

CHAPTER 38.

S. F. No. 78.

Land
drainage.

An act to amend chapter 258 of the General Laws of 1901, entitled "An act providing for the drainage of lands, in certain cases, prescribing the powers and duties of county commissioners and other officers in the premises, and appropriating funds for the payment of assessments against state lands affected thereby, and prescribing penalties for the violation thereof, and repealing certain acts therein mentioned and referred to."

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

SECTION 1. That section three (3) of chapter two hundred and fifty-eight (258), of the Laws of one thousand nine hundred and one (1901) be and the same hereby is amended so as to read as follows:

Bond of
engineer.

Sec. 3. Before entering upon his duties, such engineer shall give a bond in the sum of two thousand dollars (\$2,000), with good and sufficient freehold sureties, payable to the county (or to the respective parties, or any two or more of them) as the case may be, in which any part of the work is to be done, for the use of such county, or counties, as the case may be, and also for the use of all parties who may show themselves to be aggrieved or injured by any negligence or malfeasance on his part in acting as such engineer; to be approved by the auditor of the county in which the proceedings are commenced, conditioned that he will diligently, honestly and to the best of his skill and ability perform his duties as such engineer, and shall take an oath to faithfully perform his duties.

Duties of
engineer
defined.

He shall "make a correct survey of the line of said ditch, drain, creek or water course from its source to its outlet; and he shall cause stakes or monuments to be set along said line, numbered progressively down stream, at each one hundred feet; and he shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain, creek or water course between each of the one hundred 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 such ditch, drain, creek or water course, and make an estimate of the total cost of laying out, establishing and constructing the whole work (including branch ditches, if any), including all preliminary and other expenses connected

therewith, and with the inspecting and certifying to the work when and as the same is completed. He shall also, in tabular form, give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, creek or water course; and he shall specify the time so far as practicable, and the manner in which the work shall be done; and may for that purpose, set a different time for completing the several contracts, and also for completing any station or stations included in each contract, and shall have power, when he finds it necessary, to provide for running said ditch under ground, through drain tiles, or other materials, as he deems 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. In locating a public ditch, drain, creek, or water course, the engineer may vary from the line described in the petition, or from the starting point thereof, as he deems best; provided, he commence the ditch at or as near the point described in the petition as is reasonably practicable and follow down the line therein described as nearly as practicable, and provided, further, that he shall have authority to specify such branch ditch or ditches as, in his opinion, may be necessary to give owners of lands likely to be assessed for the construction of the main ditch the full benefit thereof; provided, that such branch ditch or branch ditches may either be opened at the same time and in the same manner as the main ditch, or the engineer may only locate said branch ditch or ditches for future construction. In all cases in which the route proposed is along highways already established, the engineer shall locate the ditch at sufficient distance from the center of such highway to admit of a good road along the central line thereof. The earth taken from the ditch shall be so placed upon the roadway as to form a turnpike, which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water, in time of high water, and no nearer to the margin thereof than two feet, but in locating a drain as above, the engineer shall not materially depart from the center of such highway to admit of a good road provided, further, that when there is not sufficient fall in the length of the route described in the petition, to drain the land adjacent thereto, or when for other reasons it appears expedient, he may shorten or extend the ditch from the

outlet named in the petition far enough to reasonably effectuate the purpose for which the work is extended. When, in his opinion, it will not be detrimental to the usefulness of the whole work, he shall, as far as practicable, locate the ditch on division lines between lands owned by different persons; and he shall, as far as practicable, avoid laying the same diagonally across lands; but he shall not sacrifice the general utility of the ditch to avoid diagonal lines."

SEC. 2. That section six (6) of said chapter of said act be and the same hereby is amended so as to read as follows:

Lands, public roads and railroads to be assessed for benefits.

"Sec. 6. 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, or prevents the overflowing of such lands, roads or railroads."

SEC. 3. That section ten (10) of said chapter of said act be and the same hereby is amended so as to read as follows:

Award of damages by county commissioners.

