

CHAPTER 384—H. F. No. 1115.

An Act amending certain sections of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 as amended by chapter three hundred sixty-seven (367) of the General Laws of Minnesota for 1907 and chapter four hundred sixty-nine (469) of the General Laws of Minnesota for 1909, relating to county and judicial drainage ditch proceedings and to procedure therein and validating drainage proceedings heretofore had, in certain cases.

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

County and judicial drainage proceedings.—Section 1. That section three (3) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 as amended by section one (1) of chapter three hundred sixty-seven (367) of the General Laws of Minnesota for 1907 as amended by section two (2) of chapter four hundred sixty-nine (469) of the General Laws of Minnesota for 1909 be and the same is hereby amended so as to read as follows:

“3. **Petition—Bond—New bond—Hearing on petition—Appointment of engineer.**—Before the county board shall establish any ditch, drain or water course or other construction named in section one (1) of this chapter, there shall be filed with the auditor of such county a petition signed by one or more of the land owners whose land will be liable to be affected by or assessed for the expense of the construction of the same, or by the supervisors of any township or the duly authorized officers of any city or village council, which township, village or city is liable to be affected by or assessed for the proposed construction, or by the duly authorized agent of any public institution, corporation or railroad, whose lands or property will be liable to be affected by or assessed for the expense of the construction of the same, or by the state board of control or its duly authorized agent, setting forth the necessity thereof and that it will be of public benefit or promote the public health, with a description of the proposed starting points, routes and termini; and one or more of such petitioners shall give bond, with good and sufficient freehold sureties payable to the county, to be approved, including amount and sureties, by the auditor, conditioned to pay all expenses in case the county board or the court shall fail to establish said proposed ditch, drain or water course.

Notice of the filing of said petition, and of the time and the place of the hearing to be had thereon, shall be given by the auditor to all persons interested, by causing a copy of such petition, preceded by a statement of the time and place set for the hearing thereof, to be published for three successive weeks in a newspa-

per printed and published in said county, and by posting, at least three weeks before such hearing, printed copies thereof, in three public places in each township, where the proposed work is located and one at the door of the court house in said county, and at the same time the auditor shall mail a printed copy of said notice to all non-residents of the county whose lands lie within two miles on either side of the routes specified in the petition, whose address is known by him or can be ascertained by inquiry at the county treasurer's office.

Provided, that in all cases in which from any cause said notice shall not be given, or in case said notice shall be defective, the county auditor shall cause the same to be given so that the petition may be heard at the next session of said board, after the expiration of such, or any new, three weeks' publication.

Provided, that the principal or principals and sureties who have signed said bond, may, at any time prior to the final order, establishing the ditch, drain or water course, and subsequent to the filing of the engineer's report, upon ten days' notice in writing to the petitioners of their intention so to do, pay the costs of the proceedings and dismiss the same, unless one or more of such petitioners shall, within ten days, give a new bond with good and sufficient freehold sureties, payable to the county auditor, conditioned the same as the original bond.

When said board shall be satisfied that all of the foregoing conditions have been complied with, they shall cause an accurate survey of the line of said proposed ditch, drain, creek or water course from its source to its outlet, to be made by a competent and experienced civil engineer, to be appointed by them by resolution to that effect.

The auditor shall forthwith transmit to such engineer a certified copy of such resolution.

Upon the filing of the petition such proceeding may be designated and numbered by the county auditor as "county ditch No.," and may be so referred to in all subsequent proceedings."

Engineer to give bond of \$5,000.—Sec. 2. That section four (4) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 be, and the same is hereby amended so as to read as follows:

"Section 4. Before entering upon his duties, such engineer shall give a bond in the sum of five thousand dollars (\$5,000), with good and sufficient sureties, payable to the county (or to the respective counties, 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 in case of a county ditch 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. *Provided*, that the engineer shall not be required to continue his bond any longer than six months after the completion or abandonment of the work. *Provided*, that in all proceedings commenced before the county board or in district court of any county, the engineer may, in place and stead of giving a separate bond as above required in each proceeding, give a bond covering all proceedings commenced in such county for ditches, drains or water courses upon or in which he may be appointed engineer under the provisions of this chapter within two (2) years after the filing and approval of such bond, in the sum of ten thousand dollars (\$10,000) with good and sufficient freehold sureties to be approved by the county auditor of said county, in case of a county ditch, or, in case of a judicial ditch, by the clerk of the district court of the county wherein such proceedings were instituted, such bond to be payable to such last mentioned county for its use and for the use of any other county affected by such ditch proceedings, 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, conditioned that he will diligently, honestly and to the best of his skill and ability perform his duties as such engineer in each and all such proceedings.

At any time during the progress of the proceedings in the matter of establishing or constructing such ditch, the county board or any judge of the district court of the county where such proceedings were instituted may, on their own motion or on motion of any person interested in such ditch, and on such notice to the engineer as shall be ordered by such county board or judge of the district court respectively, order the filing of a new or additional bond by such engineer in such sum as shall be ordered by such court or may remove the said engineer and make new appointment of engineer in such drainage proceeding.

Such engineer shall make a correct survey of the line of said ditch, drain, creek or water course, and of the branches thereof, if any, from its source, or sources, to its outlet or outlets; 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 shall make an itemized tabulation of all cleaning of obstructions of water courses, building of flumes, of other wood or masonry work, construction of fences for the protection of the ditch, and construction of bridges or other additional construction work found necessary, together with the estimated cost thereof, and shall make an estimate of the total cost of laying out, establishing and constructing the whole work (including branch ditches, if any) and 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 the bottom and width at the 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 underground, 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 under ground 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, or the branches thereof, 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.

