

Time of meeting of county commissioners of Yellow Medicine county.

by inserting the word "Yellow Medicine" in the fourth (4th) line of said section after the word 'Sibley' therein so as to change the July meeting of said board of county commissioners from the fourth Monday of July to the second Monday of July in each year.

When act to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 7, 1887.

CHAPTER 97.

[S. F. No. 420.]

AN ACT TO ENABLE THE OWNERS OF LANDS TO DRAIN AND RECLAIM THEM WHEN THE SAME CANNOT BE DONE WITHOUT AFFECTING THE LANDS OF OTHERS; PRESCRIBING THE POWERS AND DUTIES OF COUNTY COMMISSIONERS AND OTHER OFFICERS IN THE PREMISES, AND PROVIDING FOR THE REPAIR AND ENLARGEMENT OF SUCH DRAINS, AND REPEALING CERTAIN ACTS THEREIN SPECIFIED, AND DECLARING AN EMERGENCY.

148-97
108 . 91
97
162 . . . 93
40-M . 237
87 C 97
105-M - 26
116-NW 1028
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05 230 \$18
07 367 \$ 3
09 469 \$ 7
117-M - 54
134-NW 226
Supp. 265101

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

Co. Commissioners may cause ditches, etc., to be constructed.

SECTION 1. That the board of county commissioners of any county, shall have power, at any session, when the same shall be conducive to the public health, convenience or welfare, or when the same will be of public benefit or utility, to cause to be constructed, as hereinafter provided, any ditch, drain or water course within said county.

Petition to be filed with county auditor

SEC. 2. That before the board of commissioners shall establish any ditch, drain or water course, there shall be filed with the auditor of such county a petition signed by one (1) or more of the land owners whose lands will be liable to be affected by, or assessed for the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus; and such petitioner or petitioners shall give a bond with good and sufficient freehold sureties, payable to the county, to be approved by the auditor, conditioned to pay all expense, in case the board of Commissioners shall fail to establish said proposed ditch, drain or water course; and said petitioner or petitioners shall file proof satisfactory to the board of com-

Petitioners shall give bond.

missioners, to whom such petition has been presented, that at least thirty (30) days notice thereof has been given before the session of said board, at which such petition is to be heard, by posting up notices in three (3) of the most public places in each of the towns through which such ditch is proposed to be located and established. And when the said board shall be satisfied that all of the foregoing conditions have been complied with, they shall either at such session of said board or at such other time as may be appointed by them (not later than thirty (30) days thereafter) proceed to hear and determine such petition; and if such board shall determine that the construction of such ditch will be of public benefit or utility, or conducing to the public health, convenience or welfare, they shall accept such petition, and appoint three (3) resident freeholders of the county not interested in the construction of the proposed work, and not of kin to any parties interested therein, as viewers, to meet at a time and place specified by said board, preparatory to commencing their duties as hereinafter specified.

Viewers to be appointed.

SEC. 3. And it shall be the duty of the auditor thereupon to issue to said viewers a certified copy of the petition and order of the board, who shall proceed at the time set in said order, with a surveyor, who shall be a civil engineer, and shall make an accurate survey of the line of said ditch, drain or water course, from its source to its outlet; and they shall cause stakes or monuments to be set along said line, numbered progressively down stream, at each one hundred (100) feet; and they shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain or water course between each of the one hundred (100) foot stakes, and the estimated cost per cubic yard for the removal thereof, and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of said ditch, drain or water course, and an estimate of the total cost of laying out, establishing and construction of the whole work. And they shall, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each one hundred (100) foot stake or monument of said ditch, drain or water course; and they shall specify the time and manner in which the work shall be done; and they shall have power, when they find it necessary, to provide for running said ditch under ground, through drain tiles or other materials, as they deem best, by specifying the size and kind of tile or other material to be used in such underground work, and shall estimate the cost of the same as a part of the total cost of the work. And they shall file with their report an account of the names of the laborers and the time each was employed by them, and every other item of expense by them incurred in

Auditor to issue certified copy of petition to viewers.

