

CHAPTER XXVII.

An Act to provide for the Draining of Swamp, Bog, Meadow and other Lands. March 1, 1866.

Section 1. Provides for draining swamp lands, &c.

2. Justice to issue summons for owner of swamp lands to appear before said justice. Personal service required of owner if resident; if not upon occupant; if no owner can be found publication of summons for three weeks in newspaper to be deemed sufficient.
3. Gives justice power, for sufficient reason, to dismiss application for draining, or adjourn hearing.
4. A jury to be impanelled to try the case on the day of hearing.
5. The constable or sheriff to summon jury in same manner as in civil action before a justice of peace.
6. Jury to determine on oath what benefits or damages may accrue to property from drainages.
7. Persons applying to have ditches opened to supply jury with a map of the land; jury to personally examine premises.
8. Jury to certify in writing as to what benefit or damage may accrue to land.
9. Appeals allowed to district court of county against decision of jury, by either party, within certain time.
10. On payment of damages and costs work may be proceeded with by persons making application.
11. Persons making application, if granted, their heirs and successors to have power for ever after to enter on land to make necessary drainage.
12. Penalty for damming up or otherwise injuring said drains or ditches.
13. Map, certificates and other documents to be filed in Register of Deeds' office.
14. Enables persons to cut canals for increasing water power.
15. When act to take effect; repeals all acts inconsistent with this act.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Any person owning or possessing swamp, bog, meadow or other low land lying in any county within this State, who shall be desirous to drain such land, and who shall deem it necessary, in order to do it, that a ditch or ditches shall be opened through lands belonging to other persons, in case the owner of any such lands shall refuse to permit the opening of any such ditch or ditches through the same, may apply to any

Application to be made to Justice. Justice to issue summons,

justice of the peace residing in the county where such lands shall lie, for such summons as is herein specified.

Justice to issue summons.

SEC. 2. The justice to whom such application shall be made, shall thereupon issue a summons, directed to the sheriff or any constable of said county, requiring him to summon the owner of the land to appear before such justice at the time named in the summons, not less than six nor more than fifteen days from the date thereof, to answer to such application, defining the same, and designating the land, through which it is proposed to open such ditch or ditches. The summons shall be personally served upon the owner of the land, if he is a resident of the county, and upon the occupant of the land if the owner is not a resident of the county, and returned like an ordinary summons; but if on the return of the summons it shall appear that there is no owner or occupant of the land residing in the county, the justice shall adjourn the case for not less than three nor more than six weeks, endorsing upon the summons his order of adjournment, and order the publication of the summons and his order of adjournment for three successive weeks, in a newspaper published in such county, if there be a newspaper in such county, or, if there be no such newspaper in the county, then to order the publication of the summons and the order of adjournment, by setting up copies thereof for at least three weeks, at three of the most public places in the county, and such publication shall be considered as a sufficient service of the summons.

Personal service required on resident.

How service to be made on non-residents.

Justice may dismiss.

SEC. 3. At the time specified in the summons therefor or at the time adjourned, as the case may be, the parties may appear before the justice, and the justice may, for any sufficient reason, dismiss the application, and he may adjourn the same for any cause shown satisfactory to him, not exceeding three months, or on his motion, not exceeding one week.

Jury to be summoned within certain time.

SEC. 4. On the appearance day, or in case the application is adjourned, on the day to which it is adjourned, a jury of six men, qualified to serve as jurors in a justices' court, and not interested in the premises, shall be selected and summoned in the same manner as a jury in a civil case before a justice of the peace. The jurors shall be required to meet on the premises

at a time specified in the venire, not more than twenty days from the date thereof.

SEC. 5. The constable or sheriff to whom such venire shall be delivered, shall execute the same by summoning each juror in the same manner and with the like authority as upon venire issued in a civil action before a justice of the peace, and shall in like manner make return thereof. Jurors summoned in same manner as in civil action.

SEC. 6. The justice shall attend at the time and place specified in the venire, and if the six jurors shall then and there appear, he shall administer to each of them an oath or affirmation well and truly to examine and certify in regard to the benefits or damages which will result from the opening of said ditch or ditches; vacancies in the jury may be filled by talesmen, as in civil cases before a justice of the peace. Jurors to be on oath.

