

GENERAL STATUTES

33

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 1.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOT
REMEDIAL, THE LATTER BEING IN VOL. 2.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

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CHAPTER 40 (New):

DRAINAGE AND DRAINS.

- TITLE 1. DRAINAGE OF WET OR OVERFLOWED LANDS.
 2. DITCHES — DRAINS — WATER-COURSES.

Acts 1866, ch. 27, providing for the drainage of swamp, bog, meadow and other lands, and for the construction of ditches or canals from any lake, for the purpose of creating or increasing water-power, is superseded by the law in this chapter.

Sections.

DRAINAGE OF WET OR OVERFLOWED LANDS.

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TITLE 1.

DRAINAGE OF WET OR OVERFLOWED LANDS.

DRAINAGE DISTRICTS.

SEC. 3722. **Organization.**— Whenever the board of county commissioners of any county in this state deem it conducive to the public health, convenience and welfare and of public benefit and utility to drain the wet or overflowed lands in any portion of their county they shall have the power at any regular session to organize such county into a drainage district, and upon such organization the same shall be known and designated as the “—county drainage district.” Such organization shall be effected by an order adopted by a majority vote of the whole number of commissioners, which order shall be in substantially the following form:

STATE OF MINNESOTA, }
 County of —, } ss.

The board of county commissioners of the county of — (naming the county) do hereby order and determine that the said county be and the same is hereby organized into a drainage district under and by virtue of the provisions of chapter — of the general laws of 1887, (citing this act).

Dated —.

Signed —,

Attest:

Chairman.

—,
 County Auditor.

Which order shall be signed by the chairman and attested by the auditor and recorded at length in the records of the proceedings of the county commissioners, and in the drainage record hereinafter provided for; and thereupon such county shall become a drainage district without any further act or cere-

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mony and shall be deemed to have accepted all the provisions of this act and to be bound by all its obligations and requirements.

1887, ch. 98, § 1: "An act to provide for the formation and organization of drainage districts for the draining of wet and overflowed lands for agricultural and sanitary purposes." Approved March 8th.

SEC. 3723. Board of drainage commissioners.—The board of county commissioners of any county so organized into a drainage district as provided in the preceding section shall be the drainage commissioners of such district and shall be known by the corporate name of the "board of drainage commissioners of — county drainage district" and by that name shall be a body corporate with power to sue and be sued, plead and be impleaded, contract and be contracted with.

Powers.—They shall have the general supervision and control of all drainage matters pertaining to their district subject to the provisions and requirements of this act. While acting as a drainage board they shall hold meetings for the transaction of drainage business separate and distinct from their meetings as a board of county commissioners and shall be paid for their services as a drainage board, the same *per diem* and mileage as is now allowed them by law for their services as county commissioners, which fees shall be paid by the treasurer of the county upon the warrant of the clerk of the drainage board out of the drainage fund hereinafter provided for; but they shall in no case draw pay for the same day in both capacities.

The chairman of the board of county commissioners shall be *ex-officio* chairman of the board of drainage commissioners.

1887, ch. 98, § 2.

SEC. 3724. Majority of board may act.—A majority of the board of drainage commissioners shall be competent to perform any of the duties required of them by this act, but all orders made by them shall be only on the affirmative vote of the majority of the whole board.

1887, ch. 98, § 43.

SEC. 3725. Audit claims.—The board of drainage commissioners shall be a board of audit for their drainage district and shall audit and allow all legal accounts, claims and demands against their drainage district except their own compensation. Before any such account, claim or demand shall be audited or allowed it shall be itemized and duly verified by the claimant, his agent or attorney to the effect that the same is a just and true demand against such drainage district, that the same is due and that no part thereof has been paid.

1887, ch. 98, § 5.

SEC. 3726. Invest sinking fund.—Whenever the amount of money in the treasury of any drainage district belonging to the sinking fund of any sub-drainage district is sufficient to warrant the investment thereof, the board of drainage commissioners shall have power to invest the same in the bonds of any county, township or school district within the state of Minnesota, and all interest received from such investment shall be credited to the sinking fund of such sub-drainage districts.

1887, ch. 98, § 50.

SEC. 3727. Interest in contracts prohibited.—No member of the board of drainage commissioners, viewer, engineer or supervisor shall be personally interested in any contract for the construction of any work done under the provisions of this act, and any contract in which any such commissioner, viewer, engineer or supervisor is personally interested, either directly or indirectly as a contractor, shall be void, and the contractor or contractors shall forfeit all pay for any work done under such void contract.

1887, ch. 98, §§ 51, 52.

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SECS. 3728-3731.] DRAINAGE OF WET OR OVERFLOWED LANDS.

SEC. 3728. **Liability for damages.**— Each drainage district shall be liable for any damages which any person or persons or corporation may sustain, by reason of negligent or imperfect manner in which any drain, ditch or embankment is constructed within such drainage district under the provisions of this act and such damages may be recovered in an action at law against such drainage district in its corporate name, in a court of competent jurisdiction.

Assessment to pay.— *Provided*, that the amount of the judgment recovered in any such action shall be assessed in the same manner as other assessments herein provided for upon the lands in the sub-drainage district in which the cause of action arose.

1887, ch. 98, § 46.

SEC. 3729. **Wilful injury — Penalty.**— Any person or persons who shall wilfully and unlawfully fill up, injure or destroy any drain, ditch or embankment constructed under the provisions of this act, or shall wilfully and unlawfully prevent, hinder or delay the construction of any such drain, ditch or embankment, shall be deemed guilty of a misdemeanor and upon conviction thereof, before any justice of the peace or other court having jurisdiction, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail not more than ninety days, or both as the court may determine.

1887, ch. 98, § 44.

OFFICERS.

SEC. 3730. **Clerk of board — Duties — Fees.**— The county auditor of each county so organized into a drainage district shall be the clerk of the board of drainage commissioners of his county. He shall be the custodian of all books, papers and records pertaining to drainage matters in his county and shall keep in a well bound book to be known as the "Drainage Record," a record of all the proceedings of the board of drainage commissioners of his county and shall enter at length therein all orders and findings of the drainage commissioners pertaining to the subject of drainage.

Fees.— In addition to the salary allowed him by law as county auditor he shall be paid for his services as clerk of such board of drainage commissioners, three dollars per day for each day such board shall be in session, ten cents per folio for the records he is required to make by the provisions of this act, five cents for filing each petition, order or other paper which he shall be required to file and preserve as such clerk, and a sum equal to one per cent. in each year of the amount raised by special assessment for drainage purposes in his county for such year as compensation for all other services herein required of him; all such fees and compensation to be audited and allowed to him by the drainage board of his county and paid out of the drainage fund hereinafter provided for.

1887, ch. 98, § 3.

SEC. 3731. **Treasurer of board — Duties — Fees.**— The county treasurer of each county so organized into a drainage district shall be the treasurer of such district. He shall give a bond to the board of drainage commissioners of his county with sufficient sureties to be approved by such board and in such amount as they shall determine, but in no case for less than the whole amount of money likely to come into his hands in any one year as such treasurer. Said bond shall be conditioned, that such treasurer will faithfully discharge the duties of his office and that he will receive, safely keep, and pay over, according to law, all moneys which shall come into his hands as treasurer of such drainage district. He shall receive and safely keep all moneys directed by law to be paid him as such treasurer and shall pay out the same only on the warrant of the drainage clerk or order of the board of drainage commissioners signed by the chairman and attested by the clerk thereof. He shall keep the funds of the drainage district separate and distinct from those

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of the county and keep proper accounts of the same in suitable books to be provided by the drainage commissioners and they may at any time require the treasurer to exhibit and count in their presence the funds in his hands belonging to the drainage district when the board deem it advisable. They may make the same arrangements for the deposit of the funds of the drainage district with any bank or banks as are authorized by law for such deposits of county funds. As compensation for the services required of him by this act the treasurer shall be allowed two per cent. on all sums of money coming into his hands as such treasurer from the proceeds of the assessments provided for in this act, the same to be audited and allowed to him, out of the drainage fund of his county by the board of drainage commissioners.

1887, ch. 93, § 4.

SEC. 3732. Supplies for officers.—It shall be the duty of the board of county commissioners of any county so organized into a drainage district to supply at the expense of their county the clerk of the board of drainage commissioners and the treasurer of the drainage district with such records, account books and stationery as those officers may require for keeping the records and accounts and transacting the necessary business of the drainage district of the county.

1887, ch. 93, § 6.

PETITION FOR DRAINAGE.