Survey to be made and stakes set.

Viewers to file report with auditor.

and about said work, and shall file their reports with the auditor, after having subscribed and sworn to the same.

Tabular form
of benefits
and damages.

SEC. 4. And the said viewers shall, in tabular form, give the names of the owners of each tract of land to be benefited or damaged, the description of each tract benefited or damaged (said names of owners and descriptions to be the same as appears on the county tax duplicates of said county) and the total number of acres in each of said tracts, the estimated number of acres in each of said tracts of land to be benefited or damaged (as the case may be) and the amount that each tract of land will be benefited or damaged by the construction of said work. When any ditch established under this act drains, either in whole or in part, any public or corporate road, or railroad, or benefits any of such roads, so that the road-bed or traveled track of any such road will be made better by the construction of such ditch, the viewers shall estimate the benefits arising therefrom to such roads, road-beds or railroads, and report said benefits (names of roads, etc., and amounts of benefit to each) as a part of their tabular statement provided for in this section; and they shall also report the total estimated benefits, and also, whether or not, in their opinion, the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable for any reason, stating the reason why it should not be constructed.

Lands, public
or corporate
roads and rail-
roads to be
assessed.

SEC. 5. All lands benefited by a public ditch, drain or water course, and all public or corporate roads, or railroads so benefited in whole or in part, shall be assessed in proportion to the benefits, for the construction thereof, whether said ditch passes through said lands or along or near the line of such roads or railroads, or not, and the viewers, in estimating the benefits to lands, roads or railroads not traversed by said ditch, shall not consider what benefits such lands, roads or railroads will receive after some other ditch or ditches shall be constructed, but only the benefits that will be received by reason of the construction of the public ditch, as it affords an outlet for the drainage of such lands, roads or railroads.

Line of ditch
may be varied.

SEC. 6. In locating a public ditch, drain or water course, viewers may vary from the line described in the petition as they deem best, provided they commence the ditch at or near the point described in the petition, and follow down the line therein described as near as practicable. In all cases in which the route proposed is along highways already established, the viewers shall locate the ditch at a sufficient distance from the center of such highway as to admit of a good road along the central line thereof; the earth taken from the ditch shall be so placed upon

When ditch is
along highways
how to be
located.

the roadway as to form a turnpike, and no nearer to the margin thereof than two (2) feet; but in locating a drain as above, the viewers shall not materially depart from the terminal points described in said petition; *provided* that when there is not sufficient fall, in length in the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough not exceeding one-half ($\frac{1}{2}$) mile, to obtain a sufficient fall and outlet. And when it will not be detrimental to the usefulness of the whole work they shall, as far as practicable, locate the ditch on division lines between lands owned by different persons; and they shall, as far as practicable, avoid laying the same diagonally across the lands, but they must not sacrifice the general utility of the ditch to avoid diagonal lines. And all persons whose lands may be affected by said ditch, may appear before said viewers (and before the board of county commissioners at which a hearing may be had on such matter) and fully express their opinions upon all matters pertaining thereto.

Shall avoid diagonal lines.

SEC. 7. Said viewers may, after having met at the time and place specified in the order issued to them by the auditor, proceed immediately to perform their said duties, or adjourn from time to time, as best suits their convenience, and file their report with the auditor at least four (4) weeks before the next regular or special session of said board of commissioners, held after the lapse of ninety (90) days from the date of the appointment of viewers; *provided* the water be high, the weather inclement, or by reason of an unavoidable accident, they shall not be compelled or required to file their report until at least four (4) weeks before the second (2d) session of said board, to be held as above stated; but their report must then state the reason for such postponement.

Viewers may adjourn from day to day.

When report must be filed.