Sec. 10. When damages are awarded to any person, persons or corporation in excess of benefits, if any, and the same shall have been duly confirmed, the board of county commissioners of each county in which any of the lands for which such damages are awarded are located, shall order the same paid out of the treasury of such county, or warrants to be drawn and attested by the auditor and signed by the chairman of the board. Such warrants shall be issued at the expiration of the time for repeal in favor of such persons as shall not have appealed, and shall be dated and become due and payable immediately, after the letting of the contracts, as hereinafter provided. In case of appeal, or in case of any postponement or delay in determining the amount of damages due to any person or corporation, warrants in favor of such person or corporation shall not be issued until the final determination thereof. When the award is confirmed by order of court,

Appeal to the courts.

it shall be the duty of the clerk to immediately transmit to the county auditor of each county affected thereby a certified copy thereof, and likewise of any final order or judgment thereafter made in the case of any appeal or jury trial; and thereupon the same duties shall devolve upon the county commissioners and auditor as hereinbefore provided. Whenever an award shall have been finally confirmed, it shall be the duty of the board of county commissioners of the county in which the lands, in respect of which such award was made, are located, to cause to be forthwith paid to the owner of such property an amount of damages over and above all benefit which may have been awarded therefor, with interest at the rate of 6 per cent per annum, from the date to which such assessment relates to the date of such payment. If in any case there shall be doubt as to who is entitled to the damage for land taken such board may require of the claimant a bond, with good and sufficient sureties, to hold the county harmless from all loss, costs and expenses, in case any person should thereafter claim and show himself entitled to any part of such damages."

Final confirmation of awards.

SEC. 4. That section eleven (II) of said chapter of said act be and the same hereby is amended so as to read as follows:

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

First—The amount of benefits to any tract of land, or owner of any public or corporate road or railroad.

Second—The amount of damage allowed to any person, or persons or corporation."

Third—Refusing to establish such proposed ditch.

To render such appeal effectual, the appellant shall file with the county auditor, within and not after twenty (20) days from the date such final order is issued, a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond to the board of county commissioners with at least two freehold sureties in an amount for not less than two hundred and fifty (\$250) dollars, to be approved by the auditor of the county in which such appeal is taken, conditioned that said appellant will duly prosecute the appeal, and pay all costs that may be adjudged against him and

Notice of appeal to be filed.

to abide the order of the court. Within twenty (20) days after such filing, the auditor shall make a complete transcript of all the papers and proceedings on file and of record in his office, so far as the same pertain to the premises or matter on account of which the appeal is taken, together with the notice of appeal, to the clerk of the district court.

Aggrieved
party may
demand
Jury trial.

Any person deeming himself aggrieved by such award or order, or both, may demand a jury trial to determine the amount of his benefits or damages on account of the construction of such ditch. Such demand shall be in writing, signed by the party making the same, or by his agent or attorney, and shall be filed in the office of the clerk of the district court within and for the county in which the proceeding is pending, within twenty (20) days after the filing therein of the order confirming the report of the viewers. The issues raised by such demand shall stand for trial and shall be fully tried and determined at the next term of the district court held within the county in which such proceedings were commenced, beginning after the filing of such demand and shall take precedence of all matters of a civil nature in said court. If there be more than one demand, they may be consolidated and tried together, but the rights of such persons shall be separately determined by the jury in its verdict, provided, however, that if the demandant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land then the costs of such trial shall be paid by the demandant. The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned.

Action upon
viewer's
reports.

Provided, that in any case in which a viewer's report has been acted upon and rejected by any board of county commissioners since July 1st, 1901, upon the application of any petitioner in such case, made to the county auditor of the county prior to June 1st, 1902, the said county auditor shall call a special meeting of such board of county commissioners for a rehearing upon such petition, and shall give notice of such meeting and rehearing in the manner provided by section eight of said chapter 258, and at such meeting the said board of county commissioners shall proceed to reconsider such report and shall act upon the same and make findings thereon in conformity with the provisions of this act without regard to

its former action thereon, and an appeal may be taken from such action as in other cases.

