

No. 340 A.]

[Published April 28, 1893.]

CHAPTER 244.

AN ACT to appropriate to Benjamin F. Goss the sum of money therein named.

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

SECTION 1. There is hereby appropriated to Benjamin F. Goss, one thousand and fifty-eight dollars and thirty-eight cents, out of any moneys in the treasury not otherwise appropriated, in full compensation to him for expenses incurred in the contest case of O. L. Rosencrans against Benjamin F. Goss.

Appropriation
to Benjamin
F. Goss.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.
Approved April 17, 1893.

No. 248, S.]

[Published April 28, 1893.]

CHAPTER 245.

AN ACT authorizing drainage corporations to condemn lands and exercise the right of eminent domain.

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

SECTION 1. Whenever it shall become necessary for any corporation organized under the laws of this state for the purpose of constructing, maintaining and operating drains, canals, ditches or the like, for the purpose of drainage, and for reclaiming wet, submerged, overflowed and swamp lands, to acquire any real estate for the purpose of constructing, maintaining or op-

Drainage corporations may acquire certain real estate.

erating any canals, drains, ditches or the like, which said real estate is owned by any other person or corporation, it may acquire such real estate in the manner herein provided.

May file petition with county judge; what to contain.

SECTION 2. For the purpose of acquiring such title, such corporation may file a petition with the county judge of the county in which the real estate desired to be acquired is situate, praying for the appointment of commissioners of appraisal by such county judge, which petition must be signed and verified by the attorney or some authorized officer of the corporation. Such petition shall state that the corporation is duly incorporated, giving a description of the real estate sought to be acquired; that the same is required for the purpose of building, constructing, maintaining or operating canals, drains, ditches or the like, by the corporation for the purpose of draining wet, submerged, overflowed or swamp lands, and that it is the intention of the corporation to use it therefor; the names of the owners and parties interested therein; that the corporation is unable to agree with such owners and parties interested therein upon the value of such lands; that it has surveyed its route for its canals, drains or ditches, over the lands sought to be acquired, giving a description thereof, and shall state the width of the strip or strips of land necessary for its drains, canals, ditches or the like, and the reasons therefor; that the route or routes of such drains, ditches, canals or the like, has or have been located by its board of directors in accordance with such survey, and that the real estate as described is required for the purpose of constructing, maintaining or operating its drains, ditches, canals or the like. If any owner of such land is an infant, or of unsound mind, or unknown, these facts shall be stated, if known to the corporation, and if any such person is under guardianship, the name of the guardian shall likewise be stated. The filing of such petition shall be deemed to be the commencement of a suit in such county court. Upon the filing of such petition, the said judge thereof shall make an order requiring notice to be given of the time and place of hearing said petition, which notice shall in general terms state the filing of such petition, the object there-

Persons interested to be heard; infants, etc.

Judge to make order, etc.

of, and shall refer by general description to the lands described in the petition and shall be addressed to the parties named in said petition and to all persons interested in said lands, and may be served personally, or at the last and usual place of abode of such owners and parties interested, not less than five days before such hearing, or by publication in some newspaper to be designated by said judge, not less than ten days before the date fixed for the hearing of said petition.

SECTION 3. On presenting such petition to the judge, with proof of service or of publication of notice, any person whose estate or interests are to be affected by the proceedings may show cause against granting the prayer of the petition; if it shall appear from said petition that any such persons are infants, of unsound mind, or otherwise incompetent, the judge may, upon notice to the guardian, if they have any, and if not without further notice, appoint a guardian *ad litem*, to act for such person in such proceeding, and require him to give proper security. The said judge shall hear the parties interested and may adjourn from time to time as shall be convenient; and shall determine whether it is necessary for the corporation petitioning to take the whole or any part of the lands sought to be acquired, and if no sufficient cause is shown against granting the prayer of the petition, shall make an order appointing three disinterested and competent freeholders, who reside in the county where the premises to be appraised are situated, or of some adjoining county, commissioners to ascertain and appraise the compensation to be made to the owners and persons interested in the real estate determined necessary to be taken in such county for the purposes of the corporation, and fix therein the time and place for the first meeting of the commissioners, and may limit the time in which they shall hold their appointment, which shall not in any case exceed one year.

Commissioners to be appointed.

SECTION 4. The commissioners shall, before entering on the discharge of their duties, take and subscribe an oath that they will support the constitution of the United States, and the constitution of the state of Wisconsin, and faith-

Commissioners; duties and powers.

fully discharge their duties as such commissioners, to the best of their ability. Whenever requested in writing by or on behalf of the corporation, or any person interested in any tract of land described in the petition, but not otherwise, they shall proceed to perform their duties in respect to the land mentioned in such request and a majority of them may adjourn the proceedings before them in respect to any particular tract of land from time to time, in their discretion, but not more than twice, nor more than sixty days in all, as to any one such case. Upon such request they shall cause notice to be given to each party interested of the time when, and place where they will meet to consider the amount of compensation to which the land owner is entitled, which notice shall be personally served on such party or his authorized agent, or attorney, or guardian, *ad litem*, or by leaving the same at his residence or place of business with a person of suitable age or discretion at least six days before the time of such meeting; and to the attorney or agent of the corporation, when requested to act by any other party. If such a party is a non-resident of this state, or if his residence is unknown, and he has no authorized agent or attorney in this state known to such commissioners, notice shall be published in a newspaper as aforesaid for such length of time as the judge appointing such commissioners shall direct, and said judge shall also designate the newspaper in which such publication shall be made. The commissioners shall file proof of serving such notices or of the appearance of such parties before them either personally or by attorney, with their report. But it shall not be necessary to serve or publish notice of any subsequent meeting held pursuant to adjournment. The commissioners shall view such of the premises described in the petition, as are described in such written request, and hear the allegations of the parties, and shall appraise, ascertain and determine the value of each such tract or parcel of land proposed to be taken, with the improvements thereon, and of each separate interest therein, and the damages sustained by the owner by reason of the taking thereof, and fix the amount of compensation to be made to each of such owners