SEC. 3733. Form—Bond for expenses.—In any county organized into a drainage district under the provisions of this act a majority in number of the owners of land within a tract or territory, in such county, having a common drainage outlet who own one-third ($\frac{1}{3}$) or more in area of the lands to be drained or benefited and who desire to construct a drain or drains, ditch or ditches, embankment or embankments, or to establish in said tract having such common drainage outlet a combined system of drainage and protection from overflow for agricultural and sanitary purposes and maintain the same by special assessments upon the lands and property benefited thereby, may file with the clerk of the board of drainage commissioners, of the county in which such lands are situated a petition signed by them, setting forth a general description of the lands proposed to be affected, with the names of the owners and their post-office address when known, a general description of the proposed work and that the petitioners desire that a sub-drainage district may be organized embracing the lands therein mentioned for the purpose of constructing, repairing and maintaining a drain or drains, ditch or ditches, embankment or embankments or a combined system of drainage and protection from overflow or all or either within said tract for agricultural and sanitary purposes by special assessments upon the lands and property to be benefited thereby. Such petition shall be accompanied by a bond signed by two or more free-holders in the sum of two hundred and fifty dollars (\$250), payable to the board of drainage commissioners of the drainage district in which such tract is situated which bond shall be approved by said clerk and conditioned to pay all expenses of the proceedings under such petition in case said board of drainage commissioners shall fail to establish the sub-drainage district prayed for in said petition.

1887, ch. 93, § 7.

SEC. 3734. Corporations may sign petition.—Any railroad company or other corporation owning lands or other property that will be affected by the organization of any sub-drainage district as provided for in this act, may sign the petition for the organization of such sub-drainage district, by such officer or officers as are by the charter or by-laws empowered to make contracts for such railroad company or other corporation.

1887, ch. 93, § 49.

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SEC. 3735. **In more than one county.**—Sub-drainage districts extending into more than one county may be organized whenever this act has been put in operation in all of such counties as provided by section five. In such case the petition for the formation of such sub-drainage district shall be addressed to the commissioners of the drainage district of the county in which the greatest part of the lands to be affected are situated, and shall be signed by a majority of the adult owners of the lands situated in each of said counties and proposed to be embraced in such sub-drainage district, and such commissioners of the drainage district of the county in which the greatest part of the lands of the proposed sub-drainage district are situated, shall have authority to organize such sub-drainage district and to exercise control over it to the same extent and in the same manner as in case where the sub-drainage district is all in one county. But copies of all orders in relation to such sub-drainage district shall be filed with the clerk of the drainage district of each of the counties into which it extends; and in making assessments the lands in each county shall be put upon separate rolls and reported to the auditor of the respective counties for collection and payment to the treasurer of the district in which the greatest part of such sub-district is situated. All appeals or suits relating to such sub-drainage district shall be to and brought in the district court of the county in which the greatest part of such sub-drainage district lies.

1887, ch. 93, § 45.

MEETING OF BOARD TO CONSIDER PETITION.

SEC. 3736. **Notice of.**—It shall be the duty of said clerk to receive and file said petition and bond in his office and he shall thereupon call a meeting of the board of drainage commissioners of his drainage district to be held at his office not more than thirty nor less than twenty days thereafter. The clerk shall give notice of the time and place of such meeting by causing written or printed notices signed by him to be posted in at least three different places within such proposed sub-drainage district and by mailing a copy of such notice to each of the town clerks and members of the town boards of supervisors of each town in which any of the lands proposed to be included in such sub-drainage district are situated, at least ten days prior to the time of such meeting. He shall also file a copy of such notice in his office and record the same in the drainage record.

1887, ch. 98, § 8.

SEC. 3737. **Meeting—Duties at.**—It shall be the duty of the board of drainage commissioners of such drainage district to meet at the time and place mentioned in such notice and the clerk shall lay before them the said petition and all other papers in the case and they shall thereupon proceed to ascertain whether said petition has the signatures of the required number of owners of land as required by this act and if such signers are owners of one-third or more in area of the lands situated in said proposed sub-drainage district; and the affidavits of two or more credible signers of said petition, that they have examined the same, are acquainted with the locality of the proposed sub-drainage district and that they believe that said petition is signed by the required number of owners of lands in said proposed sub-drainage district and that the said signers are the owners of one-third or more of the lands therein, may be taken as *prima facie* evidence of the facts set forth in said petition as against the owners of the lands in the proposed sub-drainage district and as conclusive evidence against all persons signing said petition, of all the facts set forth in said petition and of the necessity for the organization of such proposed sub-drainage district thereunder. At such meeting any other owners of lands within said proposed sub-drainage district shall be permitted to sign said petition if they so desire. Any person or persons owning land in said proposed sub-drainage district whose names do not appear upon said petition

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may at said time and place appear by himself or attorney and controvert any material statements in said petition; and for the purpose of such hearing the board shall have full power to administer oaths, to examine all witnesses produced and shall decide all questions that may arise at such hearing at such time and place and make a written statement of their findings to be filed with the clerk and recorded in the drainage record. If they find that the petition has not been signed as herein required they shall dismiss the same. For cause shown the board may adjourn from day to day until such hearing is concluded.

1887, ch. 98, § 9.

VIEWERS.

SEC. 3738. Appointment — Survey.— If said board of drainage commissioners shall find in favor of said petition they shall immediately by order appoint three disinterested persons, residents of the county in which such proposed sub-drainage district is situated as viewers, to meet at a time and place specified in said order preparatory to commencing their duties as herein specified. It shall be the duty of said clerk thereupon to deliver to said viewers a certified copy of the petition and the order of the board thereon who shall proceed at the time set in said order with a surveyor who shall be a civil engineer and who shall make an accurate survey of the proposed work, a map or plat of his survey, and a report of all estimates required of said viewers as a basis of their report to be made to the board of drainage commissioners as herein provided.

1887, ch. 98, § 10.

SEC. 3739. Quorum.— A majority of the viewers shall be competent to perform the duties required of them by this act. *Provided*, that for work extending into more than one county, there shall be present a majority from each county interested; and any person appointed a viewer under the provisions of this act, shall qualify by taking and subscribing an oath, to faithfully discharge the duties of a viewer as prescribed by this act and while in the discharge of their duties they shall have the right to enter upon any lands within the proposed sub-drainage district for the purpose of making all surveys and estimates required of them.

1887, ch. 98, § 21.

SEC. 3740. Duties — Change boundaries.— The said viewers, while such survey and plat are being made or after the same have been completed shall have power to change the boundaries of such proposed sub-drainage district from the boundaries given in the petition, so as to include lands not embraced or exclude lands taken into said proposed sub-drainage district, and shall permit additional signatures to be made to the petition by any person or persons owning land in, or owning land desired to be taken into such proposed sub-drainage district to the end that a majority of the owners of the land in the proposed sub-drainage district as finally to be organized and who shall be owners in the aggregate of one-third or more in area of such land, shall have signed the petition, which facts said viewers shall find and put such finding in writing and the same shall be filed with the clerk who shall enter the same in his drainage record, which finding shall be conclusive.

1887, ch. 98, § 11.

SEC. 3741. Divert line.— The viewers, if they find the line of any proposed drain, ditch or embankment is not such as best to effect the object sought or that the object of the proposed work can be effected as well in connection with a ditch or embankment necessary for the improvement of any highway already established, may proceed to establish the line of such drain, ditch or embankment in connection with such highway ditch, drain or embankment already constructed and make the same a part of the proposed

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work, and the county or town which has constructed such highway drain, ditch or embankment shall be allowed a proper credit for the same in the manner hereinafter provided and in all cases in which the line of any drain, ditch or embankment is located along any highway already established, such work shall not be so constructed as to interfere with the free use of such highway for all purposes of travel thereon.

1887, ch. 98, § 17.

SEC. 3742. **Monuments — Estimates.** — If the viewers, after examination of the proposed work and consideration of the report of the engineer shall find in favor of the proposed work and determine to report in favor of the organization of the proposed sub-drainage district, they shall together with said engineer make an accurate survey of the proposed work and they shall cause stakes and monuments consecutively numbered to be set along the line or lines of the proposed drain or drains, ditch or ditches, embankment or embankments at each one hundred (100) feet and they shall make a computation of the total number of cubic yards of earth to be excavated and removed from such drain or drains, ditch or ditches, or the total number of cubic yards of earth to be used in raising such embankment or embankments and a detailed estimate of the cost of the whole work. They shall accurately describe, as the same is described upon the county tax duplicate each parcel of land to be assessed for the construction of the proposed work, giving the number of acres in each tract assessed and the estimated number of acres benefited, the amount that each tract of land will be benefited or damaged by the construction of said work and the amount that each tract is assessed therefor, and they shall in tabular form give the depth of the cut or height of the embankment, width at the bottom and width at the top at each one hundred (100) foot stake or monument of such drain, ditch or embankment, and said viewers shall also ascertain and give the names of the owners of the lands that are assessed for the construction of such work so far as they can be ascertained, upon reasonable inquiry and search of the public records of the county in which such lands are situated.

1887, ch. 98, § 12.

SEC. 3743. **Damage to property — Estimate.** — The viewers shall estimate the damage to each tract of land, railroad or other property over and upon which any portion of any drain, ditch or embankment may be located, and the amount of such damages shall be added to the estimated cost of the proposed work and be included in the assessment to be made therefor.

1887, ch. 98, § 16.

