

CHAPTER 138—H. F. No. 69.

An Act to authorize the State Drainage Commission to construct an outlet for the waters of the Mustinka state ditch in Traverse County, Minnesota, and to appropriate money therefor.

Whereas, a special committee consisting of five members of the house of representatives of the legislative session of the year 1909, duly appointed under the resolution of said house duly adopted and which authorized the appointment thereof for the purpose and which was duly empowered to administer oaths and take the testimony of certain petitioners, seventeen in number, and others, in relation thereto, after taking such testimony, duly found and reported to said house that upwards of eight thousand acres of fertile farming lands in Traverse county, Minnesota, including the lands of the said petitioners, situated adjacent to the Mustinka river in said county—previously under cultivation for about thirty years and during that time never overflowed—in the crop seasons of the years 1897 to 1908, were overflowed by overflow of the said Mustinka river; that such overflows of the said lands of the said petitioners and others during the said years, destroyed crops of the said petitioners to the value of \$28,302.00 and depreciated the value of the said lands overflowed, including the lands of the said petitioners, to an amount equal to the difference between forty dollars and fifteen dollars per acre; that the said overflows of the said river occasioned by and resulted from the construction of the Mustinka state ditch which was constructed by the State of Minnesota, during the years prior to 1896, but completed in said year, in order to drain lands situated in Grant county, Minnesota, then owned by the State of Minnesota, so as to make the said lands fertile, valuable and saleable, and for no other purpose; that the overflow of the said Mustinka state ditch is into the said Mustinka river whose channel is inadequate to take care thereof; that such overflows of said Mustinka state ditch and said Mustinka river have occurred each year since the construction of said ditch at times of rain or melting snow and will continue each year unless an adequate outlet for the surplus waters, brought to said Mustinka river as the result of the construction of said Mustinka state ditch, is constructed; that the waters which overflow lands in the vicinity of said Mustinka river collect in pools at various low places therein and become stagnant and a condition is thus created which is detrimental to the health of the people residing in the vicinity of the lands so overflowed and the same constitutes a menace to the public health and a public nuisance, in addition to being a private nuisance and injury to all persons owning lands overflowed thereby or residing in the vicinity of such overflowed land; that the nature of such injury and nuisance is such

that if caused by the act of an individual could and would be abated by action in the courts and damages recovered therefor; that it is feasible to construct an adequate outlet for the waters of said Mustinka state ditch or for the surplus waters of said Mustinka river so as to abate said nuisance and injury and so as to prevent injury to the health of the inhabitants of the vicinity of said ditch and said river and to promote public health, at a cost of about thirty-five thousand dollars (\$35,000.00).

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

State drainage commission to construct outlet of Mustinka state ditch in Traverse county.—Section 1. The state drainage commission is hereby authorized, empowered and directed to construct, expeditiously as may be found feasible, an outlet of the Mustinka state ditch in Traverse county, Minnesota, of a capacity adequate to receive and carry off all the waters thereof, in order that the said waters thereof may be deflected from and prevented from flowing into the Mustinka river in said county, and in order to abate the public nuisance created by the overflow of waters from said Mustinka state ditch and prevent injury to the health of the inhabitants of the vicinity of said ditch and said river and the lands overflowed by the waters thereof, and to promote public health; *provided*, however, that if said commission shall find it feasible to deepen and widen the channel of the said river so as to make it feasible to use the channel of said river as an outlet to said ditch and duly safeguard the lands adjacent to said river against overflows thereof in the future, then the said drainage commission are hereby authorized and empowered so to construction an outlet for the said Mustinka state ditch, the total amount to be expended by the state therefor not to exceed thirty-five thousand dollars.

\$35,000 appropriated.—Sec. 2. The sum of thirty-five thousand dollars, or whatever part thereof may be found necessary to do what is authorized in section 1 hereof to be done is hereby appropriated out of any funds in the state treasury, not otherwise appropriated.

Approved April 13, 1911.

CHAPTER 139—S. F. No. 23.

An Act abolishing second trials in actions of ejectment and repealing sections 4430 and 4431 of the Revised Laws of Minnesota of 1905.

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

Second trials in actions of ejectment abolished.—Section 1. That hereafter the trial of all actions of ejectment or of any other action in the courts of this state involving the possession