He shall also include in his report a form of contract as complete in its provisions as practicable and which shall contain detailed and complete specifications by direct statement, or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor or contractors, and which shall define the relation which shall exist between the county and the contractor or contractors and which shall give the engineer the right with the consent of the county auditor, or county auditors, as the case may be, to modify his reports, plans and specifications as the work proceeds, and as circumstances may require, *provided* no changes are made that will substantially impair the usefulness of any part of the ditch, or substantially alter its original character or increase its total cost by more than ten per centum (10%) of the total original contract price for the

construction thereof, which added cost is to be paid by the county to the contractor at the cost fixed for like work in the said contract, and the county attorney, upon request from the engineer, shall assist him in the preparation of said form of contract, specifications and provisions. In locating a public ditch, drain, creek or water course or the branches thereof, the engineer may vary from the line described in the petition, or from the starting point thereof, as he deems best, and as he finds necessary for the complete drainage of the lands likely to be assessed for the ditch originally petitioned for, and, *provided*, 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 as originally petitioned for the full benefit thereof, and he shall do the same things and report the same data, tabulations and estimates with reference to said branches as are required by the chapter with reference to the public ditch, drain, creek or water course, or the branches thereof, described in the original petition; *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. But he must fix a time limit as to the construction of any such branch ditches. 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, and the brush or timber taken from the right of way of such ditch may 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. 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 reason 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 intended. When, in his opinion, it will not be detrimental to the usefulness of the whole work or to the usefulness of any extensive section 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. *Provided*, that the engineer, when it is desirable and practicable and when necessary to the complete drainage of lands likely to be assessed for the ditch originally petitioned for, may provide for the drainage of lands not likely to be assessed for the ditch, originally

petitioned for, by extending the ditch or drain or water courses beyond the limits named in the petition, or by putting in branches, or by providing that different parts of such ditch or drain shall flow in different directions with more than one outlet, and in all such cases the viewers shall assess benefits and damages to such additional lands.

What notice shall contain—All persons to be notified.—Sec.

3. That section nine (9) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 as amended by section two (2) of chapter three hundred sixty-seven (367) of the General Laws of Minnesota for 1907 be and the same is hereby amended so as to read as follows:

“Section 9. Final hearing—Notice—Rehearing—Reassessment—Change of course.—Within three days after the filing of such report it shall be the duty of the auditor to call a special meeting of the county board by giving to each member thereof not more than thirty-five days’ notice in the manner provided by law for notifying county commissioners of special meetings. He shall also cause a notice of the time and place of such special meeting to be given to all persons interested by publication for three successive weeks prior thereto, in a newspaper printed and published in said county, and by the posting at least three weeks before such meeting of printed copies thereof in three public places in each township where the proposed work is located, and one at the door of the court house in said county, which notice shall briefly state the pendency of said petition, and shall state that the engineer’s report and viewers’ reports have been made and filed therein, and shall state the time and place set for a hearing thereon, and shall state the starting point or points of said ditch and branches, the terminus or termini thereof and the general course of the same, and such notice shall further describe or designate the governmental sections of land over which such ditch or branches or any part thereof is surveyed, all as the same appears or is shown by the said report of the engineer, and such notice shall further give the names of the owners of the lands and the names of the municipal corporations and other corporations that will be affected thereby, as the same appears in the report of the viewers; and within one week after beginning such publication the auditor, in case of a county ditch or in case of a judicial ditch, the clerk of the district court, shall mail a printed copy of said notice to all persons or corporations whose lands are affected by said proposed ditch as shown by the said viewers’ report, whose address is known to such county auditor in case of a county ditch or to the clerk of the district court of the county wherein such drainage proceedings were instituted in case of a judicial ditch, or can be ascertained respectively by

such auditor or clerk by inquiry at the county treasurer's office of the county wherein such land is situated; *provided*, that in all cases in which, for any cause, said notice shall not be given, or in case said notice shall be legally defective, the county auditor or clerk of court as the case may be, shall cause the same to be again given, so that the petition and engineer's and viewers' report and final hearing thereon may be heard at another special, adjourned or regular meeting of said board, which will occur more than seven days after the expiration of another notice by the publication, posting and mailing, as provided in the first instance.

Provided further, that whenever any final order of the county board or judge of the district court establishing or refusing to establish any ditch in proceedings under this chapter shall have been heretofore or shall be hereafter set aside, annulled or declared void by any court by reason of a failure to give proper notice of the said pendency of said petition and viewers' report or of the time and place set for the hearing thereof, or for any other reason, the county auditor in case of a county ditch, or the clerk of the district court in case of a judicial ditch, at any time within one year after the rendering of such judgment or decision, upon the application of any petitioner in such case, or upon being directed by resolution of the county board shall call a special meeting of such county board for a rehearing on such petition and viewers' report, and shall give notice of such meeting and rehearing in the manner hereinbefore provided, and at such meeting the said county board shall proceed to reconsider such report, shall act upon the same and make findings thereon and may establish such ditch in conformity with the provisions of this chapter.

Upon due publication, posting and mailing of the notice provided for in this section, the county board, in case of a county ditch, or, in case of a judicial ditch the district court and the judge thereof, shall have jurisdiction of each tract of land and of each public highway and of all other property in said viewers' report described, including any land added by the drainage of any meandered lake or the change of any water course and of each tract of land described in said notice or included in the governmental sections designated or described in said notice, and of each tract of land owned by any of the persons or private corporations whose names appear in said notice, that is affected by the proposed ditch or drain, and of all persons and corporations, municipal and otherwise, that are named in said notice, and of all persons and corporations having or owing any interest whatever in, or any mortgage lien or other lien or incumbrance against any of the tracts of land or other property heretofore in this paragraph referred to.