SEC. 3744. **Same — Payment of.** — Every person or persons or corporation owning lands over or upon which any drain or drains, ditch or ditches, embankment or embankments shall be constructed under the provisions of this act shall be allowed adequate damages and compensation for the taking of the lands upon which such drain or drains, ditch or ditches, embankment or embankments are located and for the injuries to such lands caused thereby; and the board of county commissioners of the county in which such lands are situated shall order such damages to be paid out of the county treasury to the person or persons or corporation entitled thereto, and the amount of damages to which they are entitled shall be specified by said viewers in their report to the board of drainage commissioners as herein provided; and the county shall be reimbursed for such payment out of the drainage fund of the sub-drainage district for and on account of which such damages and compensation are paid.

1887, ch. 98, § 19.

SEC. 3745. **Report.** — It shall be the duty of said viewers to perform the duties enjoined upon them by this act with all convenient speed and diligence and within fifteen days after the completion thereof to make and file a full

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report of all their proceedings under their appointment, verified upon their oaths, with the clerk of the drainage district. If said viewers report in favor of the proposed work and that the same is of public benefit and utility and conducive to the public health; such reports shall contain an accurate map or plat of the proposed work showing the lines thereof and the stakes and monuments along the same, the width of the strip of land along the line of each drain, ditch or embankment necessary to be taken and used in the construction of such drain, ditch or embankment; a computation of the number of cubic yards of earth to be excavated and removed upon each one hundred feet as shown by such stakes and monuments from such drain or drains, ditch or ditches and the number of cubic yards of earth to be used upon each one hundred feet as shown by such stakes and monuments in raising such embankment or embankments, and the total number of cubic yards of earth to be excavated and removed to complete the whole of the proposed work and the detailed estimate of the cost of the whole work. Said report shall also contain an accurate description, as the same is described upon the county tax duplicate of each parcel of land benefited or damaged by the proposed work, giving the number of acres in each tract and the estimated number of acres in each tract benefited or damaged, as the case may be; the amount that each tract of land will be benefited or damaged by the construction of the proposed work; the amount that each tract is assessed therefor and the scale of percentage of benefits as provided for in section eighteen of this act; also the depth of the cut or height of the embankment; width at the bottom and width at the top at each one hundred foot stake or monument of such proposed drain, ditch or embankment; the names of the owners of the lands affected by the proposed work so far as they can be ascertained upon reasonable inquiry; all of which shall be in tabular form. In case the viewers find the proposed work not of public benefit or utility, they may report against the same, in which case their report need only state that they find the proposed work not to be of public benefit or utility.

1887, ch. 98, § 20.

SEC. 3746. Compensation.—The viewers shall receive as compensation for their services three dollars per day for the time actually engaged in performing their duties under this act, and the engineer employed by said viewers shall receive five dollars per day for his services. Such compensation to be paid out of the drainage fund of such sub-district upon the order of the board of drainage commissioners.

1887, ch. 98, § 28.

MEETING OF BOARD TO CONSIDER REPORT.

SEC. 3747. Notice of.—It shall be the duty of the clerk of such drainage districts on said report being filed, if it be in favor of the proposed work, to call a meeting of the board of drainage commissioners of such drainage district to be held at his office not more than forty nor less than thirty days after said report had been filed in his office. The clerk shall give notice of the time and place of such meeting by causing written or printed notices, signed by him as clerk, to be posted in at least six different places within such proposed sub-drainage district and by mailing a copy of such notice to each town clerk and member of the town board of supervisors of each town in which any of the lands proposed to be included in such sub-drainage district are situated and to all non-resident owners of any of said lands whose post-office address is known to him or can be ascertained in the office of the auditor or treasurer of such county, at least twenty days prior to the time of such meeting. Said notice shall contain a description of the lands by sections proposed to be included in such sub-drainage district and a statement that the viewers' report is filed with the clerk; that the plat and description of the proposed work is on file with said report and that at the time and place men-

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tioned in said notice the said report of the viewers will be acted upon by the board of drainage commissioners at which time and place any person interested may appear and contest the report of said viewers upon any and all matters therein affecting his interests.

1887, ch. 98, § 22.

SEC. 3748. Meeting — Duties at.— It shall be the duty of the board of drainage commissioners of such drainage district to meet at the time and place mentioned in said notice and the clerk shall lay before them the said report of the viewers for their consideration. They shall first ascertain if proper notice has been given of their meeting and if they so find they shall make such finding in writing and cause the same to be entered in the drainage record. If they find that such notice has not been properly given, they shall adjourn to such time as will give the clerk opportunity to complete service of notice of such meeting and the time to which the same has been adjourned. After the board shall have found that due notice of the time and place of their meeting has been given, they shall proceed to consider the report of said viewers.

Objections.— If any objections are made to the report of the viewers, and any person or persons or corporation appear for the purpose of contesting said report, the board shall proceed to hear and determine the same and for that purpose the board shall have full power and authority to administer oaths, to examine all witnesses produced and to decide all questions arising upon the consideration of said report and the objections made thereto by any person or persons interested, and the board may adjourn from day to day until such hearing is completed.

1887, ch. 98, § 23.

SEC. 3749. Confirmation of report.— If upon the hearing it shall appear that the report ought to be modified in any particular, the board shall modify the same to conform to the equities in the premises. If after hearing and determining all questions arising thereupon, the board is of the opinion that the sub-drainage district petitioned for should be organized they shall make an order confirming the report of said viewers as made or as modified, if any modification has been made by the board, and organizing the land described in said report into a sub-drainage district to be known as Sub-Drainage District Number — of the — County Drainage District, which order shall be entered in the drainage record. If after such hearing the board is of the opinion that such sub-drainage district should not be organized, it shall make an order dismissing the proceedings, which order shall be entered in the drainage record.

1887, ch. 98, § 24.

APPEAL.

SEC. 3750. Grounds for — Manner of.— Any person or persons or corporation owning any real estate within such proposed sub-drainage district aggrieved thereby, may appeal to the district court of the proper county from such order and upon such appeal any or either of the following matters may be determined: *First* — Whether the assessment made for the construction of the proposed work upon any tract of land is in proportion to the benefits to be derived therefrom. *Second* — The amount of damages allowed to any person or persons or corporation. The party appealing shall file with the clerk of the drainage district an appeal bond in the sum of five hundred (500) dollars, with at least two freehold sureties to be approved by said clerk, conditioned that he will duly prosecute such appeal and pay all costs that may be adjudged against him in the district court. *Provided*, that such appeal and appeal bond shall be filed with the clerk of such drainage district within thirty (30) days after such order of the board of drainage commissioners is made and after the lapse of thirty (30) days from the making of such order no appeal can be taken. Upon any appeal being taken the clerk of said drainage dis-

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trict shall within twenty (20) days thereafter make a complete transcript of the proceedings had before said board of drainage commissioners and of such appeal and appeal bond and certify the same together with a transcript of all papers filed in his office pertaining to the organization of the proposed sub-drainage district to the clerk of the district court.

1887, ch. 98, § 25.

SEC. 3751. Trial of.— Said appeal shall be placed upon the court calendar and brought on for trial in the same manner and under the same rules as appeals from justice court are placed upon the calendar and brought on for trial and shall be tried and disposed of in the same manner as other civil actions. *Provided*, that the party appealing may waive a jury trial and the appeal shall thereupon be tried by the court.

1887, ch. 98, § 26.

SEC. 3752. Costs.— If the decision upon the trial of such appeal shall be in favor of the appellant judgment shall be rendered modifying or changing said report so as to fully protect the appellant's rights in the premises either as to assessments or damages and the drainage district shall pay the costs of the appeal; but if the decision be against the appellant judgment shall be rendered dismissing the appeal and that the appellant pay all costs thereof; either party to such appeal to have the same right to appeal to the supreme court as parties in ordinary civil actions.

1887, ch. 98, § 27.

CONSTRUCTION.

SEC. 3753. Contracts for—Lowest bidder.—As soon as practicable after any sub-drainage district has been organized and work ordered done therein, and the supervisors thereof have been appointed and have qualified, the supervisors of such sub-drainage district shall proceed with the construction of such work which shall be done under contract to be let to the lowest responsible bidder or bidders therefor. Before letting such contract they shall advertise for bids at least two weeks in some newspaper of general circulation in the county wherein such work is to be done, and if the estimated cost of such work is five thousand dollars or more also in some newspaper of general circulation published at the capital of the state. In such advertisement they shall name the limit of time within which such work shall be done, having due regard to the season of the year and the extent and general character of the work to be done. They may let the work in separate portions or the whole in one contract as they may find can be done most advantageously. All contracts shall be in writing and shall be in the name of the board of drainage commissioners of the drainage district and shall not become or be in force until they have received the approval of at least a majority of such drainage commissioners, either by vote in lawful meeting or by an endorsement upon such contract signed by a majority of the commissioners, and have also been recorded together with all endorsements thereon in the proper drainage record. All contracts shall be for the performance of the work in accordance with the plans and specifications therefor as approved and adopted by the board of drainage commissioners upon the organization of the sub-drainage district, and under the direction of the engineer who laid out the same or such other engineer as the commissioners shall designate for that purpose, and for payment for the whole work upon its proper completion. *Provided*, that in case more than one month will be required for the completion of the work payment may be made upon monthly estimates of ninety per cent. of such estimate in the manner hereinafter provided.

