

No. 109, S.]

[Published May 9, 1901.]

CHAPTER 319.

AN ACT to amend section 1778 of the statutes of 1898, in relation to the construction of lines for the use of telegraph, telephone and power transmission companies.

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

Liability of telephone, telegraph and power corporations. SECTION 1. Section 1778 of the statutes of 1898 is hereby amended so as to read as follows: "Any corporation formed under this chapter to build and operate telegraph or telephone lines or power transmission for public purposes, or conduct the business of telegraphing, or telephoning or transmitting power for public purposes, may, subject to all reasonable requirements and regulations made by any city or village through, across or adjoining which said line or lines may be proposed to be constructed, construct and maintain any such lines, with all necessary appurtenances, from point to point, upon, along or across any public road, highway or bridge, or any stream or body of water, or upon the land of any owner consenting thereto, and from time to time extend the same at pleasure, and for such purposes may also acquire lands or any interests therein, in the manner provided in this act; and may connect and operate its lines with the lines of any person or corporation engaged in like business, within or without this state, and charge reasonable tolls for the transmission and delivery of messages or the furnishing of power for public purposes. But no such telegraph line, or any appurtenance thereto, shall at any time obstruct or incommode the public use of any road, highway, bridge, stream or body of water. Whenever the use of any such line shall be abandoned or discontinued, the proper corporation shall forthwith take down and remove all wires, posts or other articles; and on failure for three months after such abandonment or discontinuance so to do, any person owning land near, over or upon which such line shall pass, may take down and remove the same, or any part thereof, for his own use. Any person, association or corporation operating or owning any telegraph or telephone or power transmission line for public purposes, doing business in this state, shall be liable for all damages occasioned by the failure or negligence of their operators, servants or employees

in receiving, copying, transmitting or delivering dispatches, messages or the furnishing of power to its patrons for public purposes. Nothing contained in this act shall authorize or empower such telegraph, telephone or power transmission company or corporation to in any manner destroy, trim or otherwise injure any shade or ornamental trees along any such lines, except by consent of the owner.

Petition. SECTION 2. Condemnation proceedings may be instituted for the taking by such corporations of rights, easements or interests over bridges and streams within the limits of any public highway, road, street or alley, and in land only on or within public highways, roads, streets or alleys over or upon which the line is, or is to be constructed or located, either by the corporation or any person interested in the land. They shall be commenced by petition to the circuit court or a circuit judge of the county in which the land lies. The petition may be signed and verified in the same manner as pleadings in the circuit court, and shall contain the following, in substance: The road, street, alley or highway along or over which the line is to be or has been constructed. The terminus of the line on such property, if any, and on which side or part of the highway the line is or will be located. If made by the corporation, that it intends in good faith to use such real estate, and that it is required for its use. If made by another, that it is used or is designed by the corporation to be used, for telegraph, telephone purposes or for the transmission of power for public purposes.

Order for hearing. SECTION 3. Upon the filing of such petition, the court or judge shall make an order fixing the time and place of hearing the petition, which shall be served personally, in the same manner as a summons in the circuit court, at least twenty days before the hearing, or by publication, as the court or judge may direct, at least ten days before the hearing. Such service shall be made upon the owner and any occupant of the land over which the line is, or is proposed to be located, in case the proceedings are taken by the corporation, and upon any officers or director of the corporation, in case they are commenced by the land owner.

Hearing. SECTION 4. The court or judge shall hear all persons interested who shall appear, shall appoint guardians ad litem for parties under any disability, and determine the right of the parties; and if sufficient cause exists, shall appoint one or three disinterested and competent freeholders of the county, or of any adjoining county, as commissioner or commissioners to ascertain and appraise the just compensation of those interested

in the real property to be or which has been taken in the county where it lies, and fix therein the time and place of the first commissioners' meeting. The term of such appointment shall not exceed one year, and may be further limited.

Proceedings of commission. SECTION 5. The commissioners shall take an oath that they will support the constitution of the United States and of the state of Wisconsin, and faithfully discharge their duty as commissioners to the best of their ability. Upon request of the corporation or any person interested in the property described in the petition, and not otherwise, they shall proceed with the performance of their duties, and may adjourn the proceedings, but not more than twice nor more than sixty days in all as to any one case. They shall cause notice of the time and place of their meeting to consider the compensation to which the owner is entitled to be served personally on the owner or other person interested, or his agent, attorney or guardian ad litem, or by leaving the same at his residence, with a person of suitable age and discretion, at least ten days before such meeting. If such party be a non-resident, or his residence is unknown, and have no agent or attorney in the state known to the commissioners, the notice shall be served by publication, in such manner as the court or judge shall direct. Proof of the service of such notice, and of the appearance of the parties, shall be filed in the clerk's office. No service of notice of any subsequent meeting, held pursuant to adjournment, shall be necessary. The commissioner or 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 appraise ascertain and determine the value of the rights to be taken, and of each separate estate therein, and the damages sustained by the owner by reason of the taking thereof, and fix the amount of such compensation to be made to each of such owners therefor; and in fixing the amount of such compensation said commissioner or commissioners shall include all damages for the erection, construction and maintenance of a telegraph, telephone, or power transmission line for public purposes over and along such public highways, roads, streets or alleys or over such bridges or streams, including such additional wires as may from time to time be placed on said line and of replacing the poles from time to time as may be necessary. The commissioners may, in case of dispute, determine the places along said line in which the poles shall be set. And in no case, except where the owner consents thereto, shall poles be set in front of a building occupied for business or residence purposes, unless the com-