Said county board, in case of a county ditch, or judge of the district court in case of a judicial ditch, shall thereupon at the time and place fixed in the notice of final hearing or at any adjournment thereof, proceed to consider the petition for such ditch and consider the engineer's report and the viewers' report therein, and hear and consider the testimony adduced of all parties interested, and the testimony of the viewers and engineer if offered, and other admissible testimony. At such final hearing the engineer or his deputy or assistant, and at least two of the viewers shall be present, unless excused by such county board. Such hearing may be continued or adjourned from time to time as shall be found necessary by such county board.

If, at such final hearing it shall appear to the satisfaction of such board or district court or judge thereof, from all evidence adduced or from such viewers' or engineer's report, or either or all of the same, that the general system of said proposed ditch as surveyed and reported by such engineer, may be improved by the addition of other branch ditches connecting therewith, or by a change in the course or dimensions of either the main ditch or any branches thereof or by the elimination of one or more such branches; or if it shall appear to said board or district court or judge thereof at such hearing that the viewers have made unequal or improper assessments affecting any of the property or persons assessed, or have awarded benefits in an unequal or improper proportion to any such parties, then and in either such case the said county board or judge of the district court, as the case may be, shall have authority to forthwith amend or correct such viewers' or engineer's report or both as the case may be, or to make findings in relation thereto or to either of the same as shall be required by such evidence or such report or reports, and shall have further authority if deemed advisable to resubmit such matter to the engineer or to such viewers for immediate consideration, and shall have authority to order such viewers or such engineer, as the case may be, or each of the same, to proceed forthwith and summarily to consider the said matter and to make such change or changes in such proposed ditch system, or in the location, course, number or dimensions of the branch ditches, or in relation to the amount of the benefits or damages, or both, respectively awarded, or in relation to the course or dimensions of such main ditch, or either or all of the same, as shall appear to such viewers or such engineer to be just, reasonable and necessary, and as shall appear to be required by such evidence; and thereupon such viewers or such engineer, as the case may be, shall forthwith proceed to reconsider such matters, and, at such final hearing or at such time thereafter as shall be fixed and determined by such county board, or judge of the district court, as the case may be, shall in writing recommend such amendments to such respective engineer's report or view-

ers' report, as the case may be, as shall be necessary to make same just and reasonable, and as shall appear to be required by such evidence; such findings and such amendment or amendments shall thereupon be and become a part of such original report, the same as if originally filed therewith, provided that land not included in the original viewers' report shall not be included and assessed in any amended viewers' report or at such final hearing without publishing and posting new notice of hearing. At such final hearing and after such amendment or amendments are made to such report the county board or district court or judge thereof may further hear and consider all evidence offered and admissible concerning such report or reports as amended, and may determine accordingly.

If the county board, or district judge as the case may be, from the evidence, considers it necessary or advisable for the engineer or viewers to re-examine the course of the said proposed ditch, or of the lands to be benefited or damaged thereby, or if other lands not included are desired to be assessed, then and in that case, or either of them, the said county board shall have authority to resubmit the same to the said engineer or viewers, or both thereof, as the case may be, and order such re-examination, and in such case the said viewers and the said engineer shall proceed to re-examine the course of the said ditch or of lands affected thereby and shall within thirty days after such resubmission file with the county auditor, or clerk of the district court in case of a judicial ditch, their amended report. New hearing shall thereupon be had, and such county auditor, or clerk of the district court as the case may be, shall forthwith proceed to publish, mail and post like notice thereof as is required in case of filing of and hearing on original viewers' report. For the purposes of making such re-examination the said engineer and the said viewers shall have the same authority in all respects as was possessed by them and each of them in the matter of examining and viewing for the purpose of making original reports therein. At such final hearing in case of a judicial ditch or at any time thereafter upon petition of one or more parties interested therein, and upon such notice as shall be fixed by the judge of the district court, the judge of the district court shall divide and apportion among the persons entitled thereto by law the bed of any lake or lakes drained or to be drained in any such ditch proceeding."

Report of engineer.—Sec. 4. That section ten (10) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 be and the same is hereby amended so as to read as follows:

"Section 10. If such county board or district judge as the case may be, from the original, or if amended, then from the

amended report of said engineer and viewers, and from such other evidence as may be adduced before them, shall find that the engineer's report and the viewers' report have been made, and all other proceedings in the matter have been had and taken, in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of the said work are greater than the total costs, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that said work will be of public utility or benefit, or will promote the public health, and that such reports are complete, just and correct, then such board or judge of the district court shall by an order containing such findings, establish such ditch as specified in the original, or if amended, as specified in the amended report of the civil engineer, and shall by such order establish, adopt and confirm the original or if amended, then the amended viewers' report. In case a majority of the viewers have not agreed or shall not agree in their findings the county board or district judge as the case may be, shall determine the proper findings and amend and adopt or confirm the viewers' report accordingly.

Award of damages.—Sec. 5. That section eleven (11) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905, be and the same is hereby amended so as to read as follows:

“Section 11. When damages are awarded to any person, persons or corporation, and the same shall have been duly confirmed, the county board 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, on 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 appeal in favor of such persons as shall not have appealed, and shall be dated and become due and payable immediately after the letting of contract of construction of such ditch. 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, 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 duty shall devolve upon the county board and auditor as hereinbefore provided. Whenever an award shall have been finally confirmed it shall be the duty of the county board 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 all damages awarded, with interest at the rate of six 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 damages 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.

