

REVISED LAWS OF
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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1910

Third—Logs and other timber, seven cents per thousand feet;

Fourth—Lumber twenty-five cents per 1,000 feet.

Fifth—Five cents for each mile in excess of four, necessarily traveled in going and returning between his office and place of survey.

Such compensation shall be in full for scale marking, making and recording scale bills and posting the same in the ledger. ('07 c. 185 § 1)

Historical.—"An act relating to fees of surveyors general of logs and lumber in lumber districts wherein logs or timber is received from the state of Minnesota, and any other state, intermingled and separated therein." Approved April 13, 1907.

[2575—]2. **Same—Laws repealed.**—All acts, or parts of acts, inconsistent with the provisions of this act are hereby repealed. Provided, however, that the fees herein fixed shall not apply in any case where such fees are fixed in any special law of the State of Minnesota heretofore enacted. ('07 c. 185 § 2)

[2579—]1. **Proof before record.**—Before any surveyor general of logs and lumber within this state shall record any log mark, the parties in whose name such log mark is sought to be recorded, shall satisfy the surveyor general, by competent evidence, that such person owns timber which he intends to cut into logs and desires to identify with such mark, or is a legitimate dealer in logs, or that he owns unmarked logs already cut and desires to identify them by such mark. ('05 c. 207 § 1)

Historical.—"An act to prevent the fraudulent record of log marks and punish the unlawful use of log marks." Approved April 17, 1905.

[2579—]2. **False marking—Penalty.**—Any person who shall place a mark recorded in his name, or in the name of another, upon any log bearing no log mark, and which is the property of some person or party other than the recorded owner of the mark so placed upon said log, shall be guilty of larceny, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars, and by imprisonment in the county jail not less than three months, and until said fine is paid. ('05 c. 207 § 2)

CHAPTER 44.

DRAINAGE.

Chapter 44 of the Revised Laws of 1905 was repealed by Laws 1909, c. 469, § 14.

Laws 1907, c. 191, entitled "An act to provide for the drainage of marsh, swamp, or wet lands, in any town or township in the state of Minnesota, by the owners of such lands, when the same cannot be drained without affecting the lands of others, and providing for a penalty for obstructing or injuring the ditches or drains constructed under the provisions of this act," was held unconstitutional. *State ex rel. Schubert v. Board of Sup'rs of Town of Rockford*, 102 Minn. 442, 114 N. W. 244, 120 Am. St. Rep. 640.

Prior drainage acts.—For decisions involving prior drainage acts, see *Bowler v. Renville County*, 105 Minn. 26, 116 N. W. 1028 (Laws 1887, c. 97); *Freeborn County v. Helle*, 105 Minn. 92, 117 N. W. 153 (Laws 1901, c. 258); *Jurries v. Virgens*, 104 Minn. 71, 116 N. W. 109 (Laws 1901, c. 258, as amended by Laws 1902, c. 38); *Interstate Drainage & Investment Co. v. Board of Com'rs of Freeborn County*, Minn., 158 Fed. 270, 85 C. C. A. 532 (Laws 1901, c. 258, as amended by Laws 1902, c. 38); *Heinz v. Buckham*, 104 Minn. 389, 116 N. W. 736 (Laws 1907, c. 448); *Lyon County v. Lien*, 105 Minn. 55, 116 N. W. 1017 (Laws 1907, c. 448); *State ex rel. Schafer v. Buckham*, 121 N. W. 217 (Laws 1907, c. 448).

STATE DRAINAGE COMMISSION.

[2651—]1. **Commission created—How constituted.**—That a commission consisting of the governor, the state auditor, and the secretary of state be, and the same hereby is created, to be known as the state drainage commission. The governor shall be chairman of said commission, and shall preside at all meetings of said commission, and the state auditor shall be the secretary; a majority of the members shall have the authority to act in all matters, and to perform all duties required to be performed by said commission. ('07 c. 470 § 1)

Historical.—"An act creating a state drainage commission, for the purpose of draining state lands, and such private lands as may be benefited thereby, providing for assessments for draining private lands, and for straightening, widening, deepening, and cleaning out any stream or water course, and draining any marshy, or meandered lake when the same will be of public benefit or promote the public health; establishing a mode of procedure; defining the duties and compensation of the members of the commission, appropriating money for the purpose of carrying out the provisions of this act, and prescribing penalties for interfering with or obstructing the members of the commission or any officer, agent or employé, in the discharge of his duties connected therewith." Approved April 26, 1907.