SEC. 7. The person applying to have such ditch or ditches opened, shall then deliver to the jury a map of the land through which the same are to be opened, on which map the plan, length, width and depth of such ditch or ditches shall be particularly designated. The jury shall personally examine the premises and hear any reason that may be offered in regard to the questions submitted to them; and they may, if they think proper, vary the plan or dimensions of any ditch so proposed to be opened, but in such case they shall designate on the map the alterations made by them. Applicant to deliver to jury a map.

SEC. 8. If, after taking all the circumstances into consideration, the jury shall be satisfied that the opening of such ditch or ditches is necessary or advantageous, they shall so certify in writing, and if satisfied they shall further certify in writing the amount of damages which in their opinion will be just compensation to the owner of the land for the opening of such ditch or ditches through his land, and such certificate shall be signed by all the jurors and delivered to the justice forthwith. Jury to be satisfied of necessity.

SEC. 9. Either party may appeal from the decision of the jury to the district court of the county in which the premises are situated, by filing with the justice, within ten days after the jury shall have delivered to him their decision, a recognizance of the appellant with sureties approved by the justice, in a sum double the award of the jury and not less than one hundred Appeal from decision of jury to District Court.

Proceedings on appeal to be same as appeal in civil action.

dollars, conditioned that the appellant will abide the decision of the district court, and pay all costs and damages assessed or awarded against him therein, or if the appeal shall be dismissed or discontinued, that he will pay all sums for which he would have been liable if no appeal had been taken, and the interest thereon with cost of appeal. The proceedings of the district court on the appeal shall be the same as an appeal in a civil action from a justice of the peace, as nearly as practicable, and costs shall be awarded for or against either party in the same manner as upon an appeal in a civil action.

If no appeal taken work may be proceeded with

SEC. 10. Upon payment or tendering of the damages assessed by the jury, if no appeal shall be taken, or awarded in the district court on appeal, as the case may be, and of the costs of such assessment, or if no damages shall be found, upon payment or tendering of the costs of the proceedings, it shall be lawful for the person applying for such summons to enter with his servants, team, carriage and other necessary implements upon such lands, and then and there to cut and open such ditch or ditches as were designated on the said map, according to the plans and dimensions herein specified and adopted by the jury ordered in the district court, not deviating materially from such plans and dimensions.

Applicant and his heirs to have right of entry.

SEC. 11. After such ditch or ditches shall have been opened, it shall be lawful for the said applicant, his heirs and assigns, forever thereafter, from time to time, as it becomes necessary, to enter upon the lands through which such ditches have been opened, for the purpose of clearing out and scouring the same, and then and there to clear and scour such ditch or ditches in such manner as to preserve the original length, depth and width of the same.

Penalty for damaging.

SEC. 12. Any person who shall dam up, obstruct, or in any way injure any ditch or ditches so opened, shall be liable to pay to the person owning or possessing the swamp, bog, meadow or other low land, for the draining of which such ditch or ditches shall have been opened, double the damages which shall be assessed by the jury for such injury, and shall further be deemed to have committed a misdemeanor, and shall upon conviction thereof be punished by imprison-

ment for not more than three months, or by fine of not more than one hundred dollars.

SEC. 13. The justice before whom any proceedings shall be had under this act, shall cause the map delivered by the applicant and the certificate and inquisitions of the jury, which he shall certify to have been taken before him, to be filed in the register's office of the county in which the premises shall be situated, to be kept in said office as a record of the proceedings between the parties; or if an appeal shall be taken, the applicant shall cause such map and the certificate by the clerk of the district court of the decision therein to be filed in like manner.

Justice to file map, &c., in Register's office.

SEC. 14. Any person desiring to construct ditches or canals from any lake, for the purpose of creating or increasing any water power, may do so under this act, and shall be governed by its provisions.

Gives equal rights to other parties.

SEC. 15. This act shall take effect and be in force from and after its passage, and all acts or parts of acts inconsistent with this act are hereby repealed.

Approved March 1, 1866.

CHAPTER XXVIII.

An Act Providing for the Payment of Bounties for the Destruction of Wolves.

February 21, 1866

SECTION 1. Awards bounty for killing wolves.

2. Provides the way in which persons claiming bounty may obtain it.

3. Clerks of District Courts to give order on State Treasurer for amount claimed.

4. Clerk to keep record of all orders given by him, with name of person receiving it; exhibit of all orders to be forwarded to State Auditor.

5. Makes it the duty of State Treasurer to perform certain duties on receiving orders and State Auditor to file the same.

6. Clerk of court entitled to receive fees for services.

7. When act to take effect.