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Appeal from award.—Sec. 6. That section twelve (12) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 be and the same is hereby amended so as to read as follows:

“Section 12. Any person or corporation aggrieved thereby may appeal from an order of the county board made in a ditch proceeding and entered upon their records determining either of the following matters:

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

Second. The amount of damages allowed to any person, persons or corporation, or assessed to any tract of land.

Third. Refusing to establish such proposed ditch.

To render such appeal effectual such 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 county board, with at least two freehold sureties in an amount of not less than two hundred and fifty dollars (\$250.00), 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 and disbursements that may be adjudged against him, and 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 and file same in the office of the clerk of the district court of the county.

Any person deeming himself aggrieved in a county or judicial ditch proceeding, by an order of the county board or the court as the case may be, determining the amount of his benefits or damages may demand a jury trial to determine the amount of his benefits or damages as the case may be 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

with copy of proposed bond shall be served upon attorney for petitioner, if any, and if not then upon the county attorney of the county wherein proceedings were instituted and the original bond and notice with proof of service as herein required 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 days after the filing therein of the order confirming the report of the viewers. In a judicial ditch proceeding, such demand shall be accompanied by a bond in the sum of at least two hundred fifty dollars (\$250) with at least two sureties resident in the county wherein such proceedings were instituted or in the county wherein such land is situated, bond and sureties to be approved by the clerk of the district court wherein such proceedings were commenced, said bond to be conditioned that demandant will pay all costs and disbursements adjudged against him and further conditioned to abide the order of the court therein. 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, or in such other county in which such trial shall be held as hereinafter provided, 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 triable in one county, they may be consolidated and tried together, but the rights of such demandants shall be separately determined by the jury in its verdict. If the demandant or appellant 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 or appellant as the case may be. The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned. In case of demand for a jury trial as to assessments of damages or benefits to lands situated in a county other than the county wherein such ditch proceedings were instituted and are pending, and in case such demandant for jury trial so requests in such demand, such trial as to the land situated in such other county shall be held at the next term of the district court of the county wherein such lands are situated, and in such case the clerk of the district court where such demand is filed shall make, certify and file in the office of the clerk of the district court of the county where such trial is to be had a transcript of the papers and documents on file in his office in such proceeding so far as pertain to the matter on account of which said appeal is taken. After such trial the clerk of the district court of the county where such action is tried shall make, certify and return the verdict of the jury or the order of the court in such matters to such clerk of the district court of the county wherein

such proceedings were instituted and such verdict or order shall be entered and enforced as a part of such proceedings in such last mentioned county.'"

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⁵⁷⁸ **Allowance of estimate.**—Sec. 7. That section fifteen (15) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905, be and the same is hereby amended so as to read as follows:

"Section 15. 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.

Such contract shall be drawn to the satisfaction of the engineer and the county attorney. Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the contracting county or counties and of the parties performing labor and furnishing material in and about the performance of such contracts, 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 the 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 bondsman 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 the statutory provisions construing such official bonds of public officers as security to all persons and providing for action on such bonds by any injured party in the district court.

Provided, that at the end of each year of each season's work, after giving such contractor's bond, and prior to the completion and acceptance of such job of construction, the contractor may make verified application to the county board in case of a county ditch, or in case of a judicial ditch, to the judge of the district court of the county where the proceedings were instituted, setting forth approximately the total yardage of excavation completed and total amount of other work completed, the contract price thereof and the value of the work theretofore certified as complete by the engineer, and the amount of money received by contractor, and further setting forth the amount then owing or unpaid by said contractor for labor or material already furnished in the matter of the completion of such contract, and asking an order reducing the amount of the contractor's bond.

Upon receiving such application, the said judge of the district court or the said county board, as the case may be, shall proceed to hear, consider and determine the said application upon such notice as shall be directed by such judge or by such county board respectively, and if upon such hearing, it is determined that no loss will result thereby, the said judge or said county board may by order reduce the penalty of such bond to such a sum as shall be deemed advisable by such judge or such county board, as the case may be, but such reduction shall in no case exceed by more than twenty-five per cent the amount already paid to the contractor and such reduction shall not affect the validity or the enforcement, or in any manner otherwise affect the remaining amount of the penalty of such bond.

Repairs of ditches.—Sec. 8. That section twenty-six (26) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 as amended by section four (4) of chapter three hundred sixty-seven (367) of the General Laws of Minnesota for 1907 as amended by section ten (10) of chapter four hundred sixty-nine (469) of the General Laws of Minnesota for 1909 be and the same is hereby amended so as to read as follows:

“Section 26. After the construction of any public drainage ditch within the State of Minnesota under any law of this state, the county board of the county in which the said ditch or any part thereof is located shall keep the same or such part thereof in proper repair and free from obstruction so as to answer its purposes and pay for the same out of the general revenue fund of the county and to raise the necessary money to reimburse that fund, it is hereby authorized to apportion and assess the cost thereof, upon all lands originally assessed for benefits by reason of the construction of said ditch, said apportionment and assessment to be in the same proportion as was the original assessment for benefits.

Such county board shall make a written statement of such assessments and deliver the same to the auditor of the county who shall put the same upon the next succeeding tax duplicates of said county and who shall make and file in the office of the register of deeds, the lien statement covering the costs and expenses of such repairs in the manner so far as consistent, as provided by sections 19 and 20 of chapter 230 of the General Laws of Minnesota for 1905, and such assessment shall be a first and paramount lien upon the lands affected, the same as state and county taxes.