SEC. 8. It shall be the duty of the auditor, on such report being filed, to cause a notice to be given by publication for three (3) successive weeks in a newspaper printed and published in said county, and by posting printed copies thereof in (3) public places in each township where the proposed work is located, and one at the door of the court house in said county, of the pendency of said petition, and of the time set for the hearing thereof; which notice shall briefly state where said ditch commences at its source, through whose land it passes, and where it terminates at the outlet, together with the names of the owners of the lands that will be affected thereby, as the same appears in the report of the reviewers; and at the same time the auditor shall mail a printed copy of said notice to all non-residents of the county interested in such proposed work, whose address is known to him or can be ascertained by inquiry at the county treasurer's office.

Auditor to give notice of pendency of petition and time set for hearing.

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Hearing to be before board of commissioners.

SEC. 9. Said board of commissioners, at the time set for the hearing of said petition (which said hearing may be adjourned from time to time) shall proceed to hear the same, and if they find the viewers' report is made in accordance with the provisions of this act, and they find the proposed ditch to be of public utility, or conducive to public health, or of public benefit or convenience, and if they find from the face of the report, and the evidence before them, that the estimated benefits to be derived from the construction of said work is greater than its total cost including damages awarded, and that such benefits exceed such costs and damages in a sufficient amount to warrant the construction thereof, they may, in their discretion, establish the same as specified in said viewers' report.

Damages to be paid out of county treasury.

SEC. 10. And when damages are awarded to any person or persons or corporation, as provided by this act, the board of commissioners shall order the same to be paid out of the county treasury, on warrants to be drawn and attested by the auditor and signed by their chairman; said warrants to be issued to the person or persons or corporations entitled thereto, and to be dated and become due and payable immediately after the letting of the contracts by the auditor, as hereinafter provided. And in case the proceedings had in relation to the laying out or establishing such ditch shall be declared void, and such proceeding set aside and vacated by the judgment of any court, prior to the letting of the contract by said auditor, all such warrants shall thereupon become null and void, and shall be returned to the auditor for cancellation.

Appeal may be made.

SEC. 11. Any person or corporation aggrieved thereby may appeal from any final order or judgment of the board of commissioners made in the proceedings, and entered upon their records, determining either of the following matters, viz:

Points upon which appeal may be taken.

First. Whether said ditch will be conducive to public health, convenience or welfare.

Second. Whether the route thereof is practicable.

Third. Whether the benefit to be derived from the construction of said ditch is greater than the total cost thereof including damages awarded.

Fourth. The amount of damages allowed to any person or persons or corporation.

Fifth. Whether the estimated benefits to each tract of land and to each public or corporate road or railroad are greater than the actual benefits to be derived therefrom.

Notice of appeal to be filed with county auditor.

And the appellant shall file with the county auditor a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond, with at least two (2) freehold sureties to be approved by the auditor, conditioned that said appellant will duly

prosecute such appeal and pay all costs that may be adjudged against him in the district court; *provided*, that such notice of appeal and bond appeal shall be filed within thirty (30) days after such final order or judgment of the board of commissioners is made; and after the lapse of thirty (30) days no appeal can be taken. And if an appeal be taken, the auditor shall within twenty (20) days after the notice of appeal and appeal bond is filed; make a complete transcript of the proceedings had before the board of commissioners, and certify the same, together with all the papers filed in his office pertaining to such proposed work, including the notice of appeal and the appeal bond, to the clerk of the district court.

SEC. 12. If more than one (1) party appeal the judge of the district court may, in his discretion, order the cases to be consolidated and tried together; and in such case, the rights of each party shall be separately determined by the jury in its verdict. And in all cases of appeal, *provided* the action of the commissioners be sustained, in whole or in part, the location and establishment of such ditch shall be ordered by said court, and the court shall in such order fix the time when the auditor shall give notice for the letting of the contract for the construction of the proposed work.