1887, ch. 98, § 33.

SEC. 3754. Engineer to direct.— It shall be the duty of the engineer having charge of such work to furnish the contractor or contractors directions

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for their work, and to make and give them written estimates of their work during its progress when their contract so provides, and upon its completion to inspect the same, and if he finds it has been performed in accordance with the plans and specifications therefor, to give the contractor or contractors his final estimate certificate in writing to that effect. The contractor or contractors shall present such final estimate or certificate to the supervisors who shall forthwith inspect the work, and if they approve the same, certify such approval by endorsement upon such final estimate or certificate. Inspection and approval of the final estimate or certificate by a majority of the supervisors shall be sufficient. Each monthly estimate shall be approved in the same manner as the final estimate or certificate. Each monthly estimate when approved as herein provided shall on presentation to the clerk of the drainage district entitle the contractor or contractors to an order on the treasurer of the drainage district for the amount of the estimate less ten per cent. of the same, which shall be held as a reserve or guarantee fund until the final estimate or certificate is presented and the amount of such order shall be endorsed on the estimate. Upon presentation of the final estimate or certificate the clerk shall take up the same and also monthly estimates made upon such work, and issue to the contractor or contractors an order on the treasurer of the drainage district for the whole amount that shall then remain due upon the same. Upon presentation of said orders the treasurer shall pay the same out of any money in his hands to the credit of such sub-drainage district. In case of any dispute between the contractor or contractors and the engineer or failure of the supervisors or a majority of them to approve any estimate or certificate of the engineer the matter shall be referred to the board of drainage commissioners for settlement.

1887, ch. 98, § 34.

SUPERVISORS.

SEC. 3755. Appointment — Powers.— Upon making and filing the order confirming the report of the viewers and organizing such sub-drainage district, the board of drainage commissioners shall have full power and authority to cause to be constructed the drain or drains, ditch or ditches, embankment or embankments specified in said report, and to cause to be taken the lands shown by said report to be necessary for the construction of the drain or drains, ditch or ditches, embankment or embankments therein specified; and for that purpose shall appoint three suitable persons residing in or near such sub-drainage district, supervisors thereof, who shall have full power and authority to proceed with the construction of all drains, ditches and embankments specified in said report and to enter upon and take the lands shown therein to be necessary for the construction of such drains, ditches and embankments.

1887, ch. 98, § 29.

SEC. 3756. Term of office.— The supervisors first appointed and qualified shall hold their offices until the second annual meeting of the board of drainage commissioners appointing them, after their appointment and until their successors are appointed and qualified.

1887, ch. 98, § 31.

SEC. 3757. Oath — Duties.— It shall be the duty of the supervisors of such sub-drainage district to attend to the letting of all contracts for the construction of the work specified in said report, and to exercise a general care and supervision over the construction of the same; they shall have the general care and oversight of all drains, ditches and embankments constructed in their sub-drainage district under the provisions of this act, and shall perform such other duties as may be herein prescribed. They shall take and file with the clerk of the drainage district an oath that they will faithfully perform the duties of supervisors of such sub-drainage district, and failure to file such

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oath within ten days after notice of their appointment shall be deemed a refusal to serve, and the vacancy shall be filled by another appointment.

1887, ch. 98, § 30.

SEC. 3758. Duties.— The supervisors of sub-drainage districts shall have the care of all drains, ditches and embankments that have been constructed by special assessments within their sub-drainage district, shall see that the same are kept in repair, shall make complaint against and attend to the prosecution of any person or persons injuring or destroying any of the work in their care, and shall see that all drains and ditches in their care are kept open, and that land owners making use of such drains or ditches as outlets for their private drains or ditches do so in a proper manner, and so as not to injure the public drains or ditches.

1887, ch. 98, § 35.

SEC. 3759. Reports.— Between the first and third Mondays of October in each year the supervisors of each sub-drainage district shall make and file with the clerk of the drainage district of their county a report of the condition of the drains, ditches and embankments in their care, of all work done during the year by them upon the same and the cost thereof, and an estimate of such work and the cost thereof, as in their judgment will be required upon the same for the ensuing year.

1887, ch. 98, § 36.

SEC. 3760. Enlargement.— Whenever the supervisors of any sub-drainage district find that any ditch, drain, embankment, grade or other work constructed in this district by order of the drainage commissioners, requires material enlargement or extension, they shall make a report in writing to the commissioners, setting forth the necessity for such extension or enlargement, and in general terms its extent and character, and affecting any lands not already in the sub-drainage district, a description of such lands and the names of the owners of the same with the post office address of each so far as they can ascertain the same. Such report, when filed with the clerk of the drainage district, shall be treated as a petition for the performance of the work described therein, and the same proceedings as nearly as may be shall be had thereon as in case of the petition for the work of which this proposed enlargement or extension is made, except that should the commissioners order the construction of such enlargement or extension, such order shall not create a new sub-drainage district, but instead shall attach the new territory benefited, if any, to the existing sub-drainage district and shall provide for a separate fund of such sub-drainage district from which the cost of such enlargement or extension shall be paid, and for separate assessments therefor on the basis of the benefits of such enlargement or extension, in case the benefits are found to vary from those of the original work of which the new is an enlargement or extension.

1887, ch. 98, § 42.

SEC. 3761. Compensation.— At their annual meeting to be held on the third Monday in October in each year after the organization of a sub-drainage district or districts, within their drainage district, the board of drainage commissioners shall appoint three supervisors of each sub-drainage district organized under this act within their drainage district, the term of office of the supervisors of which has expired, such supervisors to have the same powers and duties and to be required to qualify in the same manner as the supervisors first appointed for said sub-drainage district, and to hold their offices for two years and until their successors are appointed and qualified. The board of drainage commissioners may at any time remove any supervisor within their drainage district whom they are satisfied is incompetent or has been guilty of wilful neglect or misconduct in discharging the duties of his office, and in case of such removal shall immediately fill the vacancy. The supervisors of

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sub-drainage districts shall receive as compensation for their services two dollars per day for the time they are actually engaged in the performance of their duties, to be paid out of the drainage fund of their sub-drainage district on the order of the board of drainage commissioners.

1887, ch. 98, § 32.

SPECIAL ASSESSMENTS.

SEC. 3762. Duty of viewers.—The viewers in making the special assessments for benefits shall proceed by classifying the lands in the proposed sub-drainage district in tracts of forty acres, more or less, according to the legal or recognized subdivisions on a graduated scale to be numbered according to the benefits to be received by the contemplated work and whenever any railroad or public highway is benefited such benefit shall be assessed to the same upon the same scale as lands are assessed as near as practicable. The tracts of lands which will receive the most and about equal benefits shall be numbered one hundred and such as all adjudge to receive less benefits shall be marked with a less number denoting its per cent. of benefits. This classification when established as hereinafter provided shall remain as a basis for such assessments as may be needed for the lawful and proper uses of such sub-drainage district. When such classification is completed it shall be properly tabulated and shown by a map which tabulation and map shall be made a part of the viewers' report hereinafter provided for.

1887, ch. 98, § 18.

SEC. 3763. Lands to be assessed.—All lands owned by any person or persons or by any corporation except the state of Minnesota or the United States which are benefited by any of such work shall be assessed in proportion to the benefits for the construction thereof whether such work passes through or is partially located upon said lands or not; and the viewers in estimating the benefits to lands not traversed by any drain, ditch or embankment shall not consider what benefits such lands will receive after some other drain, ditch or embankment shall be constructed but only the benefit that will be received by reason of the drain, ditch or embankment then contemplated as it affords an outlet for the drainage of said lands or protection to the same from overflow; and any owner of land within the proposed sub-drainage district who signed the petition for the organization of such proposed sub-drainage district shall be forever barred from objecting that the lands of such owner situated in such sub-drainage district are not subject to assessments for benefits as provided in this act.

1887, ch. 98, § 13.

SEC. 3764. Same.—Whenever any railroad company is benefited by such drain, ditch or embankment such railroad shall be assessed its just proportion of benefits the same as lands benefited are assessed, which assessments shall be collected from the owner of such railroad in the same manner as personal property taxes are collected by law.

1887, ch. 98, § 14.

SEC. 3765. Same.—Whenever any public highway is benefited by such drain, ditch or embankment the county or town which is by law charged with the duty of keeping such highway in repair, shall be assessed with the amount of benefits accruing to such highway by reason of such drain, ditch or embankment and the amount thereof shall be collected by a general tax upon such town or county by the proper officer and when collected shall be paid into the treasury of the drainage district of the county for the benefit of the sub-drainage district to which it belongs.

1887, ch 98, § 15.