In case such assessment or any part thereof is chargeable against lands in another county then the amount thereof chargeable against such other county shall by the county board of the county which has paid the same, be certified to the county auditor of such other county chargeable therewith and such last mentioned county auditor shall thereupon draw his warrant therefor in favor of and deliver the same to the county treasurer of the county which has paid the same, and such auditor drawing such warrant shall thereupon apportion and assess and file lien for the amount thereof upon all the lands in his said county originally assessed for benefits by reason of the construction of said ditch in the same proportion as was the original assessment for benefits.

The provisions of this section shall apply to all works constructed for the purpose of drainage under any law now or heretofore in force in this state including state ditches. In case of repair of state ditches by the county board the cost of the same shall be paid out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund, the county board is hereby authorized and empowered and it shall be their duty to appoint viewers to assess and apportion the cost of such repairs and preliminary and other expenses in connection therewith, said assessment and apportionment to be for benefits to all lands which may have been benefited by the construction of said state ditch and of any lateral or spur ditch emptying therein in proportion to such benefits.

All laws of this state in regard to county drainage ditches designating the number and qualification and duties and compensation of viewers, prescribing rules and directions governing the making of assessments of benefits and the manner and time of giving notice of meeting, governing and making, filing and the approval, change and adoption of the final report of the viewers, providing for a hearing thereon, and such other provisions thereof as is necessary and as is adaptable therefor shall govern proceedings for repair of state ditches, and a statement of the assessment for repairs shall be made and such assessment levied and collected in like manner as is hereinbefore in this sec-

tion provided for the making of a statement of and collecting assessments for repairs of county or judicial ditches.

Provided, that if the repairs for any county or judicial ditch is made necessary, or if the same is widened or deepened as consequence of the construction of lateral or private ditches, not a part of such county or judicial ditch system, and which increases the volume of water to be taken care of by the original ditch or which deposits sediment in the original ditch and thereby contributes to the necessity of such repairs, then the county board shall appoint three viewers whose qualifications shall be as herein provided, and whose duty it shall be to first apportion the cost of such repairs and of the expenses in connection therewith equitably between the lands benefited respectively by such original ditch and those benefited by such private or lateral ditches in proportion to the benefits to such respective ditch systems resulting from the construction of such original ditch and of such lateral and private ditches the same as if such original ditch and such lateral and private ditches were originally one ditch system, and such viewers shall then equitably apportion and assess the portion of the cost of such repairs and expenses so determined to be borne by such private or lateral ditches upon the lands benefited by the original construction of such lateral or private ditch or ditches or by branches thereto, in proportion to the benefits to such lands resulting from such construction, and shall likewise apportion and assess the portion of such cost determined to be borne by such original ditch upon the lands benefited by the establishment and construction thereof in proportion to such benefits. The fact that such portion of such cost of repairs, and such expenses respectively apportioned to such lateral ditch system and to such original ditch system is respectively apportioned and assessed against the respective lands benefited thereby in the same proportion as the respective original assessments of benefits therein shall in all cases be prima facie evidence that such assessment and apportionment is made in compliance with the provisions and requirements of law.

Such viewers shall perform like duties and be governed by the same rules and restrictions in acting hereunder as is provided by law for viewers in judicial ditch proceedings, and such viewers shall within thirty days after their appointment file their report in writing with the county auditor of the county and such county auditor shall give such notice of the hearing on such report as is provided by law for hearing on engineer's and viewers' report in judicial ditch proceedings. At such hearing the county board shall proceed to consider such viewers' report and adopt or modify the same, and the power and authority of such county board in relation thereto shall be the same as is possessed by the judge at a final hearing on the engineer's and

viewers' report in a judicial ditch proceeding under the laws of this state. The same right of appeal from or review of the assessment of benefits and damages and the same procedure in relation thereto shall exist in regard to orders herein as exist by law in the case of county ditch proceedings. After final action by the county board in relation to such assessment, the county auditor shall proceed as is in this section provided in case such assessment for repairs were made by the county board. The repairs herein provided for shall be construed to include the taking from said ditch of sediment deposited therein, the removal of obstructions therein, the widening and deepening thereof so as to answer its original purpose or so as to provide for additional flow of water caused by other ditches or any other reason, the cutting and removal of weeds or grass from the bottom, sides, banks or right of way of such ditch and such other changes or alteration therein as will enhance its usefulness for the purpose of drainage, and shall further be construed to include the extension of said ditch to a new outlet when and in case the same is found by the county board to be necessary or advisable."

Petitioners to give bonds.—Sec. 9. That section twenty-seven (27) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 as amended by section eleven (11) of chapter four hundred sixty-nine (469) of the General Laws of Minnesota for 1909 be and the same is hereby amended so as to read as follows:

"Section 27. Before any district judge shall establish any ditch, drain, water course or other construction named in section one of this chapter as amended, there shall be presented to a judge of the district court in the judicial district in which any part of the proposed ditch is to be located a petition such as is required by section three of chapter 230 of the General Laws of Minnesota for the year 1905 as amended.

Before such presentation such petition shall be filed with the clerk of the district court of the county wherein the said ditch or any part thereof is to be located or constructed, and a copy thereof, duly certified by the said clerk, shall be filed with the county auditor of each of the counties wherein any of the lands mentioned or described in the said petition are located.

At the time of filing such petition, one or more of such petitioners shall give bond with good and sufficient freehold surety, payable to the county or counties, as the case may be, to be approved, including amount and sureties, by the clerk of the district court of the county where such proceedings are instituted, said bond to be conditioned to pay all expenses and costs in case the court or the judge thereof shall fail to establish said proposed ditch, drain or water course.

