

[*Published March 21, 1859.*]

## CHAPTER 168.

AN ACT to provide for, and defining the mode of assessing the value of lands appropriated by any railroad company, and damages resulting from the location, construction and operation of its line of road in this state.

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

Declaratory.

SECTION 1. Hereafter the mode of estimating and determining the compensation to be made for the value of any lands appropriated by any railroad company, and the damages resulting from the appropriation of any lands for right of way or other purposes of any railroad company, under and by virtue of the charters respectively of any such company shall be uniform, and all such value and damages shall be determined and paid in the manner following.

Estimates of value of lands how made.

SEC. 2. The company by its agent shall first offer to pay to the owner or owners, guardian of the owner or agent of the owner or owners, or of any other person having any interest in such lands (as the case may be) if resident of this state, such sum as such agent and two disinterested free holders of the county where the lands are situated, shall on oath, and in writing, swear is just compensation for such lands and damages, before seizing and appropriating any such lands, in all cases where lands have not already been appropriated. If such offer shall be refused, then either party may apply to any justice of the supreme court or circuit judges in term time or vacation, upon five days written and personal notice to the other party (or double that time if served by mail), for the appointment of three commissioners to make an appraisal and award of the value of each or any of the several pieces or parcels of land so entered upon or taken as aforesaid, of any party, for any of the purposes aforesaid, in reference to the value of which the said company shall have failed to agree with the owner or person claiming any interest in the same as aforesaid; and upon proof of the service of such notice, the judge to whom such application be made, shall appoint three commissioners who shall proceed to examine the premises, having first given such notice as they may deem reasonable to the railroad company, and to such owner, guardian or husband, and at least two and not more than five days personal notice to such owner, if resident in the county, and

If owner refuse the compensation offered.

Court to appoint commissioners.

Their duties.

like notice to the company, and whenever it shall appear to said company or its officers, that the title of any such land is in dispute, or that several parties claim interest therein by tax sales, tax titles, incumbrances, liens or equitable claims, the said commissioners shall, upon request of said company or its officers give such notice to all persons claiming any interest in such land, whether as owners, incumbrancers or otherwise, and after making such examination, the said commissioners, or a majority of them, shall make an appraisement and award of the value of the land so entered upon together with all the damages arising therefrom, taken, possessed, occupied or used by said company for any of the purposes aforesaid, and shall deliver one copy of their award in each case to each party, and shall file another in the office of the clerk of the circuit court of the county in which such lands shall lie, with the cost of the award taxed upon each of said copies, and if neither party shall appeal from said award in the manner hereinafter provided, the said circuit court, on motion of the party in favor of whom any award shall be made for such value as aforesaid, unless such award shall have been previously paid, shall enter up judgment in conformity with such award; and in case either of the said commissioners shall die, resign, or decline to act, the circuit judge, justice or either of the said justices shall appoint another commissioner in his stead, and the said company or any party so receiving notice from the said commissioners as aforesaid, may within thirty days after such award shall have been filed with the clerk as aforesaid, appeal from the same to the circuit court for the county in which such lands shall lie, by filing with the clerk of said court a written notice of such appeal, and upon receiving such notice, the said clerk shall enter the appeal as a case upon the docket of said court setting down the owner or owners, and person or persons claiming any interest in said land, embracing all persons so having received such notice from the said commissioner, and the said company as defendants, and the said court shall proceed to hear and determine such case in the same manner that other cases shall be heard and determined in said court; and all issues of fact arising therein shall be tried by a jury, unless a jury be expressly waived by both parties, but the appellant shall not be entitled to have the case tried at any term of said court, unless he shall have given notice to the appellee or his attorney, at least ten days before the first day of the term, that he will demand a trial at such term; but in case the appellee

Notice to parties interested

Commissioners to file award, &c.

Appeal.

Trial by jury.

has no known residence in this state, or attorney of record residing in the state, no such notice need be given, but in all cases the appellee may waive such notice, in which case the same rule for trial shall be applicable to it as to other cases in said court. After the hearing of said case, the jury, or if a jury be waived, the court shall assess the value of the land so entered upon, together with all the damages arising therefrom, taken, possessed, occupied and used by said company, whether before or after the passage of this act, and after such assessment the court shall proceed to render judgment against said company for the amount of such assessment in favor of the plaintiff or plaintiffs in such case, and if the amount so assessed in favor of said plaintiff or plaintiffs, shall exceed the amount awarded by said commissioner, (with interest, at the rate of twelve per centum per annum from the time of such award to the time of such assessment by the jury or court), then judgment shall be rendered against said company for costs, and and when the appeal shall be taken by the claimant, if it shall not exceed said amount (and interest as aforesaid), then judgment shall be rendered in favor of said company for costs, and against the said plaintiff or plaintiffs, and execution may issue accordingly. Either party shall be entitled to a change of venue for the trial of the said cause, on affidavit filed stating the belief of the affiant that a fair trial cannot otherwise be had: the change of venue shall be to the nearest county where a fair trial can be had. The judgment of the circuit court in any such case, may be reviewed on writ of error or appeal as other cases at law. Whenever the commissioners shall make an award as aforesaid, and no appeal shall be taken from the same, and whenever in case of an appeal, a final judgment shall be rendered, it shall be the duty of the company to pay to the party entitled to the same amount of such award or judgment, and in any case in which there shall be any lien, encumbrance, tax sales, tax title, or equitable claim to or upon the land or any part thereof, which is the subject matter of such award or judgment, or when more than one person shall be entitled to, or shall set up any claim to the amount of such award or judgment, or any part of it, or when the person entitled to receive the same shall not have any known residence within the state, the said company may deposit the amount of such award, where there is no appeal, with the clerk of the circuit court with whom the award in the case shall have been filed, and in case of an appeal and judgment

Court to assess damages, &c.

Costs.

Change of venue.

Writ of error.

Several claimants, money to be deposited

thereon, the company may deposit the amount of such judgment with the clerk of the circuit court for the county in which such judgment shall have been rendered, and the money so deposited in either case, shall be paid over by order of the court, to the person or persons who shall be adjudged by said court to be entitled to receive the same; service upon the secretary of the company at his office, or upon the claimant for damages, by leaving at his residence with any suitable member of his family, shall be deemed personal service.

SEC. 3. Nothing contained in this act shall be construed to prevent any other mode of determining such value, and damages as aforesaid, if agreed upon by the parties, nor take away or alter any of the powers, rights, franchises or remedies of any railroad company, excepting so far as it prescribes a uniform mode for, and procedure in, the assessment of compensation for damages to be made for lands and other property appropriated or to be appropriated by any railroad company for the uses and purposes of its road. And the tender or offer herein before provided for, shall be the commencement of proceedings (when the parties shall not otherwise agree) in all cases, and all subsequent proceedings shall be conducted as above provided.

Construction  
of this act.

Approved March 18, 1859.

[Published April 6, 1859.]

## CHAPTER 169.

AN ACT to provide and appropriate compensation to certain officers of the legislature of 1859.

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

SECTION 1. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, a sum sufficient (with the amount already appropriated), to pay the per diem of certain officers of the legislature of 1859, at the following rates, viz: to the assistant clerks and sergeant-at-arms each four dollars per day: to all other clerks, postmaster, and assistant sergeant-at-arms each three dollars per day; to the assistant postmaster, door-keeper, and fireman, each two dollars and fifty cents per day; to all messengers, each one dollar and fifty cents per day.

Appropriation