SEC. 5. That section twelve (12) of said chapter of said act be and the same hereby is amended so as to read as follows:

"Sec. 12. If more than one party appeals, the court may, in his discretion, order the cases consolidated and tried together; in such case the right of each party shall be separately determined by the jury in its verdict."

SEC. 6. That section thirteen (13) of said chapter of said act be and the same hereby is amended so as to read as follows:

"SEC. 13. Within ten (10) days after the filing in the office of the county auditor of the order of confirmation of the board of county commissioners, or, when the proceedings are taken in court, then within ten (10) days after the filing of such order in the office of the clerk, the auditor, in the first instance, and in the second instance the auditors of the respective counties, meeting for that purpose at the office of the auditor of the county in which the proceedings are pending, shall proceed, as hereinafter provided, to sell the jobs of digging and constructing the entire work, either as one job, or in one or more linear sections of one hundred feet each, each of said sections to be known and numbered by the stake or monument set by the engineer at the foot of each such section, as shown in the engineer's report, commencing at the one including the outlet, and thence in succession up the stream to the one including the source. The auditor, or auditors, as the case may be, shall contract in the name of the county, or in the name of the respective counties, as the case may be, each acting by and through its auditor, with the party to whom a section or sections is or are sold, requiring him to construct the same in the time and manner set forth in the report of the engineer, on which the ditch is established; and shall take from him a bond in the penal sum of not less than twice the contract price, with not less than two (2) freehold sureties, payable to the county, or to the respective counties, or any two or more of them as the case may be, for the use of such county, or counties, as the case may be, and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which such bond is given; to be by said auditor, or auditors, as the case may be, approved,

Auditors
to let con-
tracts by
sections.

Contracts in
names of
counties.

conditioned that said party shall faithfully perform and fulfill his contract and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor and otherwise conditioned as in this act provided.

Notice of
contracts by
publication.

The auditor of the county in which the proceedings were taken shall give notice of the letting of such contracts by publication for three (3) successive weeks, in the official paper of such county, of the time when and the place where such contracts shall be let to the lowest responsible bidders; and in such notice shall invite bids for the work as one job, and also for any one or more of such sections, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds more than thirty (30) per cent the estimated cost of the construction of the part of said work covered by said bid; not unless accompanied by a certified check, payable to the auditor, or to the respective auditors, as the case may be, for not less than ten (10) per cent of the bid; and said auditor or auditors may adjourn such letting from time to time until the whole work shall be taken, and with the approval of the engineer, may let any one or more of such sections. The engineer shall attend to such letting of the work and no bid shall be accepted without his approval, as to the compliance with plans and specifications."

SEC. 7. That section fourteen (14) of said chapter of said act be and the same hereby is amended so as to read as follows:

Bonds and
contracts.

Sec. 14. The bond and contract shall be attached to each other, and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications, and refer to the number of the section or sections, as provided for in the preceding section; and shall provide that the work shall be done and completed as provided for in the report of the engineer, and subject to his approval and that of the auditor, or auditors, as the case may be.

Contracts
to contain,
what.

Such contract shall be drawn to the satisfaction of the engineer. Every such contract shall embrace the provisions of chapter 354 of the General Laws of 1895, as amended by the provisions of chapter 307, General Laws of 1897, applicable thereto, and shall provide that time shall be of the essence of the contract, in that if there should be any failure to perform the work according to

the terms of said contract within the time limited therein, originally or by extension, the contractors shall forfeit and pay to the county in which the portion of the work in default shall be located, a certain sum, to be named therein, and which shall be fixed by the county auditor, or auditors, as the case may be, for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the auditor, or auditors, as the case may be, stating to his or their satisfaction good and sufficient reasons therefor, nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited and before such extension, or, occurring after the limit of the extension. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name, and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of sections 5951, 5952, 5953 and 5954. General Statutes 1894.