Such proceedings may be designated and numbered by the said clerk of said district court as follows:

“Judicial Ditch No. _____” and may be so referred to at all subsequent times.”

Appointment of viewers by court.—Sec. 10. That section thirty (30) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 be and the same is hereby amended so as to read as follows:

“Section 30. At the time of the appointment of such engineer or at such time thereafter as shall be deemed advisable by the said judge of the district court, the said judge shall make an order appointing three (3) viewers, such viewers to have like qualifications and perform like duties in the matter of such judicial ditch as is provided in this chapter for qualifications and duties of viewers in the matter of county ditch proceedings before the county board, and thereafter the proceedings in the matter of such judicial ditch by such viewers shall be as specified in sections six (6), seven (7), eight (8), thirty-eight (38), forty-six (46) of chapter 230 of the General Laws of Minnesota for 1905 and acts amendatory thereof and as specified in other applicable provisions of such chapter, save that the duties therein specified in respect to the county board shall be performed by such judge, and those in respect to the county auditor shall be performed by such clerk, and except that the viewers may be residents of any of the counties mentioned or described in the petition, and that the jurisdiction of such viewers shall extend throughout all such counties, and that their several reports shall be filed with such clerk of the district court.”

Compensation of engineer and other officers.—Sec. 11. That section forty-five (45) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 as amended by section five (5) of chapter three hundred sixty-seven (367) of the General Laws of Minnesota for 1907 as amended by section twelve (12) of chapter four hundred sixty-nine (469) of the General Laws of Minnesota for 1909, be and the same is hereby amended so as to read as follows:

“Section 45. The following fees and expenses shall be allowed and paid for services rendered under this act:

To engineers a sum not exceeding the sum of ten (10) dollars per day, to be fixed by the judge or the county board making the appointment, for every day necessarily engaged and actual and necessary expenses, including cost of bond.

To each viewer the sum of three and 50-100 (\$3.50) dollars per day for every day necessarily engaged in viewing ditches, in

traveling therefor, and in making up their reports, and actual and necessary expenses.

To each rodman a sum not exceeding two and fifty hundredths (2.50) dollars per day, and actual and necessary expenses.

To each chainman, axman, and every other like employee not herein mentioned, and necessary to the prompt execution of the work of locating or constructing a public ditch, a sum not exceeding two (2.00) dollars per day, and actual and necessary expenses.

To each member of the county board the sum of three (3.00) dollars per day for each day actually occupied in proceedings to establish or repair, or in inspecting any ditch after its completion, or during the course of the work, if appointed as a committee for that purpose, and the sum of ten cents (10c) per mile each way for travel necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such ditch, and for travel in inspecting ditches or other necessary travel in said ditch matter.

To the county auditor, the county attorney, the attorney for petitioners, the clerks of the district court, the register of deeds, the sheriff and other officers or persons performing duties hereunder, such reasonable compensation as shall be fixed by the county board in case of a county ditch, and by the judge of the district court in case of a judicial ditch, and the fees and compensation of all such county officers and other officers in ditch proceedings shall be in addition to all other sums and fees allowed by law.

All fees per diem, compensation and expenses provided for in this act and fees for such other legal services or expenses as may be necessary, shall in case of a county ditch be audited, allowed and paid upon the order of the county board. In case of a judicial ditch, such fees per diem, compensation and expenses, and fees for such other legal services and expenses shall be audited, allowed and paid upon the order of the judge of the district court having charge thereof.

The said judge may appoint a referee in any judicial ditch proceeding to perform the duties hereinafter set forth, such referee to take oath to faithfully perform his duties according to law. Such referee shall give bond to the counties affected by such ditch in such sum as shall be fixed by such judge, said bond to be conditioned for the faithful performance of the duties of such referee. The fees or salary of such referee shall be fixed by such judge and shall be paid out of the funds of such ditch as shall be ordered by the said judge. It shall be the duty of such referee, if appointed, to consider all bills of account or applications for payment in such ditch proceeding and to hear evidence if offered in relation thereto and to report in writing to such

judge his approval, rejection or amendment thereof as such referee. He shall also keep accurate record and account of all bills of account and all applications for payment acted upon by him and reported to the said judge together with copies of all such reports and of all proceedings had in relation thereto. It shall further be the duty of said referee by order of said judge to inspect and examine and make report upon all work of construction in the matter of such ditch, prior to the final acceptance thereof, and for the purpose of making such examination or inspection, and upon application of such referee, the said judge may appoint and designate a competent and experienced civil engineer other than the one officially acting as such in such ditch proceeding, to examine such ditch and the plans and specifications thereof and to report thereon to the said referee; and it shall be the duty of the said referee and, if requested by such referee, of said engineer to appear and testify before the county board of any county considering the final acceptance of such ditch. Any order of the said judge approving a report of such referee auditing and allowing a bill of account or application for payment in such ditch proceeding shall constitute and be construed as an auditing and allowance of such account by such judge within the meaning of this section and the approval by the said judge of any order of said referee shall constitute the said report of said referee, the order of said judge in such proceeding, provided in all cases the said judge may reject such report and make an independent order in relation to the matters covered by or contained in such report. Such referee shall be subject to removal at the pleasure of said judge."

Rate of interest.—Sec. 12. That section twenty-one (21) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 be and the same is hereby amended so as to read as follows:

"Section 21. The amount that each tract of land, public or corporate road or railroad shall be liable for on account of 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 deeds' office at a rate of interest not exceeding six per cent (6%) per annum until paid, such rate of interest to be fixed and determined by the county board in case of a county ditch or by the judge of the district court in case of a judicial ditch at the time of establishing such ditch. *Provided*, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear: *provided, further*, that in any case and at any time after the establishment of any ditch, the county board in case of a county ditch or the district judge in case of a judicial ditch

may, upon such notice as shall be respectively ordered, and upon a showing of cause therefor, either change or modify any order previously made fixing and determining the rate of interest, or fix the rate of interest in case the same has not been previously fixed, or change the existing rate of interest.

