DESIRABLE AND NECESSARY CHANGES IN DRAINAGE LAWS.

(Discussion of the paper presented by Mr. B. M. Vaughan.
L. S. Keeley, Mayville, Wisconsin.

I am in substantial accord with all that Mr. Vaughan has said except that relating to paragraph (d) of subsection (4) of section 89.37 under his proposal, I do not think that any sales of land could be made under that statute. When a mortgage is foreclosed, all subsequent mortgages are frozen out unless they protect themselves at the sale. From an equitable standpoint, I think that the words in question should stand and from a practicable standpoint I think them to be necessary. People will not buy land unless they can get a clear title to it.

It may be well to consider whether section 88.05 should be amended so as to require that the petition shall set forth more clearly whether a complete drainage system is called for or merely outlet drains. The Wisconsin Supreme Court in the case of the Green Bay and Western Railway Company against Brown County Farm Drainage No. 3 decided that supplemental drains must be provided for and installed as well as the outlet drains; that without them the system would be incomplete, inadequate, and therefore not feasible.

In its consideration of the case the court lost sight entirely of the provision of the statutes relating to the petitions for drainage. Section 88.05, subsection 1, (c), provides that the petition shall set forth: "A map or sketch of the area sought to be drained with the proposed drains shown thereon". Now, the drains shown thereon clearly determine whether an outlet drain or a complete system is intended. Again, section 88.06, subsection 1, among other things, requires that the board "shall consider whether the drains as proposed in the petition are satisfactory; and sub-
section (6), (f), requires the board to report to the court "whether the drains proposed in the petition will best accomplish the drainage prayed for and the area that should be drained. If the proposed drains are not satisfactory the board shall recommend other drains."

The foregoing shows beyond question to my mind that the drainage boards and the courts must be governed by the drains proposed in the petition and the drainage prayed for by the petitioners. They may ask for complete drainage of their lands or for mere outlet drains as they may see fit. In cases where the area to be drained is over 200 acres, subsection (7) requires the board to file, prior to the hearing in its report, a report from the state drainage engineers on (a) the location, design, feasibility and cost of the proposed outlet drains, (b) a general description of the additional drainage necessary to reclaim the land fully for agricultural purposes and the probable cost of the same. Section 33.07, subsection 1, provides that if on the hearing on the report of the board the court shall find (a) that the petition or petitions have sufficient signers, (b) that the lands described in the petition or petitions together with any additional lands recommended by the board for drainage will be improved by the proposed work, (c) that the public health or public welfare will be promoted thereby, and (d) that the benefits from such proposed work will exceed the cost of construction, the court shall make an order organizing such "drainage" and direct the board to proceed with all convenient speed.

All italicized words in this paper were made so by the writer. Subsection (7) above quoted, strongly intimates that the legislative intent was that the "proposed drains" would be outlet drains; and
the report on necessary "additional drainage" by the state engineer was intended to be purely informational to the farmers, the board, and the court, in cases where large areas are involved. The statutory requirements for organization are the same whether the area be large or small so far as the drains are concerned. Section 88.08 quoted by the Supreme Court to uphold its decision, applies only after a "drainage" is organized, and it applies alike to all installations whether large or small. However, if the decision of the court is a correct interpretation of the law, the law should be amended.

It has been suggested to me that a provision should be inserted in the farm drainage law requiring the papers in all drainage proceedings under this law to be filed with the clerk of the circuit court. Under the present system papers become mislaid, or lost, in transfer from one court to the other. The abstract officials complain against having to go to the county court to look up matters other than those relating to the probate of estates.

Section 85.25 should be so modified that all appeals on matters relating to drainage shall go directly to the Supreme Court instead of to the circuit court. The change would result in a great saving of time, money, and trouble.

Section 88.19 is the only one which makes any reference to the matter of repairs. It is sufficient for drains that have been constructed under the farm drainage law, but not for drains constructed prior to this law. Section 88.30 indicates the procedure to be taken on such drains which do not come under the jurisdiction of the law now in force, but the procedure on petitions for repairing, deepening, and widening ditches "heretofore built in
attempted appliance with statutory enactment" over which farm drainage boards now have jurisdiction, is not provided for. In this regard, the law should be made more definite and specific.

Editor's Note: The following bills have been introduced into the legislature:

(1) Bill 5 S by Senator Chase, to repeal the drainage district law. It sought to protect existing districts but there was some doubt as to the breadth of this provision. Furthermore, it did not fill the gaps that would be left in the farm drainage law if the interlocking sections are repealed. It passed the senate but was killed by the assembly committee on state affairs which recommended a substitute amendment that will probably pass both houses. It will prevent new districts, but will keep the law in full force and effect as regards old districts.

(2) Bill 351 S by the Committee on Education and Public Welfare, seeking to give greater privileges in taking water from a drainage ditch for irrigation or cranberry purposes.

(3) Joint Resolution 37A by Mr. Price, seeking to authorize the attorney general to investigate and prosecute claims against those who were parties to the partial drainage of the Horicon Marsh. This bill was laid on the table by the Assembly.

(4) 101 A by Mr. Price, requiring the tax commission to prescribe a system of accounting for drainage districts and to audit the books of any district.

(5) 219 A by Mr. Hanson, amending the Farm Drainage Law as to the meaning of "adequate drainage" and "duties of the board" and filling the gap that would have been made by the repeal of the district law.

(6) 308 A by Mr. Royce seeking to repeal the section now requiring the approval of bonds by the four state departments. The change will not affect drainage very much because no new districts have gotten into court for the last two years. The smaller drainage projects are the ones to be encouraged now. Of the following projects, none but farm drainages have been organized in the last two years, and all of them are in the well settled parts of Wisconsin.

Applications from Counties since 1919

Farm Drainages: Adams 4; Barron 2; Brown 4; Burnett 2; Calumet 1; Chippewa 7; Clark 1; Columbia 14; Dane 10; Dodge 7; Fond du Lac 1; Jefferson 6; Juneau 4; Kenosha 2; La Crosse 1; Manitowoc 1; Marquette 2; Milwaukee 1; Oconto 1; Outagamie 5; Ozaukee 5; Racine 1; Rock 2; Rusk 4; Sheboygan 7; Walworth 1; Washington 1; Waukesha 3; Waupaca 8; Waushara 1; Winnebago 2; Wood 3; Total 118.

Drainage Districts: Crawford 1; Dane 4; Dodge 1; Door 1; Jackson 1 (Under old law); Oconto 1; Racine 1; Total 10.