SEC. 8. That section fifteen (15) of said chapter of said act be and the same hereby is amended so as to read as follows:

Sec. 15. If a job be not completed within the time fixed in the contract therefor, it shall be the duty of the bondsmen to notify the county auditor of each county in which any part of the lands affected thereby is located, in writing, of that fact, within five (5) days after the expiration of the time fixed in the contract; whereupon the auditor, or auditors, as the case may be, shall, in writing, duly dated, order said bondsmen to complete said job within a time specified by him or them, and said bondsmen shall receive from the proper county or counties, as the case may be, the amount due on such job or part thereof, that they have so completed, less the proper deduction for forfeiture, if any. The amount due said bondsmen for such work shall be determined by said engineer; provided, that a job not completed, as hereinbefore specified, by the original contractor, and the completion of which shall not be undertaken by the bondsmen as hereinbefore provided, within ten (10) days after the date of such order, or of the failure to complete which, the

If contract not completed, bondsmen to complete.

bondsmen shall not so notify said auditor, or auditors, as the case may be, shall be resold by the auditor, or auditors, as the case may be, after ten (10) days' notice by publication, to the lowest responsible bidder, but not for a sum exceeding fifty (50) per cent in excess of the original estimated cost of such work, nor a second time to the same party. A contract and bond shall thereupon be entered into as hereinbefore provided, and such contract shall provide for the completion of the work resold within six months from the date thereof. Such excess, if any, shall be recoverable against the bondsmen on the original contract."

SEC. 9. That section sixteen (16) of said chapter of said act be and the same hereby is amended so as to read as follows:

**Engineer to
inspect
and report.**

Sec. 16. It shall be the duty of the engineer, on being notified by any contractor that his job is completed, to inspect the same, and if he finds it complete, according to the contract, plans and specifications, he shall report that fact to the board of county commissioners and give to the contractor a certificate stating that said section or sections (by number) are completed according to the contract, plans and specifications, as set forth in the report of said engineer; provided, that when part of the work for which such certificate is to be issued, if it affects more than one county, such proportionate certificates shall be issued; whereupon, if approved by the county commissioners of the county or counties, as the case may be, and upon the presentation and surrender of said certificate with such approval indorsed thereon, to the auditor of the proper county or counties, said auditor shall draw a warrant on the county treasurer of his county for the proportionate amount found to be due in respect of lands in his county on said contract, according to such preliminary certificate, as hereinafter provided; and said warrant shall be paid out of the general ditch fund to be provided by the board of county commissioners, as hereinafter specified. Said warrant shall become due and payable out of said fund at once and if there shall be no cash in said fund to pay said warrant when the same is presented, the county treasurer shall endorse said warrant 'Not paid for want of funds,' and date and sign such endorsement, and the amount of said warrant 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; provided, however, that the engineer, upon the written approval of

**Payment
of contract.**

the auditor, may issue preliminary certificates for not to exceed fifty (50) per cent of work already done and approved, within the county of which he is such auditor, which certificate shall be treated as hereinbefore provided; but no such certificate shall be furnished except when accompanied by the engineer's written certificate that no loss will result therefrom."

SEC. 10. That section seventeen (17) of said chapter of said act be and the same hereby is amended so as to read as follows:

Sec. 17. The board of county commissioners of each and every county wherein any such ditch is proposed to be wholly or partly located and established, are hereby authorized to issue the bonds of their respective counties in such amount as may be necessary for the purpose of defraying the expenses incurred or to be incurred in locating, constructing and establishing so much of the same as may be located in or in such relation to such county as to affect lands therein within the terms of this act. The word 'expenses' shall be construed to mean and to cover every item of cost of said ditch, from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof, and the said counties shall be reimbursed as hereinafter provided. Said bonds shall bear interest at a rate not exceeding six (6) per cent per annum, and shall be payable at any time not to exceed ten (10) years, at the option of said board. Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of this act, and shall be signed by the chairman of said board and countersigned by the county auditor, who shall keep a record thereof. Said board shall have power to negotiate said bonds as they shall deem for the best interest of such county, but not for less than par value. Said board shall provide a fund for the payment of annual interest on said bonds, and they are hereby authorized and empowered to transfer from the general revenue fund of the county to such drainage fund any surplus moneys which can be properly applied for the purposes of this act.