All interest shall constitute an additional lien on said lands or roads until fully paid, which said interest when about to be paid shall be computed by the county auditor. If bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the county auditor or county auditors in the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable, in keeping such ditch in proper repair and free from obstruction so as to answer its original purpose."

Preliminary certificates for work done.—Sec. 13. That section seventeen (17) of chapter two hundred thirty (230) of the General Laws of Minnesota for 1905 as amended by section six (6) of chapter four hundred sixty-nine (469) of the General Laws of Minnesota for 1909, be and the same is hereby amended so as to read as follows:

"Section 17. It shall be the duty of the engineer, on being notified by the 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 county board and give to the contractor a certificate stating that said section or sections (by number) or other jobs of construction, are completed according to the contract, plans and specifications, as set forth in the report of said engineer:

Provided, That when the work for which such certificate is to be issued, affects more than one county, proportionate certificates shall be issued to each county; whereupon, if approved by the county board of the county or counties, as the case may be, and upon the presentation and surrender of said certificate with such approval endorsed 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 from such county on said contract, according to such preliminary certificate, as herein provided; and that said warrant shall be paid out of the general ditch fund to be provided by the county board 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.

At any time during the progress of the work of construction, the engineer may issue preliminary certificates for work done and approved or for material or supplies furnished and delivered along the line of said proposed ditch, or otherwise delivered according to the contract therefor and to be used for the construction or installment of tile or other enclosed drains or for bridges or culverts along the line of and as a part of the said proposed ditch system; which preliminary certificate shall contain the station number or numbers of the work covered by such certificate, the actual yardage of the excavation certified, and the total value thereof according to the contract of construction, or in case the same is for material furnished, then an estimate of the total value of such material according to contract. Such certificate shall further show the percentage of such total value of the work or material to be paid by the county or counties, and if the proportion has been fixed by the district court, such certificate shall further show the proportion of such total value to be paid by the respective counties. Said certificate shall be executed in duplicate by the said engineer, or in such number as may be necessary and as many thereof marked "duplicate" shall be delivered to the contractor as there are counties affected, and such engineer shall further file one thereof with the county auditor of each county affected; *provided* that no engineer in drainage proceedings shall by preliminary certificate certify or recommend for payment and no county auditor shall cause to be paid a sum exceeding seventy-five per cent (75%) of the total value of the work done and approved or exceeding fifty per cent (50%) of the total value of material or supplies furnished or delivered as such total value is shown by such preliminary certificate.

Thereupon the said county auditor shall forthwith issue his warrant for such amount to be so paid, by such county, which said warrant shall be payable as hereinbefore provided for payment of warrant issued after full completion of contract of construction.

Provided, That no certificate or certificates of partial completion or of furnishing of material shall be furnished or delivered by the engineer unless the said certificate or certificates shall be accompanied by the engineer's written certificate that no loss will result from such partial payment. *Provided further*, that the county or counties paying a preliminary estimate of the engineer on material furnished or delivered shall have a lien on the said material to the amount of all payments made thereon by such county or counties.

Provided, That the said certificate or certificates of the engineer in the matter of any county or judicial ditch proceedings, or any other estimate or certificate required under any of the

drainage laws of this state to be made by him, shall not constitute prima facie or other evidence of the truth of the contents thereof, or of the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or any part thereof unless and until said certificate is approved by resolution of the county board.

It shall also be the duty of the engineer to inspect the laying of tile, excavation and all other work of construction from time to time, as provided for in the specifications and provisions in his report and as provided for in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board or the judge of the district court as the case may be, as to all work completed since the last prior report, and his services for making such inspection shall be paid for at the same rate and in the same way as his services in making his original survey and report.'

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Modification of order construction ditch.—Sec. 14. Where the county board of any county in this state or the judge or judges of any district court of this state has heretofore located, established or caused to be constructed, or has attempted or purported to locate, establish or cause to be constructed any ditch, drain or other water course within their respective jurisdiction under the provisions of chapter 230, General Laws of Minnesota for 1905 and acts amendatory thereof or supplementary thereto, and said county board or said judge of the district court, as the case may be, has found and determined that such ditch, drain or other water course will be of public utility or will promote the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded and where the contract or contracts for the construction of such ditch have been actually entered into, and the county auditor has executed and filed in the office of the register of deeds, the tabular statement required by law and making assessments for the costs and expenses of location, establishment and construction of the same against the lands, corporations, roads and other property benefited thereby, and no appeal has been taken therefrom, or from any such proceedings, or if appeal was taken, same has been determined prior to the passage of this act, and where, first, the final order establishing such ditch is ineffective or not according to law for the reason that the same does not sufficiently or correctly describe or designate the course, or the size or dimensions of such ditch, or the branch or branches thereof, or any part of the same, or is ineffective for any other reason or, second, where for any reason, whether the main ditch or any part thereof, or any branch or lateral ditch or any part thereof has not been located, dug or constructed along the line or at the place or