SEC. 13. If no appeal be taken within the time limited the auditor shall sell the jobs of digging and constructing the entire work, in linear sections of one hundred (100) feet each, each of said sections to be known and numbered by the stake or monument set by the viewers at the foot of each said section, as shown on the viewers' report, commencing at the one including the outlet, and thence in succession up stream to the one including the source. And the auditor shall contract in the name of the county with the party to whom a section or sections is sold, requiring him to construct the same in the time and manner set forth in the report of the viewers, on which the ditch is established, and shall take from him a bond with two (2) freehold sureties, payable to the county, for not less than double the amount for which the same is sold, to be by said auditor approved, conditioned that said party will faithfully perform and fulfill his contract and pay all damages which may accrue by reason of the failure to complete the work within the time required in the contract therefor. And the auditor shall give notice of the letting of such contracts by publication for three (3) successive weeks in the official paper of the county wherein such work is located, of the time when and the place where such contracts will be let to the lowest responsible bidder or bidders; and no bid shall be entertained which exceeds more than thirty (30) per cent. over and above the estimated cost of the construction of the part of said work covered by said bid; and

Cases may be consolidated in case more than one party appeals.

Auditor shall sell the job.

Auditor shall contract in the name of the county.

Notice to be given of letting of contract by publication.

said auditor may adjourn such letting from time to time until the whole work shall be taken.

Bond and contract.

SEC. 14. The bond and contract shall constitute but one (1) paper, and shall be a printed form, with proper blanks left for filling out the same in writing, and the description of the work to be done so mentioned in the contract, shall be by the number of the section or sections as provided for in section thirteen (13); the work to be done and completed as provided for in the report of the viewers.

Job not completed in time shall be resold by auditor.

SEC. 15. A job not completed within the time fixed in the contract and bond, shall be resold by the auditor to the lowest responsible bidder, but shall not be sold for a sum exceeding fifty (50) per cent. of the estimated value of such work, nor a second time to the same party. A contract and bond shall be entered into, as hereinbefore provided; but the auditor may, for good cause shown, give further time to any contractor, not exceeding one (1) year. The auditor shall fix a time for the completion of the work resold, not exceeding six (6) months from the date of the bond.

County surveyor to inspect job when completed.

SEC. 16. It shall be the duty of the county surveyor, on being notified by any contractor that his job is completed, to inspect the same, and if he finds it completed according to the specifications of the viewers, he shall accept it and give to the contractor a certificate of acceptance, stating that said section or sections (by number) are completed according to the specifications of said ditch, as set forth in the report of the viewers, and upon the presentation and surrender of said certificate of acceptance by said contractor to the auditor, the said auditor shall draw a warrant on the county treasurer of his county for the full amount found to be due on said contract; and said order shall be paid out of a general ditch fund to be provided by the county board of commissioners, as hereinafter specified. And the said order shall become due and payable out of said fund at once, and if there [shall] be no cash in said fund to pay said order when the same is presented, the county treasurer shall endorse on said order: "Not paid for want of funds," and date and sign such endorsement, and the amount of said order shall draw interest at the rate of six (6) per cent. per annum until called in by the treasurer or auditor of said county, and paid. The fees of the county surveyor under this section shall be paid him by such contractor.

Warrants for work—how paid.

Commissioners may issue bonds to defray expenses of ditches, etc.

SEC. 17. The board of county commissioners of each county wherein such ditch or ditches are proposed to be located and established, are hereby authorized to issue the bonds of said county in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in locating, constructing and establishing the

same, said word, "expenses" to be construed to mean and to cover every item of cost of said ditch, from its inception to its completion, and the said counties to be reimbursed as hereinafter provided. Said bonds shall bear interest at a rate not exceeding six (6) per cent. and shall be payable on or before ten (10) years, at the option of said board of commissioners; and the said commissioners shall provide for the payment of annual interest on said bonds. The bonds, issued under the provisions of this act shall be signed by the chairman of the board of county commissioners of said county, and countersigned by the county auditor, who shall keep a record of the bonds issued under the provisions of this act. The said board shall have the power to negotiate said bonds as they shall deem best for the interest of said county; *provided*, that they shall not negotiate the same at less than par value. All such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this act. The county commissioners are also hereby authorized and empowered to transfer from the general revenue fund of the county to such drainage fund any surplus moneys that may be in such revenue fund that can be properly used for the purposes of this act.