Counties
may issue
bonds.

SEC. 11. That section eighteen (18) of said chapter of said act be and the same hereby is amended so as to read as follows:

Sec. 18. At the earliest practicable time after the letting of the contract for the construction of any ditch, as herein provided, the auditor of each county affected thereby shall make in tabular form a list and statement

Auditors to
make re-
ports, what
they shall
contain.

showing the following facts, and in the order named, viz :

First—The names of the owners of all lands and the names of all public or corporate roads or railroads within their respective counties benefited by the construction of such proposed work as appears from the viewer's report, as affected by the order of confirmation of the board or judge, as aforesaid.

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

Third—The estimated number of acres benefited in each tract of said land, as shown as aforesaid.

Fourth—The estimated amount of benefits and damages to each of said tracts of land and the estimated amount of benefits and damages to each public or corporate road or railroad, as the same appears in such viewer's report, or as changed by the jury or court.

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 into the treasury of each county for the location, construction and establishment of such ditch, which said amount shall be determined as follows :

Said auditor shall make a full statement showing the total cost of each ditch, under each separate petition for such ditch ; and each petition and each ditch located, constructed and established shall be known and designated by a number to be given to it. Such statement shall be headed as follows :

**Form of
Statement**

Statement showing cost of ditch, No	To whom
paid	For what paid
Amount paid	Said statement shall be summed

up showing in figures the total cost of each ditch and shall be attached to and form a part of the statement herein provided for. The total cost shall then be divided by the total estimated benefits as provided for in subdivision five of this section, for the rate of cost on each one dollar of benefits, the auditor not to be obliged to carry out and use a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land, and to each public or corporate road or railroad (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, less the amount of damages, if

any, shall be the amount that each of said tracts of land, public or corporate roads or railroads will be liable for on account of such improvement.

SEC. 12. That section nineteen (19) of said chapter of said act be and the same hereby is amended so as to read as follows:

Sec. 19. Such statement shall then be signed by the auditor in the presence of two attesting witnesses and be duly acknowledged by him, and shall then be duly filed with and recorded by the register of deeds of such county. The amount which each tract of land and each public or corporate road or railroad will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a lien on such land, public or corporate roads or railroads until fully paid: such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. 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 auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him.

Statement
to be filed
with register
of deeds.

SEC. 13. That section twenty-one (21) of said chapter of said act be and the same hereby is amended so as to read as follows:

Sec 21. The payment of such liens shall be made to the treasurer of such county, as follows, viz: One-tenth of said principal, with the interest thereon, on or before one (1) year from such filing in the register of deeds office, one-tenth of same on or before two (2) years; one-tenth of the same on or before three (3) years; one-tenth of the same on or before four (4) years; one-tenth of the same on or before five (5) years; one-tenth of the same on or before six (6) years; one-tenth of same on or before seven (7) years; one-tenth of same on or before eight (8) years; one-tenth of same on or before nine (9) years; one-tenth of same on or before ten (10) years, all reckoned from the date of such filing. On or before the fifteenth day of November next following such filing, the auditor shall enter on the tax list of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on said tracts, with a proper notation to secure the successive entry each year thereafter of the unpaid balance

Payment
of liens.

of such lien. One-tenth of such tax shall become due and payable, with accumulated interest thereon, at the time and in the manner and be subject to and be collected with like penalties as all other taxes for said year on said tracts in which such entry was made, and another one-tenth with and as the taxes of each successive year, until all is paid. When the full amount of such lien, with accumulated interest, shall thus, or at one time be made, the auditor upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal, a certificate of such payment, and the same when recorded in the office of the register of deeds shall release and discharge such lien of record.

SEC. 14. That section twenty-two (22) of said chapter of said act be and the same hereby is amended so as to read as follows:

State and
corporate
lands liable.

Sec. 22. All lands owned by this state, and all lands owned by any railroad or other corporation, benefited by any such ditch, drain, or water course, shall be liable for such benefits the same as taxable lands.

