

§ 156-43. Incorporation of canal already constructed; commissioners; reports.

Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the names of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such bylaws and regulations as such corporation shall make and declare. But those who fail to avail themselves of the benefit of this Subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on 10 days' notice to each owner of the land, under such rules and regulations as the bylaws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered.

Upon the return date of the summons or on the hearing by the clerk as provided in this section, the clerk of the court may appoint three persons as commissioners, who having been duly sworn shall examine the premises and inquire and report:

- (1) The route and plan of the canal, including the breadth, depth and slope as nearly as they can be calculated, with all other particulars necessary for calculating the cost of enlarging and improving said canal.
- (2) The probable cost of the improvement and enlargement of said canal.
- (3) The proportion which each proprietor or corporator ought in equity and justice to pay toward the enlargement, improvement and permanent support and upkeep of said canal.
- (4) With their report they shall return a map explaining as accurately as may be, the various matters required and necessary in aid or explanation of their report.
- (5) The said report shall be heard and determined as other reports in special proceedings, and if approved by the clerk, such proprietors shall become a body corporate or a corporation.
- (6) A meeting of the corporators may be called by the clerk of court or by any corporator or proprietor who is a petitioner in the proceeding, and at such meeting a president, vice-president, secretary and treasurer shall be elected from the proprietors or corporators who are petitioners; and also a board of directors shall be elected from the proprietors or corporators who are petitioners in the proceeding.
- (7) The board of directors shall assess the sum or amount which shall be paid by each proprietor or corporator in conformity and compliance with the report of the commissioners on which the corporation was based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which said proceeding was pending and instituted, the same shall be passed upon by the clerk of court, and when approved by the clerk, said assessments shall

become judgments against the several proprietors or corporators so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also, if they deem it proper, fix and prescribe the time, manner and mode of payment. (1889, c. 380; 1901, c. 670; Rev., s. 4008; C.S., s. 5301; 1939, c. 180, s. 2.)