Time bonds to run and rate. per cent.

May transfer funds.

SEC. 18. Within thirty (30) days after the letting of the contracts for the construction of any ditch, drain or water course, as herein provided, the county auditor shall make in tabular form a list and statement showing the following facts, and in the order named, viz:

Tabular form to be made by auditor.

First. The names of the owners of all lands, and the names of all public or corporate roads or railroads benefited by the construction of such proposed work.

Facts to be shown in form.

Second. The description of said lands, as the same appears in the report of the viewers, together with the total number of acres in each tract according to the assessment rolls or tax lists of the county.

Third. The estimated number of acres benefited in each piece or parcel of said lands, as shown by the viewers' report.

Fourth. The estimated amount of benefits to each of said tracts of land, and the estimated benefits to each public or corporate road or railroad, as the same appears in the viewers' report, or as changed by the jury in case of appeal, if any changes are made by such jury.

Fifth. The amount that each of said tracts of land, and that each of said corporate roads or railroads, so benefited, will be liable for and must pay for the location, construction and establishment of such ditch or ditches so benefiting them; which said amount, shall be determined by the county auditor of said county as follows: The said auditor shall make a full statement, showing the total cost of

each ditch or ditches under each separate petition for said ditch or ditches, and each petition, and each ditch located, constructed and established, shall be known and designated by a number to be given to it by the county auditor. Such statement shall be headed as follows:

Form of
statement
showing cost
of ditch.

STATEMENT SHOWING COST OF DITCH NO. —

TO WHOM PAID.	FOR WHAT PAID.	AMOUNT PAID.

Costs and
benefits.

And said statement shall be summed up, showing in figures the total cost of each ditch or ditches, and shall be attached to and form a part of the statements herein provided for. The total cost shall then be divided by the total estimated benefits, as provided for in subdivision five (5) of this section, for the rate of cost on each one (1) dollar of benefits, the auditor not to be obliged to carry out and use a smaller fraction than one (1) tenth of one (1) mill. The amount of estimated benefits on each tract of land, and on each public or corporate road or railroads (as hereinbefore provided for) shall be multiplied by said rate, and the result set down in the proper column opposite each of said tracts of lands, public or corporate roads or railroads; and such result so obtained shall be the amount that each of said tracts of lands, public or corporate roads or railroads will be liable to pay for such improvement.

Statement to
be recorded in
office of regis-
ter of deeds,
and assess-
ments made a
lien upon land.

SEC. 19. Said statement, as provided for in section eighteen (18) of this act, having been completed by the auditor, he shall sign and acknowledge the same before some officer authorized to take acknowledgments; which said signature shall be witnessed by two persons. The said statement shall then be recorded by the register of deeds, and posted upon the abstract books in his office, if any such books are there, of the proper county, and the amount that each tract of land and the interest thereon, as hereinafter provided, public or corporate road or railroad will be liable to pay, shall be and remain a lien on such lands, public or corporate roads or railroads, until fully paid; said payments to be made as hereinafter provided. And the filing of such statement in said register of deed's office shall be notice to all the world of the existence of such lien. And the fee of such register of deeds for such recording, shall be paid by the county, on the allowance of the board of county commissioners; and said statement, after the same has been recorded, shall be returned to the county auditor, to be by him placed with the other papers

relating to such ditch or ditches, and carefully preserved by him.

SEC. 20. The amount that each tract of land, public or corporate road or railroad, shall pay for the location, construction and establishment of any ditch or ditches, under the provisions of this act, shall bear interest from the date of the filing of the auditor's statement in the register of deed's office, at the rate of seven (7) per cent. per annum, until paid, and said interest shall constitute an additional lien on said lands or roads until fully paid; which said interest, when paid, shall be computed by the auditor.

Amount of assessment to draw interest.

SEC. 21. The payments of such liens shall be made to the county treasurer of said county by the owners, at any time, as follows, viz:

Liens, how paid.

One (1) tenth of said principal with the interest thereon on or before one (1) year.