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SEC. 3766. **Include current expenses.**— At the annual meeting of the board of drainage commissioners of each drainage district in which one or more sub-drainage districts have been organized as herein provided, such board shall make a careful estimate of the amount of money that will be required for the current expenses of such sub-drainage district under their control, and to cover any unpaid expenses or charges already incurred on account thereof, also to meet the interest on any bonds issued on account of and for the benefit of such sub-drainage district and to provide a sinking fund for the payment of the principal of such bonds, and shall thereupon make an order directing the assessment of the amount of such estimate upon the lands subjected to assessment in such sub-drainage district; such order shall be in writing and signed by at least a majority of the board, and may be substantially in the following form:

“The board of drainage commissioners of — county — drainage district do hereby order and determine that the sum of — dollars be levied as special assessment upon the lands and property subject to assessment for benefits in sub-drainage district No. — of — county drainage district.

Dated —

Signed } — — —,
 } — — —,
 } — — —,
Commissioners.”

Such order shall be recorded in the drainage record.

1887, ch. 98, § 37.

SEC. 3767. **Assessment roll.**— The clerk of the board of drainage commissioners shall thereupon make and attach to said order an assessment roll of the sub-drainage district to which the order relates; such assessment roll shall contain a description of each tract of land subjected to assessment in such sub-drainage district, the name of the owner if known, its acreage, the percentage of benefit it receives as the same has been fixed and determined in accordance with the provisions of this act, and the amount of assessment against each tract of land, as per such percentage. If any railroad or other property within such sub-drainage district is benefited, such assessment roll shall contain the amount that such railroad or other property is to be assessed according to the scale of percentage fixed upon the same as hereinbefore provided. Such assessment roll when completed shall be attested by such clerk and filed in the office of the county auditor of the county in which such drainage district is situated on or before the first Monday in November of each year.

1887, ch. 98, § 38.

SEC. 3768. **Collection.**— Upon such assessment roll being filed in his office the county auditor of such county shall thereupon enter upon the tax duplicate of the current year against the respective tracts of lands so assessed, the amount of such assessment as shown by such assessment roll, and shall enter the assessment against any railroad or other property upon the appropriate tax roll, so that the same may be collected in the manner provided by this act. Such assessment entered upon the tax duplicate, shall be collected and the payment thereof enforced in the same manner and as a part of the total tax assessment levied against each tract of land for that year, and the assessment against any railroad company shall be collected from the owner of such railroad in the same manner as personal property taxes are collected from individuals. All such assessments when collected shall be paid over to the treasurer of such drainage district and by him credited to the sub-drainage district to which the same may belong.

1887, ch. 98, § 39.

SEC. 3769. **Bonds in anticipation of assessment.**— As soon as the board of drainage commissioners have organized any sub-drainage district and

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ordered work done therein, they shall make a careful estimate of the total expense thereof including the preliminary costs already incurred in the construction of the work ordered, and the cost of the supervision thereof. They shall then order the issuance and negotiation of the bonds of their drainage district in an amount equal to the amount of such estimate and ten per cent. of such estimate in addition thereto. In such order they shall fix the time which such bonds shall run, which shall be not less than twenty nor more than thirty years. Such bonds shall bear interest payable annually, at the lowest attainable rate, but in no case shall the interest be at a higher rate than seven per cent. per annum. Such order and estimate shall be in writing, signed by the chairman and attested by the clerk and recorded in the drainage record.

1887, ch. 98, § 40.

SEC. 3770. Negotiation of bonds.—It shall be the duty of the chairman of the board of drainage commissioners, and the clerk and treasurer of the drainage district, to negotiate all bonds ordered issued as above provided. They shall negotiate such bonds if practicable within such time as will make the proceeds thereof available for the prompt payment for the work on account of which the same are issued. All such bonds shall be issued in the name of the board of drainage commissioners of — county drainage district in the state of Minnesota,—shall specify that they are issued in accordance with the provisions and pursuant to the authority of this act, naming it by its title and date of approval, and the number of the sub-drainage district on account of which the same are issued, and shall be signed by the chairman of the board of drainage commissioners and the clerk thereof. Such clerk shall upon signing said bonds enter in the drainage record, a description of each bond, its number, date, rate of interest, the time when it is payable, and the number of the sub-drainage district on account of which it is issued. The treasurer shall on demand, pay the interest and principal of such bonds as the same becomes due and payable so far as the funds in his hands for that purpose shall permit. All assessments made as herein provided for the payment of the principal or interest or both, shall be used for no other purpose until such interest and principal have been paid in full.

Lien.—And such bonds shall, so long as the same remain unpaid, be a perpetual lien upon the lands subjected to assessments for benefits under this act in the sub-drainage district on account of which such bonds are issued. And no bond issued under the provisions of this act shall be negotiated or sold for less than its face or par value. *Provided*, that such bonds shall not be construed to constitute a lien on any tract or sub-division of land to any greater amount than the amount of benefits assessed against such sub-division or tract, pursuant to the provisions of this act.

1887, ch. 98, § 41.

SEC. 3771. Liens of assessments.—The amount of assessments made by the viewers and confirmed by the board of drainage commissioners, shall be a lien upon the lands assessed from the date of the order of the board of drainage commissioners organizing the sub-drainage district, and such order together with the report of the viewers, shall be notice to all the world of the existence of such lien, and this act shall be liberally construed, and such order shall be conclusive that all prior proceedings were regular and according to the provisions of this act.

1887, ch. 98, § 48.

SEC. 3772. Failure to levy or assess — Mandamus.—If the county auditor, county treasurer or other county officers required to perform any duties under this act, relating to the levying and collecting of assessments, shall neglect or refuse to perform such duties, they may be compelled to perform the same by mandamus, and they shall be liable to any person or per-

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sons or corporation for any damage that such person or persons or corporation may sustain by reason of such neglect or refusal.

1887, ch. 98, § 47.

DRAINAGE WITHIN ANY TOWN.

SEC. 3773. Authorized.— That the supervisors of any town in this state, are hereby authorized to lay out or establish any ditch or drain within the limits of such town for the purpose of drainage, when the same shall be petitioned for by any number of legal voters who own real estate or who occupy real estate under the homestead pre-emption laws of the United States or under contract from the state of Minnesota, when the same cannot be done without affecting the lands of others.

1889, ch. 168, § 1: "An act to provide for the draining of lands in any town in this state by owners of lands when the same cannot be done without affecting the lands of others, and to repeal chapter 99, acts of 1887." Approved April 24, 1889. Acts 1887, ch. 99, § 1, limited the application to not less than six voters who own lands within one mile of the ditch to be constructed.

SEC. 3774. Petition for.— Whenever any number of legal voters, as aforesaid, determine to petition the supervisors for laying out or construction of a ditch they shall cause a copy of their petition to be posted up in three of the most public places of the town twenty days before any action is had in relation thereto. Such petition shall describe as near as possible the course of such ditch and shall give as near as possible the points where such ditch shall begin and where the same shall terminate, and a description of the lands through which such ditch shall be proposed to be constructed.

1889, ch. 168, § 2. Supersedes but same as § 2, ch. 99, acts 1887.

SEC. 3775. Notice of filing.— Upon receiving such petition the supervisors shall, within thirty days, make out a notice and fix therein a time and place at which they will meet and decide upon such petition, and shall, at least ten days previous to such time, cause such notice to be given to all occupants of the land through which such ditch is proposed to be constructed, which notice shall be served personally or by copy left at the usual place of abode of each of said occupants, proof of such service to be made by an affidavit of the supervisors making such notice.

1889, ch. 168, § 3. Supersedes and same as first part of § 3, ch. 99, acts 1887.

SEC. 3776. Hearing.— The supervisors, at the time and place fixed in said notice, shall proceed to examine personally the territory affected by said proposed ditch and shall hear any reasons for or against the laying out or constructing of the same and shall decide upon the application as they deem proper. If they decide in favor of laying out or constructing such ditch they shall make out or cause to be made out an accurate description thereof and incorporate the same in an order to be signed by them, and shall cause such order together with all the petitions and affidavits of the service of notice to be filed in the office of the town clerk, who shall note the time of filing the same, and, on a refusal of the supervisors to lay out and construct such ditch, they shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions and affidavits together with the award of damages shall be made out and filed within five days after the date of the order for laying out or constructing such ditch, but the town clerk shall not record such order within thirty days nor until final decision is had, and not then unless such order is confirmed; and in case the supervisor shall fail to file such order within twenty days, they shall be deemed to have decided against such petition.

1889, ch. 168, § 4. Supersedes and same as § 4, ch. 99, acts 1887, except in the latter a provision to send papers to county auditors.

SEC. 3777. Record of.— An order laying out or directing the construction of such ditch and a copy of the record duly verified by the town clerk shall

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be received in all courts as competent evidence of the facts therein contained, and shall be prima facie evidence of the regularity of the proceedings prior to the making of such order, except in case of appeal when an appeal has been taken within the time limited by this act.

1889, ch. 168, § 5. Supersedes but same as § 5, ch. 99, acts 1887.