By section 34 of said act, Laws 1905, c. 106 ("An act to establish a drainage commission and to provide for the drainage of the swamp and marshy lands of the state"), is repealed. Section 35 provides that the act shall take effect from its passage.

See section [2651—] 34, post.

[2651—]2. **Powers.**—The drainage commission of the State of Minnesota shall have power to construct as hereinafter provided, any ditch, drain or other water course within the State of Minnesota, and such ditch, drain or other water course may in whole or in part follow and consist of the bed of any creek, stream, or river, whether meandered or not, and they may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural water course, whether navigable or whether meandered or not, and may construct new and additional outlets to any marshy, shallow or meandered lake, for the purpose of draining the same, and may follow and extend the same into or through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural water course by means of dykes, levees and embankments to its natural or artificial bed, as laid out: Provided, that when in any such proceedings the waters of any creek, river or other water course are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable follow the general direction of such creek, river or water course, and terminate therein. And, provided, further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply. Provided, further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report and filed in the office of the clerk of the district court of the county in which such proceedings are had. ('07 c. 470 § 2)

[2651—]3. **Chief engineer—Qualifications—Oath—Bond—Records—Other agents.**—Said state drainage commission shall appoint a chief engineer who shall be a civil engineer holding a

diploma, conferring upon him such degree from a school of good standing in which the science of civil engineering is taught, and who must be a practical drainage engineer, who shall be known as the state drainage engineer, and who shall hold his office subject to the pleasure of said commission, whose salary shall be fixed by the commission. Before entering upon his duties as state drainage engineer he shall subscribe to, execute and file an oath of office and bond in the penal sum of \$5,000, with sufficient sureties to be approved by the attorney general conditioned upon the faithful performance of his official duties. He shall keep complete records of all his surveys and of every official act of said commission. Said state drainage commission shall have the full power to appoint and employ as many agents and servants and assistant engineers, and who shall furnish a bond in the same amount as the chief engineer, and qualify in the same manner, as they find necessary and proper to comply with the provisions of this chapter, and to fix the compensation which shall be allowed for their services. ('07 c. 470 § 3)

[2651—]4. **Petition to district court.**—Before said state drainage commission shall construct any ditch, drain and water course, or deepen, drain, change, straighten, or lower the channel or bed of any creek, river, lake or other natural water course or other construction named in section two [2651—2] of this chapter, they shall (except as hereinafter provided) file with the judge of the district court for the county or counties wherein it is proposed to construct any ditch, drain or other construction referred to under this chapter, a petition setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with a map showing the route of said proposed construction, estimates of the cost of the same, and description of the lands likely to be affected by such construction, such map, estimates and description of lands to be prepared by the engineer for the drainage commission or under his direction. ('07 c. 470 § 4)

[2651—]5. **Viewers—Duties—Report.**—Within ten days after the filing of such petition the said judge of the district court shall make an order appointing two resident freeholders of the county or counties in which said construction is proposed, not interested in the construction of the proposed work and not kin to any of the parties known to be interested therein and the state drainage commission shall appoint one who is not a resident of the county, as viewers, to meet at a time and place to be specified by the said court, preparatory to commencing their duties. The viewers after taking their oath to faithfully perform their duties shall proceed at the time fixed in said order, with or without said drainage engineer and shall prepare a tabular statement showing as far as practicable, 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 to be the same as appears on the county tax duplicate of said county, and the description to be given in legal form), and the total number of acres in each of said tracts; the estimated number of acres in each said tract of land to be benefited or damaged, (as the case may be); the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any water course and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; 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 benefits any such road so that the road bed or travelled track of such road will be made better by the construction of such ditch, the viewers shall estimate the benefit arising

therefrom to such roads or road beds, and report said benefits (names of roads and other particulars necessary to identify the corporations, private or public, to be benefited thereby, and amounts of benefits to each), as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement, the damages awarded to each municipal or other corporation for injury to any road or road bed, and from the necessary construction and maintenance of any bridged culverts or other works rendered necessary by the establishment of such ditch, stating the same separately; and they shall also report the total estimated benefits in respect to the entire ditch and branches, if any, 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. ('07 c. 470 § 5)

[2651—]6. Disagreement.—In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matter disagreed upon. ('07 c. 470 § 6)

[2651—]7. Private ditch—Deduction from benefits.—Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed the engineer shall make an estimate of the number of cubic yards of earth already excavated on each tract of land and of the amount of the reduction in the cost of constructing the portion of the ditch on each such tract of land by reason of such private drain having been constructed, and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report. ('07 c. 470 § 7)