- One (1) tenth of same on or before two (2) years.
- " " " " " three (3) "
- " " " " " four (4) "
- " " " " " five (5) "
- " " " " " six (6) "
- " " " " " seven (7) "
- " " " " " eight (8) "
- " " " " " nine (9) "
- " " " " " ten (10) "

Provided, that if such payment or payments are not made by the owners before the first (1st) day of December next succeeding the date of filing the aforesaid statement in the office of register of deeds, and before the first day of December of each succeeding year, until all of such payments shall have been fully paid, then, and in that case, the auditor shall enter said one (1) tenth payment for said year against the said tract of lands on the tax lists of the county, as a tax on said tract, to become due and payable, with the accumulated interest thereon and a penalty of ten (10) per cent. of such payment, and to be collected as all other taxes are collected for said year on said lands; *provided*, that when full payment shall have been made on any tract of land the auditor shall certify to the fact, and the record of such certificate shall release and discharge the same of record; *provided further*, that any person may pay the full amount of said lien, with accumulated interest, at any time.

Duty of auditor in case of delinquency in payment.

SEC. 22. All lands owned by this state, and all lands owned by any land company or railroad company benefited by any such ditch, drain or water course, shall be liable to pay and shall pay for such benefits, the same as owners of taxable lands.

State lands liable.

SEC. 23. All public or corporate roads or railroads benefited shall pay the amounts taxed up against them as

How assessments of roads and railroads paid.

follows: Whenever any public highway is benefited by such drain or ditch, the town which is by law charged with the duty of keeping such highway in repair, shall be assessed with the amount of benefits accruing to such highway in said town by reason of said ditch or drain, and the same shall be paid out of the treasury of such town upon demand of the county auditor; and whenever any railroad or the lands of any railroad company is benefited by such ditch or drain, such railroad or railway company shall be assessed its just proportion of such benefits, the same as other lands benefited are assessed; which assessments shall be collected from such railroad corporation or company in the same manner as personal taxes are collected by law. Or said liens against any such company may be foreclosed by suit in the same manner as provided by law for the foreclosure of mortgage liens upon real estate by action.

Ditches must be kept open.

SEC. 24. Every person or corporation through whose lands any public ditch is constructed, shall be required to keep the same open, free and clear of all obstructions upon his or its premises by him or it placed thereon, and in case of a failure to do so shall be liable to pay all reasonable and necessary expenses of removing such obstruction. A person or corporation aggrieved by any such obstruction, may make a sworn statement of the facts to the chairman of the town supervisors of the town wherein such obstruction exists, who shall proceed to examine the premises and inquire into the truth of the statement, and if he finds the statement to be true he shall immediately notify the owner of the land on which such obstruction exists, to remove the same within a reasonable time, not exceeding twenty (20) days; and if the owners so notified fail to remove the obstruction, the said chairman shall at once cause the same to be removed at the expense of such owner, and certify such expense to the county auditor, who shall place the same, together with all fees and other expenses in the case, on the tax duplicate, as an assessment upon the lands of such person or corporation, and the same shall be a lien upon such lands, and shall be collected as other taxes.

Proceedings in case of obstruction.

Costs of keeping ditches open may be assessed — duties of town supervisors.

SEC. 25. After the construction of any such work, the town supervisors of such township in which the same is, or any part thereof, shall keep the same or such part thereof in proper repair and free from obstructions, so as to answer its purpose, and pay for the same out of the general township fund; and to raise the necessary money to reimburse that fund, they shall apportion and assess the cost thereof upon the lands which will be benefited by such repairs or removal of obstructions, according to such benefits, in their judgment. They shall make a statement of such assessment, and deliver the same to the auditor of the county, who shall put the same upon the succeeding tax duplicate,

