

[No. 182, S.]

[Published March 26, 1880.]

## CHAPTER 283.

AN ACT to provide for draining wet or swamp lands and lead and coal mines.

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

SECTION 1. That when any one or more owner or owners of any lands or lead or coal mines in this state shall desire to construct a ditch or drain or ditches across the lands of another or others for agricultural, sanitary or mining purposes, and which tends to the benefit or advantage of the public, and no agreement can be made between them and the owner or owners of said lands, to make or establish a ditch or drain, the person or persons may file a petition in the circuit or county court of the county in which said ditch or ditches, drain or drains shall be proposed to be constructed, setting forth the necessity for the same, with a description of its or their proposed starting point, route and terminus, and if it shall be necessary for the drainage of the land or lead or coal mines, or for sanitary purposes, or either or all of said purposes, that a drain or ditch or ditches or other similar work be constructed, and to the public interest that the work shall be so constructed, the petitioner or petitioners shall so state in the petition, and shall set forth the general description of the same as proposed, and shall ask for the condemnation of so much of the lands as may be sufficient to construct and build said ditch or ditches, drain or drains.

Petition to circuit court,

When owners cannot agree.

SECTION 2. The petition shall set forth the name or names of all persons owning the land over which such drain, ditch or ditches is to be constructed, as owner or otherwise, as their interest may appear therein by the records of the register of deeds of said county, and if the name of the owner or owners shall not be known to said petitioners, such petition shall state that fact, and pray such court or judge to cause the compensation, as hereinafter provided, to be paid to the owners of such land, or to the person or persons entitled to the same.

Style of petition.

SECTION 3. That if the proceedings seek to affect the property of minors or persons under guardianship, idiots or lunatics, the guardian shall be made party defendant to the proceedings, if any, and, if none, the court shall appoint such to defend; and if a married woman, the husband shall be made a party, if known;

Rights of minors, etc.

and parties interested whose names are unknown, shall be made parties defendants by the name and description of unknown owners, but in all such cases an affidavit shall be filed by one of the petitioners or some other credible person, setting forth that after due diligence and inquiry, stating such diligence, he is unable to learn the name of the owner or owners of such land.

Hearing of petition.

SECTION 4. Said petition may be presented to the judge in vacation, and the judge shall fix upon a day when he will hear the same, and shall order the issuance of a summons to be served upon all the persons made defendants in such proceedings, which summons shall be served upon each of said owners, prayed to be made defendants in such proceedings, in the same manner required for the service of summons in the circuit court in this state in a civil action, which summons shall be served on each of said owners at least ten days before the hearing of such petition, and shall be issued by the clerk of the circuit court for the county where such lands are situated.

Same.

SECTION 5. Said cause may be heard by such judge in vacation as well as in term time, but no cause shall be heard earlier than ten days after service upon defendants, or ten days after the last day of the publication of said summons, when service is required to be made by publishing a copy thereof, to bring in non-resident or unknown owners.

Compensation may be found and assessed separately.

SECTION 6. That any number of separate parcels of land situated in the same county may be included in one petition, and the owners thereof may be joined as petitioners or defendants therein; and the finding of the necessity to use such land for the purpose of constructing said ditch or drain, with the compensation for each owner, may be found and assessed separately by the same jury.

Amendment to petition.

SECTION 7. Amendments to the petition or any part of the records in the case, may be permitted whenever necessary to a fair trial and final determination of the questions involved.

In case of defense.

SECTION 8. If any defense shall be made to the petition, the defendant or defendants shall plead, answer or demur to such petition as in chancery proceedings, in this state, and a general replication by the petitioner or petitioners shall be sufficient to make up the issues between the parties.

Bringing new party before judge.

SECTION 9. Should it be necessary at any time or stage of the proceedings to bring a new party before

the judge or court, the judge shall have the power to make such rule or order in relation thereto, as may be deemed reasonable and just, and shall have power to make all such necessary rules and orders for notice to parties, of the pendency of the proceedings, and to issue all necessary process for the execution of orders and judgments, as may be considered necessary by the court.

SECTION 10. At the time fixed for hearing the petition, the judge, if there shall be an issue, either of law or fact, made by a demurrer or answer to said petition shall proceed to the trial of such issue, and if an issue of law and the same shall be decided in favor of the defendant or defendants interposing such demurrer, and the petitioners shall not amend their petition, as provided herein, or the issue of fact, except the issue denying that the construction of such ditch or drain tends to the benefit or advantage of the public, or as to whether it is necessary to use the defendant's or either of defendants' land in the construction of such ditch or drain decided in favor of said defendant or defendants, all proceedings on said petition shall be dismissed. And in case the issue shall be found for the petitioners or there shall be no appearance by such defendants, the judge shall make an order that the clerk draw a jury, which order shall fix the time and place at which such jury is required to appear.

