

SEC. 6. That section nineteen (19) of said act be amended so as to read as follows:

Section 19. In case it shall appear from the pleadings or upon the trial of any cause, that the title to real estate is involved in the action, the municipal court shall not proceed further therein, but shall transfer the action to the district court of said county, and the cause shall be proceeded with in the court to which it shall be transferred, as if originally commenced therein.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved March 8, 1878.

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## CHAPTER 66.

AN ACT TO AMEND SECTION SEVEN OF AN ACT ENTITLED "AN ACT TO AMEND AN 'ACT ENTITLED AN ACT TO INCORPORATE THE HASTINGS, MINNESOTA RIVER AND RED RIVER RAILROAD COMPANY,' APPROVED FEBRUARY TWENTIETH, ONE THOUSAND EIGHT HUNDRED AND FIFTY-SEVEN, 'APPROVED MARCH THIRD, ONE THOUSAND EIGHT HUNDRED AND SIXTY-SIX.'"

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

SECTION 1. That section seven (7) of an act entitled "An act to amend an act entitled an act to incorporate the Hastings, Minnesota River and Red River Railroad Company," approved February twentieth (20th), one thousand eight hundred and fifty-seven, (1857), now known as the Hastings and Dakota Railway Company, be amended so as to read as follows :

Section 7. The said company shall have the right of way upon and may appropriate to its own use and control for the purposes of said road and its appurtenances, land one hundred (100) feet in width throughout its entire length and that of its branches, together with such other widths as the company shall deem necessary for the usual slopes, berms, barrow and gravel pits, waste banks and for the purpose of making drains and giving proper direction to water courses across or along said road; also all other necessary widths for turn-outs, sites for water, depot buildings and store-houses, machine shops and other shops, and extra tracks necessary therefor, in which case such further quantity may be taken as shall be necessary for such purposes; and whenever said company shall deem it necessary to acquire such lands they shall have the right to enter upon, take, hold and occupy such lands, and also to enter upon any lands adjoining said road and obtain therefrom sand, gravel, stone and other materials which may be necessary for the

construction of said road; and whenever any lands or materials shall be required for the construction of said road and the same shall not be given or granted to said company, the compensation to be paid therefor by said company shall be ascertained in manner following:

The said corporation may present either in term time or vacation to any court in the judicial district in which the lands or real estate proposed to be taken are situated, having jurisdiction competent to entertain, adjudicate and determine questions of title to real estate, a petition signed by some authorized agent or attorney thereof, describing with reasonable certainty and accuracy, by maps, plat survey, government subdivisions or otherwise, the lands or real estate so proposed or required to be taken, and setting forth the name of each and every owner, encumbrancer and other persons interested in the same, or any part thereof, so far as the same can be ascertained by the legal records affecting the same, and by view of the premises or other inquiry touching the occupation thereof, and praying the appointment of three (3) competent disinterested persons as commissioners to ascertain and determine the compensation to be made to the said owner or owners respectively, and to all tenants, encumbrancers and others interested for the taking or injuriously affecting said land or real estate:

That upon the filing of such petition in the clerk's office of such court, the said company shall cause notice to be signed by its attorney, which shall contain the name or style of the court in which such petition is filed and be directed to the persons in said petition named as owners, lien-holders or otherwise, and to all whom it may concern, therein stating that a petition has been filed by said company for the purpose of condemning certain real estate therein particularly described, for the use of said corporation, and specifying the time and place at which the application under the said petition will be made for the appointment of commissioners, which notice shall be served by delivering a copy thereof to such of the parties as can be found in said district, at least ten (10) days before the time fixed for such hearing.

In case any of the parties aforesaid cannot be personally served with such notice, then upon affidavit of such fact the court shall by its clerk enter an order directing the publication of a copy of such notice in some newspaper published in the judicial district in which said proceeding is pending, and in case no newspaper is printed in such district, then such publication shall be made in one or more of the newspapers published at the seat of government, as said court may direct, which publication shall be made at least once a week for three (3) successive weeks prior to the time fixed for said application. That it shall not be necessary to publish a description of the property sought to be affected by such proceedings, or give any further notice than as above provided.

That upon proof of service of such notice personally or by publication thereof, and proof thereof filed, the service shall be complete, and the parties and all persons interested be deemed in court and the

court shall thereupon have jurisdiction of the property in the petition described, as well as of the parties interested therein, and at the time specified or at the time to which the same may be adjourned, the court may make the order appointing three (3) commissioners to ascertain and determine the damage or compensation to be made to the owner or others interested in said lands, and fix a time and appoint a place at which said commissioners shall meet to organize and hold their first meeting. That notice of such meeting shall be entered upon the minutes of said court, and the same shall operate as notice to all parties.