and it shall be a lien upon the lands, and be collected in the same manner as state and county taxes. The provisions of this section shall also apply to all works constructed for the purpose of drainage, under any law now or heretofore in force in this state. If they shall be of the opinion that such assessment, or any part thereof, ought to be charged to lands in other townships, the supervisors thereof shall, on request, meet with them at a time and place by them appointed, and they shall jointly make such assessments and certificates to the auditor of the proper counties. A majority of such supervisors as attend any such meeting shall have power to act and decide any question, and to make the assessments and certificates; and upon failure of any township supervisor to perform the work required of him by this section, after ten (10) days' notice in writing to him by any person interested, he shall be liable for all damages caused by such failure to perform his duty, to be recovered by the person or persons so damaged. He shall also be deemed guilty of a misdemeanor, and on conviction thereof, fined not less than ten (10) nor more than fifty (50) dollars.

SEC. 26. If any person shall wilfully obstruct any public ditch, or shall wilfully divert the water from its proper channel, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five (5) dollars nor more than fifty (50) dollars and shall also be liable for any and all damages accruing to any person or persons, or corporation, by such act.

Penalty for wilfully obstructing a ditch.

SEC. 27. The orders issued by the auditor to viewers, shall be served by the sheriff, and he shall be paid by the county for such services, the same fees as he is allowed by law for similar services.

Sheriff to serve orders.

SEC. 28. The surveyor and engineer shall receive the sum of four (4) dollars per day for every day he is necessarily engaged in performing the duties required of him by this act; the viewers shall receive three (3) dollars per day for each and every day they are necessarily engaged in viewing ditches and making up and filing their reports; each rodman shall receive the sum of two (2) dollars per day for each and every day he is employed; and each chain man, ax man, and all other hands necessary to the prompt execution of the work of locating a public ditch, shall be allowed one dollar and fifty (1.50) per day for the time each are actually employed; the county auditor of each county shall receive compensation for his services, under this act, as the board of county commissioners shall determine, and such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The fees, per diem and compensation provided for in this

Compensation of officers.

act, shall be audited, examined, allowed and paid, upon the order of the board of county commissioners.

SEC. 29. A majority of the viewers shall be competent to perform the duties required of them by this act.

"Ditch"
defined.

SEC. 30. The word "ditch" as used in this act, shall be held to include a drain or water course, and the petition for any public ditch, may include any side, lateral spar or branch ditch necessary to secure the object of the improvement.

SEC. 31. This act shall be literally construed so as to promote the public health and the drainage and reclamation of wet or overflowed lands.

Records prima
facie evidence.

SEC. 32. Every order of the county commissioners of any county laying out and establishing any ditch or drain, or in refusing to establish the same under the provisions of this chapter, the record thereof or a certified copy of such record shall be prima facie evidencê of the facts therein stated, and of the regularity of all the proceedings prior to the making of such order.

Proceedings
commenced
under former
act shall be
continued
under this.

SEC. 33. That in all cases where petitions have heretofore been made under the provisions of chapter one hundred and eight (108) of the laws of one thousand eight hundred and eighty three (1883), and acts amendatory thereto, and viewers have been appointed under said petition, if such viewers have not reported as required by the provisions of said act, they shall proceed in all matters under such petition, and report in every particular as required by this act. And in all cases where such viewers have reported, or where the county commissioners have acted under such report, in proceeding to establish the ditch or ditches petitioned for, but no contracts have been made for digging or constructing the ditch or drain applied for, the county commissioners may at any session thereof held within one (1) year from the passage of this act by an order made and entered upon the minutes of said board, rescind all action taken upon any such petition subsequent to the report of the viewers, and resubmit all matters contained in any such petition to such viewers, who shall take such action as may be necessary in the premises and conform to their report, which shall be made within a reasonable time after such resubmission, to the provisions of this act, and all further proceedings under such report shall be had as required under a petition made under the provisions of this act. In case any of such viewers are unable to serve, the county commissioners may appoint others in their stead. *Provided*, that before rescinding any such action or again resubmitting the matter to the viewers as aforesaid, the county commissioners may, in their discretion, require of the petitioners a new bond in such sum as they deem necessary with sufficient sureties to be approved

Commission-
ers may rescind
all action.

