but partly sustained. If the items excepted to be wholly disallowed, and in all other cases when the commissioners shall exceed their authority, the taxable costs of proceedings shall be adjudged against the commissioners and not against the district.

4. Notice of the filing of the annual report containing a summary of said financial report shall be published once in a newspaper published in the county where the court files of said district are kept and posted and mailed to each owner of lands in the district the post-office address of which is to the commissioners known. Such annual report shall be heard by the court on the third Tuesday of August each year or as soon thereafter as may be convenient and the presiding judge shall examine said report, hear all objections to the same, fix and determine the amounts of such assessments and cause such adjudication to be entered of record in said court.

Section 1379—28m. 1. Whenever an order has been made by the court confirming assessments of benefits or assessments of supplemental benefits for drainage or assessments for repairs and the validity of such assessments or the sufficiency of the notice or other proceedings leading up to the order confirming such benefits or supplemental benefits or assessments for re-

pairs is questioned, and the fact of such question being raised is brought to the attention of the court by the commissioners of the drainage district or other interested person, such court shall make an order fixing the time and place of hearing and requiring all interested parties to show cause, if any they have, why said former order of confirmation be not validated.

2. Said order to show cause shall be published for three successive weeks before said hearing in a newspaper to be designated by the court in each county where any land of the district is situated, and a copy thereof shall be mailed to each owner of land in said drainage district whose post-office address is known to the commissioners or can with reasonable diligence be ascertained, at least twenty days before said hearing.

3. Any person or corporation interested and desiring to object to the validating of said order of confirmation or any part thereof shall, at least five days before the day fixed for hearing, file in the office of the clerk of the court a remonstrance stating his objections in writing as required by section 1379—20 of the statutes. The court may adjourn said hearing from time to time and upon the hearing may, if demanded, frame issues and empanel a jury to try the questions of damages involved. All other issues shall be tried by the court without a jury. The court may order all necessary amendments of the proceedings and all amendments of said former assessments of benefits and awards of damages found necessary and make an order validating said former assessments of benefits or said assessments of benefits so amended.

4. Said order of validation shall direct all necessary amendments, shall cure all defects in said former proceedings, shall render valid and binding the former order of confirmation or said order of confirmation as amended by the court, and shall be final and conclusive upon all interested parties, unless appealed from within thirty days from the entry of said order. Notice of entry of said order shall be given to all parties interested by publishing such notice once in a newspaper published in the county the circuit court of which has jurisdiction, or if no newspaper is published in such county then in a newspaper published in an adjoining county.

5. This section shall be retroactive and apply to all orders of confirmation of assessments heretofore made in drainage proceedings.

Section 1379—31v. 1. Whenever the owners of lands in a part of a drainage district desire a more thorough or different drainage than the drains of such district then constructed or planned will give to such land, a majority of such owners may

petition the commissioners of such district to grant such more thorough or different drainage. The said commissioners shall examine the lands the owners of which desire such more thorough or different drainage and shall report the facts to the court.

2. If the court shall be satisfied that the public health or public welfare will be promoted by such more thorough or different drainage and that the benefits therefrom will exceed the damages and cost of construction, the court shall (1) order a sub-district of said drainage district formed (2) shall give it a name or number (3) shall fix its boundaries and (4) shall order the commissioners of said district (a) to make and report a plan and specifications for such more thorough or different drainage and (b) to estimate the cost of construction thereof together with (c) the cost of all additional bridges thereby made necessary and (d) assess the benefits and award the damages to all lands, easements and corporations in said district benefited by said more thorough or different drainage as provided in subsection 5 of section 1379—18 of the statutes. When said report shall be filed the court or the presiding judge thereof shall make an order fixing the time and place of hearing thereon which notice shall be served as provided in subsection (1) of section 1379—30b of the statutes in case of assessment of supplemental benefits.

3. Thereafter the proceedings under this section shall so far as possible conform to the proceedings under sections 1379—30b to 1379—30d of the statutes, but notices of the time and place of hearing on the report of the commissioners and other notices may be waived in writing by all parties interested.

4. The provisions of this section shall not limit or repeal the supplemental assessment laws herein elsewhere contained.

Section 1379—32d. 1. Whenever any owner or owners of land in a drainage district desire to draw water from a drainage district for irrigation purposes they may make application to the commissioners for right to draw such water, specifying what land they desire to irrigate, the number of acres thereof, where the same is located accompanied by a plat thereof and stating what they are willing to pay for said irrigation privileges. If the commissioners believe that such irrigation will not injure the drainage of other lands in the district, and that the water used for irrigation will be returned to the ditches of the district before they leave the lands of the petitioners, they shall report all of the facts to the court and petition the court to authorize them to grant the irrigation privileges.

2. The court or presiding judge shall make an order for hearing on such petition.

3. The court shall require notice of such hearing to be served on the owners of all lands immediately surrounding the lands to be irrigated and within one-fourth mile thereof and on the return day of said notice, which shall be not less than twenty nor more than forty days after the filing of the commissioner's report, shall hear all of the evidence presented bearing on the questions,

(1) Whether said irrigation will in any way injure other lands in the district by rendering their drainage less effective.

(2) What the reasonable value of such irrigation privileges is per year.

(3) Whether said irrigation will in any other way injure the district.

The court may grant permission to the commissioners to enter into a contract with said applicants for irrigation privileges, which contract shall provide for an annual rental to be paid by the irrigators to the district on the first day of September each year. Such contract shall not be for more than five years.

SECTION 3. This act shall take effect upon passage and publication.

Approved August 9, 1915.

No. 642, S.]

[Published August 11, 1915.

CHAPTER 518.

AN ACT to create a superior court in the county of Fond du Lac.

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

SECTION 1. There is hereby created and established in the county of Fond du Lac, state of Wisconsin, a court to be known and designated as the "Superior court of Fond du Lac county," which court, after the first day of September, A. D., 1915, shall have the powers and jurisdiction hereinafter provided, and shall be presided over by a judge to be known as the superior judge.

SECTION 2. The superior court of Fond du Lac county shall be a court of record, with a seal to be designed and procured by the judge thereof, at the expense of the county.

SECTION 3. Said superior court shall be held in the city of Fond du Lac, in some suitable room or rooms to be furnished and supplied at the expense of the county under the direction of the county board thereof.