*Before said commissioners shall enter upon the discharge of their duties, they shall respectively take and subscribe an oath that they will faithfully and impartially discharge their duties as commissioners to ascertain and determine the compensation to be paid by the said corporation to the respective claimants for lands or interest in lands to be taken for the use of said company. Such oath may be taken before any officer authorized by law to administer oaths.*

Whenever the place of any commissioner shall become vacant from any cause, or any one (1) or more shall neglect to act, the court or judge may upon such notice to the parties as he may prescribe and by like order supply such vacancy, and supply the place of any one neglecting to act, by the appointment of another person as such commissioner, who shall be in like manner served with a copy of the order appointing him and take the oath.

The commissioners shall meet at the time and place specified in the said order, and when met, and all present, may proceed to the hearing of the proofs and allegations of the parties, and are hereby authorized to administer oaths to witnesses before them. The commissioners may, as the emergency or convenience of any case shall require, adjourn from time to time, and to such place as may, in their judgment, be most conducive to the purposes of their investigation. No proceedings shall be had by said commissioners unless all of them are present, except to adjourn; but any and every question submitted to them may be decided by a majority, and a report by a majority shall be valid.

The report of said commissioners shall state the amount of damages or compensation awarded to or against each tract or parcel of land, and the report of the commissioners or a majority of them, shall have the force and effect of the verdict of a jury, and upon the filing thereof in court, judgment shall be entered thereon as in case of verdicts in civil actions, and with like force and effect, and subject to like proceedings in appeal as are now provided for in civil actions in such court.

*The fees of the commissioners, clerk and other officers shall be paid by the company, except in case of appeal, in which case the court shall award costs to the successful party, as in other cases; Provided, That no appeal shall operate to stay the work upon such road, or deprive said company of the use of the premises affected, in case the company shall pay into court the amount awarded to the property of such appellant.*

The said company may exonerate itself from all liability as to the application of the amount awarded to or for any particular tract by paying the same into court, and in all cases the court may adjudge and determine upon motion or interpleader as between the parties claiming the same, who is entitled thereto. In estimating damages or compensation to be paid to any claimant, the said commissioners shall take into consideration the benefits to accrue to the claimant by the construction of said road, and to allow such benefits by way of a reduction of the damages which such claimant may sustain thereby, and report only the balance of the damages, if any, but no balance shall in any case be reported in favor of the company.

Upon the filing of the report of the commissioners at any time after the passage of this act) it shall be the duty of said railroad company to cause notice of the filing of such report, to be published in a daily newspaper, which may be published in the city of St. Paul, for at least ten (10) days, and upon such publication made and proof thereof filed with the clerk of the court in which the proceeding is pending, notice of the making and filing said report shall be deemed complete; and in case said company or any person interested in said report, shall deem the same unjust in any matter affecting the amount of compensation to be paid, the company or such party may appeal therefrom at any time within sixty (60) days after the publication of notice of filing said report as aforesaid.

The party appealing shall file a notice of such appeal with the clerk of the court with whom the report of the commissioners shall have been filed, stating the grounds of appeal, and serve a copy thereof on the opposite party within the time above prescribed for taking an appeal, and by giving a bond in such penalty as the said court shall prescribe, conditioned to prosecute the appeal without delay, and to abide the order the court may make on such appeal and to pay the costs if he should fail therein. Upon the filing the notice and bond for appeal with proof by affidavit of service of notice of appeal, as above prescribed, all further proceedings affecting the particular parcel of property named in the notice of appeal upon the report shall be stayed until the further order of the court (unless the company shall make the deposit herein provided for,) and the cause upon such appeal shall be entered, proceeded in and determined in the same manner as cases of appeal from the courts of justices of the peace, and in case the appeal shall involve the determination of any question of fact, the same shall be tried by a jury, unless a jury shall be waived by both parties.

Whenever any report of the commissioners shall become final, and whenever any appeal from such report or part of report shall have been finally determined, the said corporation shall, upon the payment to each party interested of the sum determined thereby to be due him or her as compensation for property taken, or the deposit of the same in court for his or her use, become invested and seized of the title of the lands or real estate for which such

payment or deposit shall have been made, and entitled to full, free and perfect use and occupancy of the same for the purposes aforesaid.

*And provided further,* Than when it is necessary or convenient for said railroad company to procure water outside and beyond the limits of such road as the same now are or may be hereafter fixed and established under the provisions of this act, for the uses and purposes of said company in running and operating said road, then, in such case, the said company shall have the same right and power to enter upon, take, hold and occupy the land necessary or convenient for such purpose as they now have to take, hold and occupy lands for the other purpose specified in this section.

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

Approved March 7, 1878.

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## CHAPTER 67.

AN ACT TO AMEND SECTION EIGHT (8) OF CHAPTER TWO HUNDRED AND THIRTY-FIVE (235) OF THE SPECIAL LAWS OF ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SEVEN (1877), RELATING TO THE VILLAGE OF DULUTH.

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

SECTION 1. Section eight (8) of chapter two hundred and thirty-five (235) of the special laws of the year one thousand eight hundred and seventy-seven (1877), is hereby amended by striking out the first three (3) lines and inserting in lieu thereof the following words:

“Whenever any of the bonds, matured coupons or orders of the city of Duluth, are so held by said judge in trust for the village of Duluth.”

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

Approved March 7, 1878.