SEC. 3778. **Damages.**—The damages sustained by reason of laying out or construction of such ditch may be ascertained by the agreement of the owners and supervisors and unless such agreement is made and the owners shall in writing release all claims to damages the same shall be assessed in the manner hereinafter prescribed before the same is opened or used. Every agreement of the owners shall be filed in the town clerk's office and shall forever preclude the owners of lands from all further claim for damages, not only for the taking of land in the construction of such ditch, but also shall preclude the owner from any claim for damages by the use of such ditch. In case the supervisors and the owners of land claiming damages cannot agree and if the owner of any land through which any such ditch shall be laid out or constructed is unknown, the supervisors shall, in their award, specify the amount of damages awarded by them to all such owner or owners giving a perfect description of such parcel of land in their award. The supervisors shall assess the damages at what they deem just and right with each individual with whom they cannot agree and deposit a statement of the amount of damages so assessed to each individual with the town clerk who shall note the time of filing the same. The supervisors in all cases of assessing damages shall estimate the damages and benefits which such ditch and the construction thereof will confer on the claimants for the same as well as the disadvantages. Any person living on United States land who has made his declaratory statement for the same in the proper land office shall, for the purpose of this act, be considered the owner of such land.

1889, ch. 168, § 6. Supersedes but same as § 6, ch. 99, acts 1887.

SEC. 3779. **Construction by petitioners.**—Whenever the supervisors shall have laid out, or authorized the construction of said ditch or drain in conformity with the provisions of this act, the parties petitioning therefor shall have full power to construct such ditch or drain, provided, however, that before they shall enter upon the lands of others to open such ditch or drain the petitioners shall pay or cause to be paid such sums of money as may have been assessed by the supervisors as damages to the owners thereof.

1889, ch. 168, § 8. Supersedes § 8, ch. 99, acts 1887.

SEC. 3780. **Appeals.**—The several acts and provisions of the general statutes of one thousand eight hundred and seventy-eight (1878), and the acts amendatory thereto relating to appeals from the award of damages in the laying out of highways, shall be applicable to an appeal from award of damages in laying out or constructing ditches under the provisions of this act, and such appeals shall be conducted under the provisions of said laws.

1889, ch. 168, § 7. Supersedes but same as § 7, ch. 99, acts 1887.

DRAINING MEANDERED LAKES.

SEC. 3781. **Proceedings.**—That for the purpose of providing for the draining of shallow, grassy lakes, and making the same productive, and removing certain causes of malaria, the county commissioners, or a majority of them, of the county in which such lake is situated or a major part thereof, shall be authorized and empowered to grant permission for such drainage upon the presentation of the petition of all the parties living on land bounded in part by said lake, praying that the same may be drained along its natural outlet, at their, said petitioners, cost and expense. *Provided*, that before any lake shall be drained under the authority of this act, all persons owning lands ad-

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adjacent or contiguous to the lake mentioned and described in their petition, or the outlet thereof, so far as opened, shall file their deed of consent to such drainage in the office of the register of deeds in and for the county in which such lake is situated, which deed shall be acknowledged as deeds of real estate are by law now required to be acknowledged; and, *provided further*, that no lake shall be so drained which is free from grass or other vegetable growths, or that contains water of a greater depth than four (4) feet; and, *provided further*, that this bill [act] shall only apply to meandered lakes.

1883, ch., 139, approved March 2d: "An act to provide for the draining of shallow, grassy, meandered lakes."

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Acts 1883, ch. 108, superseded acts 1877, ch. 91; 1878, ch. 39; 1879, ch. 33. Acts 1887, ch. 97, superseded acts 1883, ch. 108, and 1885, ch. 25.

PROCEEDINGS.

SEC. 3782. Construction authorized.— That the board of county commissioners of any county, shall have power, at any session, when the same shall be conducive to the public health, convenience or welfare, or when the same will be of public benefit or utility, to cause to be constructed, as hereinafter provided, any ditch, drain or water course within said county.

1887, ch. 97, approved March 2d: "An act to enable the owners of lands to drain and reclaim them when the same cannot be done without affecting the lands of others; prescribing the powers and duties of county commissioners and other officers in the premises, and providing for the repair and enlargement of such drains, and repealing certain acts therein specified, and declaring an emergency."

SEC. 3783. Petition for — Appointment of viewers.— That before the board of commissioners shall establish any ditch, drain or water course, there shall be filed with the auditor of such county a petition signed by one or more of the land owners whose lands will be liable to be affected by, or assessed for the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus.

Bond.— Such petitioner or petitioners shall give a bond with good and sufficient freehold sureties, payable to the county, to be approved by the auditor, conditioned to pay all expense, in case the board of commissioners shall fail to establish said proposed ditch, drain or water course.

Notice.— Said petitioner or petitioners shall file proof satisfactory to the board of commissioners, to whom such petition has been presented, that at least thirty (30) days' notice thereof has been given before the session of said board, at which such petition is to be heard, by posting up notices in three (3) of the most public places in each of the towns through which such ditch is proposed to be located and established.

Hearing.— And when the said board shall be satisfied that all of the foregoing conditions have been complied with, they shall either at such session of said board or at such other time as may be appointed by them (not later than thirty (30) days thereafter) proceed to hear and determine such petition.

Viewers.— If such board shall determine that the construction of such ditch will be of public benefit or utility, or conducive to the public health, convenience or welfare, they shall accept such petition, and appoint three resident freeholders of the county not interested in the construction of the

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proposed work, and not of kin to any parties interested therein, as viewers, to meet at a time and place specified by said board, preparatory to commencing their duties as hereinafter specified.

1887, ch. 97, § 2.

SEC. 3784. Majority of viewers to act.— A majority of the viewers shall be competent to perform the duties required of them by this act.

1887, ch. 97, § 29.

SEC. 3785. Duty of viewers.— And it shall be the duty of the auditor thereupon to issue to said viewers a certified copy of the petition and order of the board, who shall proceed at the time set in said order, with a surveyor, who shall be a civil engineer, and shall make an accurate survey of the line of said ditch, drain or water course, from its source to its outlet; and they shall cause stakes or monuments to be set along said line, numbered progressively down stream, at each one hundred feet; and they shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain or water course between each of the one hundred foot stakes, and the estimated cost per cubic yard for the removal thereof, and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of said ditch, drain or water course, and an estimate of the total cost of laying out, establishing and construction of the whole work. And they shall, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, drain or water course; and they shall specify the time and manner in which the work shall be done; and they shall have power, when they find it necessary, to provide for running said ditch under ground, through drain tiles or other materials, as they deem best, by specifying the size and kind of tile or other material to be used in such underground work, and shall estimate the cost of the same as a part of the total cost of the work. And they shall file with their report an account of the names of the laborers and the time each was employed by them, and every other item of expense by them incurred in and about said work, and shall file their reports with the auditor, after having subscribed and sworn to the same.

1887, ch. 97, § 3.

SEC. 3786. Meeting of viewers.— Report.— Said viewers may, after having met at the time and place specified in the order issued to them by the auditor, proceed immediately to perform their said duties, or adjourn from time to time, as best suits their convenience, and file their report with the auditor at least four weeks before the next regular or special session of said board of commissioners, held after the lapse of ninety days from the date of the appointment of viewers: *provided* the water be high, the weather inclement, or by reason of an unavoidable accident, they shall not be compelled or required to file their report until at least four weeks before the second session of said board, to be held as above stated; but their report must then state the reason for such postponement.

1887, ch. 97, § 7.

SEC. 3787. Tabular statement.— And the said viewers shall, in tabular form, give the names of the owners of each tract of land to be benefited or damaged, the description of each tract benefited or damaged (said names of owners and descriptions to be the same as appears on the county tax duplicates of said county) and the total number of acres in each of said tracts, the estimated number of acres in each of said tracts of land to be benefited or damaged (as the case may be) and the amount that each tract of land will be benefited or damaged by the construction of said work. When any ditch established under this act drains, either in whole or in part, any public or corporate road, or railroad, or benefits any of such roads, so that the road-bed or traveled track of any such road will be made bet-

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ter by the construction of such ditch, the viewers shall estimate the benefits arising therefrom to such roads, road-beds or railroads, and report said benefits (names of roads, etc., and amounts of benefit to each) as a part of their tabular statement provided for in this section; and they shall also report the total estimated benefits, and also, whether or not, in their opinion, the estimated expense of the construction of such ditch, including the damages awarded therefor, are greater than the utility of the proposed ditch, or that the construction of such ditch is impracticable for any reason, stating the reason why it should not be constructed.

1887, ch. 97, § 4.

SEC. 3788. **Location.**— In locating a public ditch, drain or water course, viewers may vary from the line described in the petition as they deem best, provided they commence the ditch at or near the point described in the petition, and follow down the line therein described as near as practicable. In all cases in which the route proposed is along highways already established, the viewers shall locate the ditch at a sufficient distance from the center of such highway as to admit of a good road along the central line thereof; the earth taken from the ditch shall be so placed upon the roadway as to form a turnpike, and no nearer to the margin thereof than two feet; but in locating a drain, as above, the viewers shall not materially depart from the terminal points described in said petition: *provided* that when there is not sufficient fall in length in the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough not to exceed one-half mile, to obtain a sufficient fall and outlet. And when it will not be detrimental to the usefulness of the whole work they shall, as far as practicable, locate the ditch on division lines between lands owned by different persons; and they shall, as far as practicable, avoid laying the same diagonally across the lands, but they must not sacrifice the general utility of the ditch to avoid diagonal lines. And all persons whose lands may be affected by said ditch, may appear before said viewers (and before the board of county commissioners at which a hearing may be had on such matter) and fully express their opinions upon all matters pertaining thereto.