therefor; and in fixing the amount of such compensation, said commissioners shall not make any allowance or deduction from the value of the real estate taken on account of any real or supposed benefit which the parties in interest may derive from the construction, maintenance or operation of such canals, drains or ditches, for which said real estate may be taken. A majority of the commissioners, all being present, shall be competent to determine all matters before them. The commissioners shall, within twenty days after last viewing any of the lands so taken, make and file in the office of the county judge of such county, a report of their proceedings concerning such lands, making separate reports in relation to the lands of each distinct owner, setting forth the award made for each tract or parcel thereof, or separate estate therein, to the owner or owners thereof. The commissioners shall be entitled to such compensation as the county judge may direct, which shall be paid by the petitioner.

Report to be filed.

Compensation.

SECTION 5. Within thirty days after the filing of the report of the commissioners in the office of such county judge, any party interested may appeal from that part thereof in which he has an interest, to the circuit court of the county, by filing in the office of said county judge a written notice of appeal. Upon receiving such notice, the county judge shall certify all of the records and papers in such proceedings to the circuit court; the appeal shall be considered an action pending in such circuit court, subject to a change of the place of trial, and to appeal to the supreme court, as in other actions, and shall be entered by the clerk upon the records of the court by setting down the owner or owners of the land for which such award was made and who are parties to the appeal as plaintiffs, and the petitioning corporation as defendant; such appeal shall be tried by jury, unless a trial by jury is waived by both parties. Costs shall be allowed to the successful party on such appeal, and, if in favor of the plaintiff, be added to the amount of the verdict; if in favor of the defendant, be deducted therefrom; and judgment shall be rendered thereon according to the rights of the parties. Upon the trial of said appeal the same proceedings and

Appeal from award of commissioners.

rules of practice shall apply that apply to other actions and trials by jury.

Upon payment
of award cor-
poration may
take lands.

SECTION 6. The report of the commissioners shall be reported by the county judge in the judgment book of the county court, and at any time after the making of such award the petitioning corporation may pay to the owners of the lands so taken or to the said county judge for the use of such owners the amounts awarded by the commissioners, and thereupon may enter upon, take and use the lands for the purpose for which they were condemned, and may move said county judge, upon twenty-four hours' notice, that a writ of assistance may be issued to put such corporation into the possession of the same, and said county judge shall, upon the corporation giving security in such additional amount as he shall require to pay any judgment that shall be recovered against it on appeal, award such writ.

Writ of
assistance.

If such corporation be in possession or be put in possession of such land, pending an appeal, the owners or parties entitled thereto shall be entitled to receive the money paid into court on account of the award appealed from without prejudice to the appeal taken; but if the corporation shall have appealed, such moneys shall not be so withdrawn, upon filing a bond in such sum and with such sureties as shall be approved by the county judge, to repay the amount by which such award shall be abated on such appeal with costs. If such corporation shall omit, for the space of sixty days, to pay the amount so awarded into court, or to pay into court the amount of any final judgment, which shall be rendered upon any appeal from such award, the party interested in such award or judgment may have execution upon said judgment without motion, or for the amount of such award upon motion.

Failure to pay
award.

If any defect of title to, or incumbrance upon, any parcel of the premises shall be suggested in said petition, or if any party to said proceeding, or any person not a party, shall petition the said court, setting up a claim adverse to the title set out in said petition, to said premises, and to the money or any part of it to be paid as compensation for the property so taken, the court shall hear and determine the rights of the parties to said money, and, for that

Defect of title,
etc; how rights
determined.

purpose, may order a reference or an issue to be tried by a jury. Either party may except to the decisions of the circuit court, and appeal to the supreme court, in like manner as in other actions. Either court may award costs to the prevailing party, and render judgment therefor against the other party.

Use of lands,
when to vest in
corporations.

SECTION 7. When no appeal shall be taken from any award, within the time provided by law, and the corporation shall have paid the amount thereof into court, or filed a receipt therefor duly signed by the owner and acknowledged before an officer authorized to take the acknowledgment of deeds, in the office of the county judge, or when, after the determination of such an appeal, the petitioning corporation shall have paid into court the amount of the judgment rendered thereon, or filed a receipt therefor as aforesaid, the county judge shall make a minute of such payment, or of the filing of such receipt, at the foot of the record of the report of such commissioners, thereupon the exclusive use of said premises, and every part and parcel thereof, shall vest in such corporation, its successors and assigns, so long as used for said purposes, without any other or further act, deed or conveyance; and said record, or the certified copy thereof, shall be prima facie evidence of such title in all courts and places.

Proceedings
may be
amended.

SECTION 8. The county court shall have power at any time before the appeal is taken, and the circuit court shall have power after the appeal is taken, to amend any defect or informality in any of the special proceedings authorized by this chapter, as may be necessary, to cause new parties to be added and to direct such other notices to be given to any party in interest, as it deems proper, and also to appoint other commissioners in place of any who shall die or refuse or neglect to serve or be incapable of serving.

SECTION 9. For the purpose of carrying out the powers conferred by this act, every county judge and county court in this state is hereby vested with full and complete jurisdiction.

SECTION 10. This act shall take effect and be in force from and after its passage and publication.

Approved April 17, 1893.