[2651—]8. What lands assessed—Benefits; how estimated.—All lands benefited by a public ditch, drain or water course, and all public or corporate roads, 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 land or along or near the line of such road or not, and the viewers in estimating the benefits to lands or roads not traversed by said ditch shall not consider what benefits such lands or roads will receive after some other ditch or ditches shall be constructed, but only the benefits that shall be received by reason of the construction of the public ditch, as it affords an outlet for drainage, or prevents overflowing of or otherwise directly or indirectly benefits such lands or roads, and in determining the cost of draining said land or lands, there shall be included the amount paid for damages to private owners of lands, and the cost of right of way of any other ditches through such private land to the main stream, together with the cost of the construction of the ditch, office expenses, field expenses, salaries of all clerks and employes, and all fees necessary paid to officers or other persons in the proceedings. ('07 c. 470 § 8)

[2651—]9. Damages—Remedy of party aggrieved.—In running said ditch, or ditches, or works through private lands not necessary to drain, it shall be the duty of the viewers to report the amount of damages to be allowed to such owner or owners for the right of way or other damages for the construction of the ditch or ditches through such land or lands. Any person or party interest aggrieved by the amount of damages so allowed or of the disallowance of the amount of damages claimed, or any part thereof, for the land so appropriated for such ditch or laterals, or any other work authorized to be done under this act, may, within ten days after the filing of the viewers' report, petition the district court before whom

said proceedings are pending for the appointment of appraisers in the same manner as is now provided by law for the appropriation of private property for public uses, with all the rights and authority incidental thereto, but the construction of any such work, ditch or laterals thereof shall not be delayed by such proceedings. ('07 c. 470 § 9)

[2651—]10. Viewers' report, when filed.—Said viewers shall forthwith file with the clerk of court a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a re-reference as hereinafter provided) within thirty days from the date of their first meeting; provided that, if the water be so high or the weather so inclement, or such unavoidable accident occur as in the opinion of the judge of the district court to practically and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by the said judge; but the report of said viewers must in each case state the reason for such delay, and if such reason be not deemed sufficient by the court such viewers shall forfeit one-half of the compensation hereinafter provided. ('07 c. 470 § 10)

[2651—]11. Order for hearing—Notice.—Within three days after the filing of such report it shall be the duty of the said clerk of court to prepare and transmit forthwith to the judge of said court, and to the auditor of each county described in the petition a written notice of the filing of such report. Upon the receipt of such notice the judge shall make an order fixing the time and place of hearing said petition and engineers' and viewers' report. He shall also cause a notice of the time and place of such meeting to be given to all persons interested, by publication for three successive weeks prior thereto, in a newspaper printed and published in said county, and by posting at least three weeks before such meeting, 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 engineers' and viewers' reports, and of the time and place set for the hearing thereof, which notice shall be signed by the clerk of court, and shall briefly state substantially the starting points and terminal of the ditch, drain, creek or water course and branches, together with a description of the land through which they pass, all as appears by the engineers' report, together with the names of the owners of the land and the names of the municipal corporations that will be affected thereby, as the same appears in the report of the viewers; and within one week after beginning such publication the clerk of the court shall mail a printed copy of said notice to all non-residents of the county named in the viewers' report as affected by such proposed work, whose address is known to him, or can be ascertained by him by inquiry at the county treasurer's office; provided, that in all cases in which, for any cause, said notice shall not be given, or in any case said notice shall be legally defective, the clerk of court shall cause the same to be given again, so that the petition may be heard at another special or adjourned meeting, which will occur more than seven days after the expiration of another notice by the publication, posting and mailing, as provided in the first instance, the date of which meeting and hearing to be fixed by the court. ('07 c. 470 § 11)

[2651—]12. Hearing—Findings and order—Re-submission to viewers—Benefits and damages—Rehearing, where order set aside.—At the time and place fixed for the hearing, if the court shall be satisfied that notice thereof has been given according to law, he shall proceed to hear and consider the same; and all persons in-