1887, ch. 97, § 6.

SEC. 3789. **Orders to viewers — Service of.**— The orders issued by the auditor to viewers, shall be served by the sheriff, and he shall be paid by the county for such services, the same fees as he is allowed by law for similar services.

1887, ch. 97, § 27.

SEC. 3790. **Fees.**— The surveyor and engineer shall receive the sum of four dollars per day for every day he is necessarily engaged in performing the duties required of him by this act; the viewers shall receive three dollars per day for each and every day they are necessarily engaged in viewing ditches and making up and filing their reports; each rodman shall receive the sum of two dollars per day for each and every day he is employed; and each chain man, ax man, and all other hands necessary to the prompt execution of the work of locating a public ditch, shall be allowed one dollar and fifty cents per day for the time each are actually employed; the county auditor of each county shall receive compensation for his services, under this act, as the board of county commissioners shall determine, and such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The fees, per diem and compensation provided for in this act, shall be audited, examined, allowed and paid, upon the order of the board of county commissioners.

1887, ch. 97, § 28.

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HEARING.

SEC. 3791. Notice of.— It shall be the duty of the auditor, on such report being filed, to cause a notice to be given by publication for three successive weeks in a newspaper printed and published in said county, and by posting 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, of the pendency of said petition, and of the time set for the hearing thereof; which notice shall briefly state where said ditch commences at its source, through whose land it passes, and where it terminates at the outlet, together with the names of the owners of the lands that will be affected thereby, as the same appears in the report of the viewers; and at the same time the auditor shall mail a printed copy of said notice to all non-residents of the county interested in such proposed work, whose address is known to him or can be ascertained by inquiry at the county treasurer's office.

1887, ch. 97, § 8.

SEC. 3792. Judgment.— Said board of commissioners, at the time set for the hearing of said petition (which said hearing may be adjourned from time to time) shall proceed to hear the same, and if they find the viewers' report is made in accordance with the provisions of this act, and they find the proposed ditch to be of public utility, or conducive to public health, or of public benefit or convenience, and if they find from the face of the report, and the evidence before them, that the estimated benefits to be derived from the construction of said work is greater than its total cost including damages awarded, and that such benefits exceed such costs and damages in a sufficient amount to warrant the construction thereof, they may in their discretion, establish the same as specified in said viewers' report.

1887, ch. 97, § 9.

SEC. 3793. Payment of damages.— And when damages are awarded to any person or persons or corporation, as provided by this act, the board of commissioners shall order the same to be paid out of the county treasury, on warrants to be drawn and attested by the auditor and signed by their chairman; said warrants to be issued to the person or persons or corporations entitled thereto, and to be dated and become due and payable immediately after the letting of the contracts by the auditor, as hereinafter provided. And in case the proceedings had in relation to the laying out or establishing such ditch shall be declared void, and such proceeding set aside and vacated by the judgment of any court, prior to the letting of the contract by said auditor, all such warrants shall thereupon become null and void, and shall be returned to the auditor for cancellation.

1887, ch. 97, § 10.

APPEAL.

SEC. 3794. Proceedings.— Any person or corporation aggrieved thereby may appeal from any final order or judgment of the board of commissioners made in the proceedings, and entered upon their records, determining either of the following matters, viz:

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

Second. Whether the route thereof is practicable.

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

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

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

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Notice of appeal.— And the appellant shall file with the county auditor a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond, with at least two freehold sureties to be approved by the auditor, conditioned that said appellant will duly prosecute such appeal and pay all costs that may be adjudged against him in the district court; *provided*, that such notice of appeal and appeal bond shall be filed within thirty days after such final order or judgment of the board of commissioners is made; and after the lapse of thirty days no appeal can be taken. And if an appeal be taken, the auditor shall within twenty days after the notice of appeal and appeal bond is filed, make a complete transcript of the proceedings had before the board of commissioners, and certify the same, together with all the papers filed in his office pertaining to such proposed work, including the notice of appeal and the appeal bond, to the clerk of the district court.

1887, ch. 97, § 11.

SEC. 3795. Consolidation of cases.— If more than one party appeal the judge of the district court may, in his discretion, order the cases to be consolidated and tried together; and in such case, the rights of each party shall be separately determined by the jury in its verdict. And in all cases of appeal, provided the action of the commissioners be sustained, in whole or in part, the location and establishment of such ditch shall be ordered by said court, and the court shall in such order fix the time when the auditor shall give notice for the letting of the contract for the construction of the proposed work.

1887, ch. 97, § 12.

CONSTRUCTION.

SEC. 3796. Letting contracts.— If no appeal be taken within the time limited the auditor shall sell the jobs of digging and constructing the entire work, in linear sections of one hundred feet each, each of said sections to be known and numbered by the stake or monument set by the viewers at the foot of each said section, as shown on the viewers' report, commencing at the one including the outlet, and thence in succession up stream to the one including the source. And the auditor shall contract in the name of the county with the party to whom a section or sections is sold, requiring him to construct the same in the time and manner set forth in the report of the viewers, on which the ditch is established, and shall take from him a bond with two freehold sureties, payable to the county, for not less than double the amount for which the same is sold, to be by said auditor approved, conditioned that said party will faithfully perform and fulfill his contract and pay all damages which may accrue by reason of the failure to complete the work within the time required in the contract therefor. And the auditor shall give notice of the letting of such contracts by publication for three (3) successive weeks in the official paper of the county wherein such work is located, of the time when and the place where such contracts will be let to the lowest responsible bidder or bidders; and no bid shall be entertained which exceeds more than thirty per cent. over and above the estimated cost of the construction of the part of said work covered by said bid; and said auditor may adjourn such letting from time to time until the whole work shall be taken.

1887, ch. 97, § 13.

SEC. 3797. Bond and contract to construct.— The bond and contract shall constitute but one paper, and shall be a printed form, with proper blanks left for filling out the same in writing, and the description of the work to be done so mentioned in the contract, shall be by the number of the section or sections as provided for in section thirteen; the work to be done and completed as provided for in the report of the viewers.

1887, ch. 97, § 14.

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SEC. 3798. Reletting.— A job not completed within the time fixed in the contract and bond, shall be resold by the auditor to the lowest responsible bidder, but shall not be sold for a sum exceeding fifty per cent. of the estimated value of such work, nor a second time to the same party. A contract and bond shall be entered into, as hereinbefore provided; but the auditor may, for good cause shown, give further time to any contractor, not exceeding one year. The auditor shall fix a time for the completion of the work resold, not exceeding six months from the date of the bond.

1887, ch. 97, § 15.

SEC. 3799. Inspection of work — Payment.— It shall be the duty of the county surveyor, on being notified by any contractor that his job is completed, to inspect the same, and if he finds it completed according to the specifications of the viewers, he shall accept it and give to the contractor a certificate of acceptance, stating that said section or sections (by number) are completed according to the specifications of said ditch, as set forth in the report of the viewers, and upon the presentation and surrender of said certificate of acceptance by said contractor to the auditor, the said auditor shall draw a warrant on the county treasurer of his county for the full amount found to be due on said contract; and said order shall be paid out of a general ditch fund to be provided by the county board of commissioners, as hereinafter specified. And the said order shall become due and payable out of said fund at once, and if there [shall] be no cash in said fund to pay said order when the same is presented, the county treasurer shall endorse on said order: "Not paid for want of funds," and date and sign such endorsement, and the amount of said order shall draw interest at the rate of six (6) per cent. per annum until called in by the treasurer or auditor of said county, and paid. The fees of the county surveyor under this section shall be paid him by such contractor.

1887, ch. 97, § 16.

SEC. 3800. Bonds to pay construction.— The board of county commissioners of each county wherein such ditch or ditches are proposed to be located and established, are hereby authorized to issue the bonds of said county in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in locating, constructing and establishing the same, said word, "expenses" to be construed to mean and to cover every item of cost of said ditch, from its inception to its completion, and the said counties to be reimbursed as hereinafter provided. Said bonds shall bear interest at a rate not exceeding six per cent. and shall be payable on or before ten years, at the option of said board of commissioners; and the said commissioners shall provide for the payment of annual interest on said bonds. The bonds issued under the provisions of this act shall be signed by the chairman of the board of county commissioners of said county, and countersigned by the county auditor, who shall keep a record of the bonds issued under the provisions of this act.

Negotiation.— The said board shall have the power to negotiate said bonds as they shall deem best for the interest of said county; *provided*, that they shall not negotiate the same at less than par value. All such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this act.

Transfer of funds.— The county commissioners are also hereby authorized and empowered to transfer from the general revenue fund of the county to such drainage fund any surplus moneys that may be in such revenue fund that can be properly used for the purposes of this act.