location fixed or determined therefor by the order establishing such ditch, but has been wholly or partially located, dug or constructed along a different line or at a different place or location, or third, where branches or laterals to any ditch have been wholly or partially located, dug or constructed, additional to, different from, or other than those established or designated by the final order establishing such ditch, or, fourth, where at the final hearing or subsequent thereto, the engineer's report or viewers' report or the final order establishing such ditch have been either actually or constructively changed or altered or modified by order or action of the county board or the district judge originally acting thereon, or, fifth, where any other action or thing, not above specified, required to be done or performed by any officer or person in the matter of the establishment, location or construction of any such ditch, or of the acceptance or payment therefor, or if any part thereof or of the issuance of bonds therein, or of the making of assessments of benefits therein, or of the making or filing of the lien of assessments of benefits therein, or any other step in such drainage proceeding, has been attempted to be performed, but has been actually done or performed in a manner not in compliance with law, then all of the said proceedings so taken as aforesaid and all parts thereof and any assessments or liens so levied or assessed or attempted to be levied or assessed for payment of the expense and cost of said ditch, including damages awarded, and the contract, if any, entered into in the said ditch matter, and all payments thereon or otherwise made in such ditch proceedings, and all ditch bonds issued in the said proceeding, and the final order establishing any such ditch, and any such change or alteration in such final order, or in the engineer's or viewers' report therein, and all other steps and proceedings in such ditch matter attempted to be done, but wherein the provisions of law were not fully complied with or were violated, and each and all of the same are hereby legalized and declared to be valid and in full force and effect, the same as if all proceedings in the matter of locating and establishing said ditch and the acceptance thereof and payment therefor and all other proceedings therein were in all respects regular, and the same as if the final order establishing said ditch had been regularly and correctly made. Where such main ditch or branches or laterals or any part thereof has not been wholly or partly located, dug or constructed along the line determined and fixed therefor, as aforesaid, but has been wholly or partly located, dug or constructed at a different place, or where branches or laterals to any ditch have been wholly or partly located, dug or constructed additional to, different from or other than those established by the final order establishing such ditch, or when such final order was ineffective or defective as aforesaid, then the said ditch or branches thereof as wholly or partly

located, dug or constructed at such different place and such branches or laterals additional to or different from those designated or established by such final order and all such ditch or branches as actually located and constructed or partially constructed, and each and all of the same are hereby legalized and made valid and effective at such different place of location or construction, the same as if there located and ordered constructed by the final order establishing such ditch, provided that, if any person whose lands are affected by the said ditch or by such change, claims additional or other damages to such lands on account of such change, than as originally awarded, or claims a reduction of assessment of benefits to any such land by reason of such change, then and in either such case, such person shall within sixty days after the passage of this act, make application to the county board which established such ditch, in the case of a county ditch, or to a judge of the district court which established the same, in case of a judicial ditch, to have his claim for such additional damages or reduced benefits considered and determined, and such county board shall thereupon proceed to hear and consider such application and determine the same, upon such notice of hearing therefor, as shall be deemed advisable by such county board or district judge, as the case may be, and shall make such order in the premises as may be just and equitable and required by the evidence submitted, and appeal from such order or review thereof shall be had in the manner provided by law for appeal from or review of assessment of benefits in county and judicial ditch proceedings.

Provided, That the provisions of this section shall not apply to any action at law or in equity now pending in any court of this state brought for the purpose of questioning or reviewing any such defect in any such ditch proceeding.

Side ditches not to be constructed in certain cases.—Sec. 15. That section thirteen (13) of chapter four hundred sixty-nine (469) of the General Laws of Minnesota for 1909 be and the same is hereby amended so as to read as follows:

“Section 13. Construction of branch ditches after completion of main ditch—Petition—Hearing.—After the completion of any ditch constructed under any law of this state, excepting state or town ditches, no public or private, or side lateral or spur ditch or ditches draining lands or property not assessed for benefits in such main ditch proceeding shall be so dug or constructed by any person or persons or any association of persons or by any corporation or any township or other municipal or corporation or the authorities of either of them, without having first secured express authority so to do from the county board of the county where such principal ditch is located, or in case of a judicial district, from the county board of both counties meet-

ing jointly for that purpose in the county wherein such drainage proceedings were originally instituted, upon notice by the county auditor of such county to the members of said county board or boards as in case of special board meetings.

Such proceedings shall be instituted by a petition to the county board filed with such county auditor and signed by parties interested in and affected by said proposed branch, setting forth the source, course, terminus and the size and dimensions of said proposed side lateral or spur ditch.

Thereupon the said auditor shall appoint a time and place to consider the same and shall call a special meeting of the county board or boards, as the case may be, to meet at such time and place for that purpose and shall cause notice thereof to be published once each week for two successive weeks in a newspaper published in each county affected.

The said county board or county boards, as the case may be, may employ a competent and experienced civil engineer to investigate and report on the matter.

On the day of hearing so appointed, or at any adjourned day thereof, the county board or boards shall proceed to hear all testimony offered in relation to said matter, and shall determine and decide the same, and if the county board or boards decide to permit such branch or lateral ditch to be built, or such other ditch to empty therein, determine and decide the terms and conditions under which same may be built, and the amount to be paid by petitioners therefor, if any, and upon compliance therewith and not otherwise, said petitioner or petitioners may proceed to construct and complete said private ditch or side lateral or spur ditch so petitioned for."

Approved April 20, 1911.

CHAPTER 385—H. F. No. 515.

An Act to amend section two thousand nine hundred thirty-six, Revised Laws 1905, relating to the incorporation of cemetery associations.

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

Incorporation of cemetery companies.—Section 1. That section two thousand nine hundred thirty-six Revised Laws 1905 be and the same is hereby amended so as to read as follows:

"2936. A corporation or association may be formed for the purpose of procuring and holding or selling lands or lots exclusively for the purpose of public cemetery and such corporation may acquire and manage all real and personal prop-