SEC. 15. That section twenty-four (24) of said chapter of said act be and the same hereby is amended so as to read as follows:

Assessment
of benefits
upon municipal
and other
corporations.

Sec. 24. The benefits accruing to any municipal corporation or to the owners of any corporate road, or to the owners of any railroad, respectively, by reason of the improvement of any public road within the limits of, or connecting with such municipal corporation, or of such corporate road, or such railroad by the construction of any such ditch, shall be assessed, levied and enforced as follows: Whenever any public road shall have been found to be so benefited, the town which is by law chargeable with the duty of keeping such road in repair, shall be assessed the amount of such benefits in said town accruing to such roads within said town by reason of such ditch and the same shall thereupon become a liability of such town, and shall be due and payable in ten equal annual installments, beginning on the first day of June next following the date of the entry of the lien against private individuals, as herein provided; but if any of such installments are not paid within thirty (30) days after its maturity, the amount hereof, with interest, shall be enforced in the same manner as judgments against the town. Whenever any railroad or the lands of any railroad company, shall be determined in any such proceeding to be benefited by any such ditch, such railroad, or the lands of

such railroad company, so far as the same are legally subject to local assessment, shall be assessed their just proportion of such benefits as other lands benefited are assessed, which assessment shall be collected from the owners of such railroad or from such railroad company in the same manner as personal taxes are collected by law. From the date of the filing by the county auditor in the office of the register of deeds of the statement aforesaid, the amount of such assessment, with interest, shall constitute a lien against all the property of such owners and railroad company within such county. Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens.

SEC. 16. That section twenty-seven (27) of said chapter of said act be and the same hereby is amended so as to read as follows:

"Sec. 27. All orders and notices herein prescribed shall be issued by the auditor or by the judge, as the case may be, and the same shall be served by the sheriff or other disinterested person designated by the auditor or by the judge, as the case may be, and such sheriff or other person so designated shall be paid by the county for such services the same fees as are allowed by law for similar services."

Sheriff's
duties
and fees.

SEC. 17. That section twenty-eight of said chapter of said act be and the same hereby is amended so as to read as follows:

"Sec. 28. The engineer shall receive the sum of five dollars (\$5.00) per day for every day he is necessarily engaged in performing the duties required of him by this act, and his actual and necessary expenses incurred in and about the same. The viewers shall each receive three dollars (\$3.00) per day for every day they are necessarily engaged in viewing ditches and making up and filing their reports, and their actual and necessary expenses. Each rodman shall receive the sum of two dollars (\$2.00) per day, and may be allowed in addition thereto his board and lodging, for each and every day he is employed; and each chainman, axman and every other employe necessary to the prompt execution of the work of locating or inspecting a public ditch shall be allowed one dollar and fifty cents (\$1.50) per day, and may be allowed in addition thereto his board and lodging for the time such person is thus actually employed. The county auditor of each county, and the clerk of the district court shall receive reasonable compensation for their services under this act, and

Compensa-
tion of en-
gineer and
others.

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*, compensation and expenses provided for in this act shall be audited, examined, allowed and paid upon the order of the board of county commissioners."

SEC. 18. That section thirty-two (32) of said chapter of said act be and the same hereby is amended so as to read as follows:

Force of
order by
commission-
ers or
judges.

"Sec. 32. Every order of the county commissioners of any county, or the judge of the district laying out and establishing any ditch or 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* evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such order."

SEC. 19. That section thirty-three (33) of said chapter of said act be and the same hereby is amended so as to read as follows:

Repealed.

Sec. 33. Chapter 97 of the General Laws of 1887; chapters 81, 82, 83, 84 and 293 of the General Laws of the year 1895; chapter 328 of the General Laws of the year 1897, and chapters 274, 323 and 247 of the General Laws of the year 1899, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 20. That section thirty-five (35) of said chapter of said act be and the same hereby is amended by re-numbering same so that it shall read as section forty-one (41).

SEC. 21. That said chapter two hundred fifty-eight (258) is hereby further amended by adding after section thirty-four (34) thereof the following sections, that is to say:

When peti-
tions to be
addressed
to district
court.