1887, ch. 97, § 17.

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[SECS. 3801-3803.]

ASSESSMENT.

SEC. 3801. Lands subject to assessment.— All lands benefited by a public ditch, drain or water course, and all public or corporate roads, or railroads so benefited in whole or in part, shall be assessed in proportion to the benefits, for the construction thereof, whether said ditch passes through said lands or along or near the line of such roads or railroads, or not, and the viewers, in estimating the benefits to lands, roads or railroads not traversed by said ditch, shall not consider what benefits such lands, roads or railroads will receive after some other ditch or ditches shall be constructed, but only the benefits that will be received by reason of the construction of the public ditch, as it affords an outlet for the drainage of such lands, roads or railroads.

1887, ch. 97, § 5.

SEC. 3802. Interest on assessments.— The amount that each tract of land, public or corporate road or railroad, shall pay for the location, construction and establishment of any ditch or ditches, under the provisions of this act, shall bear interest from the date of the filing of the auditor's statement in the register of deed's office, at the rate of seven per cent. per annum, until paid, and said interest shall constitute an additional lien on said lands or roads until fully paid; which said interest, when paid, shall be computed by the auditor.

1887, ch. 97, § 20.

SEC. 3803. Lien of assessment.— Within thirty days after the letting of the contracts for the construction of any ditch, drain or water course, as herein provided, the county auditor shall make in tabular form a list and statement showing the following facts, and in the order named, viz:

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

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

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

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

Fifth. The amount that each of said tracts of land, and that each of said corporate roads or railroads, so benefited, will be liable for and must pay for the location, construction and establishment of such ditch or ditches so benefiting them; which said amount shall be determined by the county auditor of said county as follows: The said auditor shall make a full statement, showing the total cost of each ditch or ditches under each separate petition for said ditch or ditches, and each petition, and each ditch located, constructed and established; shall be known and designated by a number to be given to it by the county auditor. Such statement shall be headed as follows:

STATEMENT SHOWING COST OF DITCH NO. —.

TO WHOM PAID.	FOR WHAT PAID.	AMOUNT PAID.

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

1887, ch. 97, § 18.

SEC. 3804. **Same — To be recorded.**— Said statement, as provided for in section eighteen of this act, having been completed by the auditor, he shall sign and acknowledge the same before some officer authorized to take acknowledgments; which said signature shall be witnessed by two persons. The said statement shall then be recorded by the register of deeds, and posted upon the abstract books in his office, if any such books are there, of the proper county, and the amount that each tract of land and the interest thereon, as hereinafter provided, public or corporate road or railroad will be liable to pay, shall be and remain a lien on such lands, public or corporate roads or railroads, until fully paid; said payments to be made as hereinafter provided. And the filing of such statement in said register of deeds' office shall be notice to all the world of the existence of such lien. And the fee of such register of deeds for such recording, shall be paid by the county, on the allowance of the board of county commissioners; and said statement, after the same has been recorded, shall be returned to the county auditor, to be by him placed with the other papers relating to such ditch or ditches, and carefully preserved by him.

1887, ch. 97, § 19.

SEC. 3805. **Payment of assessments.**— The payments of such liens shall be made to the county treasurer of said county by the owners, at any time, as follows, viz:

- One tenth of said principal with the interest thereon on or before one year.
- One tenth of same on or before two years.
- One tenth of same on or before three years.
- One tenth of same on or before four years.
- One tenth of same on or before five years.
- One tenth of same on or before six years.
- One tenth of same on or before seven years.
- One tenth of same on or before eight years.
- One tenth of same on or before nine years.
- One tenth of same on or before ten years.

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

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[SECS. 3806-3809.]

discharge the same of record; *provided further*, that any person may pay the full amount of said lien, with accumulated interest, at any time.

1887, ch. 97, § 21.

SEC. 3806. Same.— All lands owned by this state, and all lands owned by any land company or railroad company benefited by any such ditch, drain or water course, shall be liable to pay and shall pay for such benefits, the same as owners of taxable lands.

1887, ch. 97, § 22.

SEC. 3807. Same.— All public or corporate roads or railroads benefited shall pay the amounts taxed up against them as follows: Whenever any public highway is benefited by such drain or ditch, the town which is by law charged with the duty of keeping such highway in repair, shall be assessed with the amount of benefits accruing to such highway in said town by reason of said ditch or drain, and the same shall be paid out of the treasury of such town upon demand of the county auditor; and whenever any railroad or the lands of any railroad company is benefited by such ditch or drain, such railroad or railway company shall be assessed its just proportion of such benefits, the same as other lands benefited are assessed; which assessments shall be collected from such railroad corporation or company in the same manner as personal taxes are collected by law. Or said liens against any such company may be foreclosed by suit in the same manner as provided by law for the foreclosure of mortgage liens upon real estate by action.

1887, ch. 97, § 23.

GENERAL PROVISIONS.

SEC. 3808. Ditches to be kept open.— Every person or corporation through whose lands any public ditch is constructed, shall be required to keep the same open, free and clear of all obstructions upon his or its premises by him or it placed thereon, and in case of a failure to do so shall be liable to pay all reasonable and necessary expenses of removing such obstruction. A person or corporation aggrieved by any such obstruction, may make a sworn statement of the facts to the chairman of the town supervisors of the town wherein such obstruction exists, who shall proceed to examine the premises and inquire into the truth of the statement, and if he finds the statement to be true he shall immediately notify the owner of the land on which such obstruction exists, to remove the same within a reasonable time, not exceeding twenty days; and if the owners so notified fail to remove the obstruction, the said chairman shall at once cause the same to be removed at the expense of such owner, and certify such expense to the county auditor, who shall place the same, together with all fees and other expenses in the case, on the tax duplicate, as an assessment upon the lands of such person or corporation, and the same shall be a lien upon such lands, and shall be collected as other taxes.

1887, ch. 97, § 24.

SEC. 3809. Same—Expenses of.— After the construction of any such work, the town supervisors of such township in which the same is, or any part thereof, shall keep the same or such part thereof in proper repair and free from obstructions, so as to answer its purpose, and pay for the same out of the general township fund; and to raise the necessary money to reimburse that fund, they shall apportion and assess the cost thereof upon the lands which will be benefited by such repairs or removal of obstructions, according to such benefits, in their judgment. They shall make a statement of such assessment, and deliver the same to the auditor of the county, who shall put the same upon the succeeding tax duplicate, and it shall be a lien upon the lands, and be collected in the same manner as state and county taxes. The

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

1887, ch. 97, § 25.

SEC. 3810. **Wilful obstruction.**— If any person shall wilfully obstruct any public ditch, or shall wilfully divert the water from its proper channel, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five dollars nor more than fifty dollars and shall also be liable for any and all damages accruing to any person or persons; or corporation, by such act.

1887, ch. 97, § 26.

SEC. 3811. **Ditch defined.**— The word "ditch" as used in this act, shall be held to include a drain or water course, and the petition for any public ditch, may include any side, lateral spar or branch ditch necessary to secure the object of the improvement.

1887, ch. 97, § 30.

SEC. 3812. **Liberally construed.**— This act shall be liberally construed so as to promote the public health and the drainage and reclamation of wet or overflowed lands.

1887, ch. 97, § 31.

SEC. 3813. **Records — Evidence.**— Every order of the county commissioners of any county laying out and establishing any ditch or drain, or in refusing to establish the same under the provisions of this chapter, the record thereof or a certified copy of such record shall be prima facie evidence of the facts therein stated, and of the regularity of all the proceedings prior to the making of such order.

1887, ch. 97, § 32.

SEC. 3814. **Prior proceedings.**— That in all cases where petitions have heretofore been made under the provisions of chapter one hundred and eight of the laws of one thousand eight hundred and eighty-three, and acts amendatory thereto, and viewers have been appointed under said petition, if such viewers have not reported as required by the provisions of said act, they shall proceed in all matters under such petition, and report in every particular as required by this act. And in all cases where such viewers have reported, or where the county commissioners have acted under such report, in proceeding to establish the ditch or ditches petitioned for, but no contracts have been made for digging or constructing the ditch or drain applied for, the county commissioners may at any session thereof held within one year from the passage of this act by an order made and entered upon the minutes of said board, rescind all action taken upon any petition subsequent to the report of the viewers, and resubmit all matters contained in any such petition to such viewers, who shall take such action as may be necessary in the premises and con-

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form to their report, which shall be made within a reasonable time after such resubmission, to the provisions of this act, and all further proceedings under such report shall be had as required under a petition made under the provisions of this act. In case any of such viewers are unable to serve, the county commissioners may appoint others in their stead. *Provided*, that before rescinding any such action or again resubmitting the matter to the viewers as aforesaid, the county commissioners may, in their discretion, require of the petitioners a new bond in such sum as they deem necessary with sufficient sureties to be approved by the county auditor conditioned to pay all expenses already made in the proceedings had for the construction of such drain, and also all expenses to be made after such resubmission, and in case the county commissioners shall fail to lay out and establish such drain.

1887, ch. 97, §§ 33, 34, 35.