missioners shall find that the same is necessary, and in such case such poles shall be placed within four (4) feet of the boundary line or party wall of such building. After the condemnation proceedings have been completed the court may still determine as to whether such line or any pole or fixture thereof might be removed to some other point or place within such public road, street, highway or alley, or over such bridge or stream, and determine the question as to whether the necessity exists that such pole or other fixture remain in the spot or place theretofore located. 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 property so taken, make and file in the office of the clerk of the circuit court of such county a report of their proceedings concerning such property, making separate reports in relation to the property of each distinct owner and setting forth the award made to each owner or owners thereof. The commissioners shall be entitled to such compensation as the court may direct, which shall be paid by the corporation taking such telegraph, telephone or power line.

Appeals. SECTION 6. Within thirty days after the filing of the report of the commissioner or commissioners in the office of the clerk of such circuit court, any party may appeal to the circuit court from any award made by the commissioners by filing in the office of said clerk a written notice of appeal from such award. Upon filing such notice the appeal shall be considered an action pending in court, subject to change of place of trial and 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 lands for which said award was made and who are parties to the appeal as plaintiffs and the corporation as defendant. Such appeal shall be tried by jury unless a trial by jury be waived by both parties. Costs shall be allowed to the successful party on such appeal, and if in favor of the plaintiff shall be added to the amount of the verdict, if in favor of the defendant to be deducted therefrom; and judgment shall be rendered thereon according to the rights of the parties.

Payment of award; possession; executions; intervention. SECTION 7. The report of the commissioner or commissioners shall be recorded by the clerk in whose office the same is filed, and at any time after the making of such award the corporation may pay the owners of the property so taken, or to the clerk of said court for the use of such owners, the amount awarded by the

commissioners, and thereupon may enter into the use of the property or rights which have been condemned, and upon twenty-four hours' notice may move said court or judge that a writ of assistance may be issued to put such corporation into possession of the same, and said court or judge shall, upon the corporation giving security in such amount as the court or judge shall require, to pay any judgment that shall be recovered against it on appeal, award such writ. If the corporation be in possession, or be put in possession of any property 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 money shall only be so withdrawn upon the person withdrawing the same filing a bond in such sum and with such surety or sureties as shall be provided by the court or judge to repay the amount by which award shall be paid on 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 the court the amount of any final judgment which will 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 and if execution be returned unsatisfied may maintain an equitable action for the sale of the lines and franchises of the corporation. If in any event the title to or incumbrance upon any of the premises shall be suggested, or if any party to said proceeding or any person not a party, shall petition said court, setting up a claim adverse to the title set out in said petition to said premises or any part thereof or to the money or any part of it to be paid as compensation for the property taken, the court shall hear and determine the rights of the parties to said money and for that purpose may order a reference or issue to be tried by a jury. Either party may except to the decisions of the court and appeal to the supreme court in like manner as in actions. Either court may award costs to the prevailing party and render judgment therefor.

When use to vest. SECTION 8. When the corporation shall have paid into court the amount of the award or of the judgment, or filed a receipt therefor, the rights and easements obtained by said corporation shall vest in the corporation, its successors and assigns, so long as used for telephone or telegraph purposes, or power transmission for public purposes, without any other or further act, deed or conveyance, and said report, or a certified copy thereof, shall be prima facie evidence in all courts and places,

Remedies; condemnation after taking; limitations. SECTION 9. This act shall not apply to any proceeding or action now pending, nor to any claim or cause of action existing prior to the passage of this act, nor shall the right of the land owner to bring or maintain any action of trespass, trespass on the case, nuisance or ejection be impaired, but all such actions or proceedings pertaining to such rights, easements or interests over bridges and streams and in public highways, roads, streets or alleys shall be brought before July first, 1903, and not thereafter. The proceedings herein authorized, pertaining to such rights, easements or interests over bridges and streams in public highways, roads, streets or alleys, may be taken in respect to telegraph, telephone and power lines now existing before July first, 1903, and not thereafter. In case of rights or easements taken or used by any such corporation after the publication of this act, the proceedings herein authorized shall not be taken nor other action commenced against the corporation in respect to its rights to use or possess such rights or easements, unless begun within six years after the commencement of the construction of any such line over, along, or across any property. Section 1329a of the statutes of 1898 is not affected by this act, and is continued in full force.

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

Approved May 8, 1901.

No. 67, S.]

[Published May 10, 1901.

CHAPTER 320.

AN ACT to amend section 1459 of the statutes of 1898 relating to the State horticultural society and Dairymen's association and making and [an] appropriation.

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

Society, a body corporate; duty of; annual appropriation to, increased. SECTION 1. Section 1459 of the statutes of 1898 is hereby amended by striking out the words "seventeen hun-