"Sec. 35. Whenever it is desired to construct a ditch extending into or through part or the whole of more than one county, or if entirely within one county, the ditch is to be so located that it will probably result in benefit or damage, or both, to lands in and adjoining county or counties, then in either of such cases, the petition required by section two (2) of said chapter shall be addressed and presented to the judge of the district court of the district in which any one of such counties is situated. Before such presentation, such petition shall be filed with the clerk of the district court of the county in which such proceedings are commenced and a

copy thereof, duly certified by him, shall be filed with the county auditor of each of the counties wherein any of the lands described in said petition are located.

"Sec. 36. Upon presentation of such petition, the judge shall fix a time and place for the preliminary hearing, which is provided for in section two (2) of said chapter, in respect of presentation to the board of county commissioners, and the same notice thereof shall be given, save that it shall be given by such clerk and shall be posted and published in each county wherein a copy of such petition shall have been filed."

Hearing on
petition.

"Sec. 37. Upon such hearing, if the judge shall be satisfied that the requisite conditions exist and have been complied with, he shall, by order, direct a survey to be made, as provided in section two (2) of said chapter, and shall appoint a competent and experienced civil engineer to make the same and direct a copy of such order to be forthwith made and transmitted by the clerk to such engineer and to the auditor of each county, described in the petition. The same proceedings shall be taken by such engineer as in section one (1) of this act and section four (4) of said chapter are provided, save that the findings shall be with such clerk."

Order of
survey.

"Sec. 38. As soon as reasonably possible after the filing of such report, the judge shall make an order appointing viewers, as provided in section five (5) of said chapter, and the proceedings thereafter shall be as specified in sections five (5) and seven (7) of said chapter, and section two (2) of this act, save that the duties therein specified in respect of the board of county commissioners shall be performed by such judge, and those in respect of the county auditor shall be performed by such clerk; and that the viewers may be residents of any of the counties described in the petition, and that their jurisdiction shall extend throughout all such counties, and that their reports shall be filed with such clerk."

Court to
appoint
viewers.

"Sec. 39. Immediately upon the filing of such report, it shall be the duty of such clerk to prepare and transmit forthwith a certified copy thereof to the auditors of each of the counties described in the petition, and within three (3) days after the filing of such report, to transmit to the judge of such court a written notice of the filing of such report. Upon the receipt of such notice, the judge shall make an order fixing the time and place of hearing said petition and report. The same notice thereof shall be

Viewers'
reports.

given by the clerk as is provided in section eight (8) of said chapter in respect of the county auditor, save that it shall be published and posted in each county described in the petition."

Sec. 40. At the time and place fixed for the hearing, if the court shall be satisfied that notice thereof has been given according to law he shall proceed as in section nine (9) of said chapter."

"Sec. 41. This act shall take effect and be in force from and after its passage."

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

Approved March 11, 1902.

H. F. No. 109.

CHAPTER 39.

Ditches and drains.

An act to legalize certain ditches, drains or water-courses, established or attempted to be established under and pursuant to the provisions of chapter two hundred and fifty-eight (258) of the General Laws of 1901, and to declare legal and valid all assessments and liens levied under and pursuant to said act.

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

Ditch or water-course legalized, and assessments validated.

SECTION 1. Where the county commissioners of any county of this state, in pursuance of chapter two hundred and fifty-eight (258) of the General Laws of 1901, have established and constructed, or attempted to establish and construct, any ditch, drain or other watercourse, the petition for which states that said ditch, drain or other watercourse will be conducive to the public health, convenience or welfare, or of public benefit or utility, and the county commissioners, in granting such petition, have found and determined, or shall find and determine, that said proposed ditch, drain or other watercourse will be conducive to public health, convenience or welfare, or of public benefit or utility, said ditch, drain or other watercourse is hereby legalized and declared to be conducive to public health, convenience and welfare and of public benefit and utility; and any assessments or liens levied, or that may hereafter be levied, against the lands benefited by the construction of any ditch, drain or other watercourse, by the county auditor of any county, for the cost of the establishment and the construction of the same,