SECTION 11. The clerk shall immediately, on receipt of such order, proceed to select a jury, by writing the names of forty-eight disinterested freeholders of the county, on forty-eight separate slips of paper and in the presence of two disinterested freeholders, in the same manner provided by law for drawing jurors for the circuit court, draw the names of twelve such persons to act as jurors, and the clerk shall thereupon issue a venire directed to the sheriff of the county, commanding him to summon the twelve persons so selected as jurors, to appear at the time and place named in such order.

SECTION 12. The petitioner or petitioners and every party to the proceedings interested in ascertaining the amount of compensation, shall have the same right of challenge of jurors, as in other cases in the courts of this state. If the panel be not filled by reason of non-attendance or being exhausted by challenge, the judge hearing such petition shall designate by name the necessary number of persons of proper qualifications, and the clerk shall issue another venire, returnable instant, until the jury be filed.

**Oath of juror.** SECTION 13. The following oath shall be administered to the jury, when so selected, by the judge or clerk of said court: "You, and each of you, do solemnly swear (or affirm) that you will well and truly ascertain and report just compensation to the owners and each owner of the property sought to be used by petitioner in this case, and to each person interested therein, according to the facts in the case as the same may appear by the evidence and the law given to you by this court, and that you will truly report the same: so help you God."

**Jury to examine premises.** SECTION 14. The jury shall go upon the land sought to be used, in person, and examine the same, and after hearing the evidence in the case that may be offered, make its report in writing to the court, the amount of damages to be caused to the land separately, giving a brief description of each piece by reason of using the same for the purpose sought in the petition, and the just compensation to be allowed the owners by reason of using the same: *provided*, that in no case shall the size or capacity of such ditch or drain be greater than what is actually necessary to carry away the water to be conveyed through the same. Said report shall be subject to amendment by the jury, under the direction of the court, as the case may be, so as to clearly set forth and show the findings of the jury therein.

**In case defendant denies the necessity of using land.** SECTION 15. That in case the owner of any land, made defendant in said proceeding, shall in his answer, deny that it is necessary to use such land in the construction of said ditch or drain, or that the construction thereof will not tend to the benefit or advantage to the public, the court shall direct such issue to be tried by the jury aforesaid and shall make all needful rules for the trial of the same, and the jury in its report shall report its findings thereon: that it finds such issue or issues for the defendant or against the defendant.

**Duty of judge.** SECTION 16. The judge or court shall upon such report, proceed to adjudge and make such order as to right and justice shall pertain, ordering the petitioner or petitioners or persons authorized by law, to enter upon said property and the use of the same, upon the petitioner or petitioners or other persons interested, paying the full compensation as ascertained, as aforesaid, if any is found by the jury, and such order, with evidence of payment, shall constitute complete justification for the taking of such property for the purposes aforesaid.

**Owners to construct drain or** SECTION 17. The court may, in case said jury shall

have reported any portion of such ditch or drain to be constructed by the owner or owners, adjudge and enforce such report by the judgment of the court, which judgment may be in the alternative that such owner or owners construct the same in the time fixed, or pay the cost of constructing the same, as in such report set forth: *provided*, no owner shall be required to construct any ditch or drain, or pay anything for the same, across land not actually occupied by him. pay for construction.

SECTION 18. In all cases in either the circuit or county courts, or before the circuit or county judge, an appeal may be taken from the county court to the circuit court, and from the circuit court to the supreme court, as in other cases of appeals from said court, as is now provided for by law. Appeal.

SECTION 19. Compensation so adjudged may in all cases to be paid into the court before whom the proceedings were had, and the clerk shall on demand pay the same to the party entitled thereto, taking a receipt for the same, or payment may be made directly to the party entitled to receive the same by the petitioner or petitioners or persons compelled to pay the same. Compensation to be paid to judge.

SECTION 20. The court or judge shall cause the verdict of the jury and the proceedings of the court to be entered upon the records of said court. Verdict to be of record.

SECTION 21. The person or persons constructing such drain or ditch may go upon the lands of the owners with their servants, teams, tools and instruments for the purpose of constructing the same, and may forever thereafter go upon said lands as aforesaid for the purpose of repairing and keeping such ditch or drain in order, doing no more damage than the necessity of the occasion shall require. Constructing and repairing drain.

SECTION 22. This act shall take effect and be in force from and after its passage and publication.

Approved March 15, 1880.

[No. 76, S.]

[Published March 27, 1880.]

### CHAPTER 284.

AN ACT to provide for the incorporation of religious societies in connection with Congregational churches.

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

SECTION 1. The male members over twenty-one years of age, not less than three in number, of any Congregational church known as such in both govern- Organization of societies.