terested may appear and be heard by and before said court. Unless excused by the court, the engineer and at least two of the viewers shall be present at such hearing. If said court, from the report of the engineer and from the report of the viewers, and such other evidence as may be adduced before him, shall find that the engineers' and viewers' report and all other proceedings in the matter have been made and taken, in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of the work are greater than its total costs, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that said work will be of public utility and promote the public health and that such reports are complete and correct, he shall, by an order containing such findings, establish such a ditch as specified in the report of the state drainage engineer, and establish and confirm the viewers' report; provided, that in case the viewers' report is found to be defective or erroneous in any particular, the judge of the district court shall have authority to remedy such defect by reference to said viewers, if necessary, or otherwise, and to cause the expense of such re-reference, if any, to be assessed, against the land benefited. In case the viewers have not agreed or shall not agree in their findings, the court shall determine the proper findings, and change the viewers' reports accordingly, and provided, further, that if it appears from the evidence adduced before the court, that unequal and dis-proportionate assessments have been made, the matter shall be re-submitted to the viewers who shall proceed summarily, to make the necessary correction under the instructions of the court and forthwith report the same to the court, and thereupon, the court shall, by an order containing such findings, establish such ditch as specified in the report of the civil engineer, and establish and confirm the viewers' report, and shall, in such findings, determine the total cost of the construction of such ditch, drain or water course, laterals and branches thereof, based upon the engineers' and viewers' reports which shall include all the costs and expenses, and fees that may be necessarily incurred in the construction of the same, and connected therewith, all to be allowed by the court, and shall by an order to be made and filed therein, determine the total cost to be equitably assessed against each separate tract or parcel of land owned by the different owners, so benefited by the construction of said ditch, drain or water course, in proportion to said benefits, and the damages, if any, are to be allowed, and to be paid on account of the construction of the same, which shall be included in the cost of the same, in order to arrive at the total cost, which order and findings shall be filed in the office of the clerk of court, of the county where such proceedings are pending, whereupon the clerk of said court shall endorse his filing thereon, and forthwith file a certified copy of the same in the office of the county auditor of such county, and in case such ditch, drain, or water course extends into more than one county, the said clerk shall file a certified copy in each of the said counties. Provided, that whenever any final order of the court establishing, or refusing to establish, any ditch in proceedings under this chapter shall be set aside, annulled or declared void by any court by reason of a failure to give proper notice of the pendency of said petition, and viewers' report, and of the time and place set for the hearing thereof, or any adjourned hearing, the court shall issue an order at any time within one year thereafter upon application of the state drainage commission for a rehearing thereof, notice of such meeting and rehearing shall be given in the same manner as hereinbefore provided for in the first instance, and at such meeting and hearing the said court shall proceed to reconsider such report, shall act upon the same, and make findings thereon as justice may

require, and may re-establish such ditch in conformity with the provisions of this chapter. ('07 c. 470 § 12)

[2651—]13. State lands.—In case any lands belonging to the State of Minnesota, are drained or benefited under the provisions of this act, the clerk of court shall also file a certified copy of the order and findings of the court so far as it affects state lands, but private lands shall not be included in said report, with the state auditor. ('07 c. 470 § 13)

[2651—]14. Statement.—As soon as practicable after the filing of the certified copy in the office of the county auditor, or county auditors, as the case may be, as provided for in section 12[2651—12] of this act, the said auditor or auditors shall make in tabular form a list and statement showing the following facts:

First—The names of the owners of all lands (except state lands), which shall not be included. The names of all public or corporate roads within their respective counties benefited by the construction of such proposed work as appears from the order on file in the proceedings.

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

Third—The estimated number of acres in each tract of said land.

Fourth—The estimated amount of benefits and damages to each of said tracts of land, the estimated amount of benefits and damages to each public or corporate road as the same appears in said viewers' report, or as affected by the order of the court made in said proceedings.

Fifth—The amount that each of said tracts of land, and that each of said corporate roads so benefited will be liable for and must pay into the treasury of each county for the location, construction and establishment of such ditch, drain or water course, as shown by the order of the court on file in said petition. ('07 c. 470 § 14)

[2651—]15. Record of statement—Liens—Fees.—Such statement shall then be signed by the auditor in the presence of two attesting witnesses, and shall then be duly filed with and recorded by the register of deeds of such county. The amount which each tract of land and each public or corporate road will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate roads, until fully paid; and shall take precedence of all mortgages, charges, encumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees of such register of deeds for such recording shall be paid by the county, on the allowance and order of the court by auditor's warrant, and said statement, after the same has been recorded, shall be returned to the auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him. ('07 c. 470 § 15)

[2651—]16. Jury trial.—Any land owner aggrieved at the decision and amount finally assessed against his said land on account of the construction of the said ditch, or on account of the disallowance in the amount of damages claimed for right-of-way or other damages, may demand a jury trial. The costs and disbursements of such trial shall be taxed against the party demanding such trial in case he fails to increase the amount of the award for damages or decrease the amount of the assessment. ('07 c. 470 § 16)

[2651—]17. **Appeal—Increased cost, how paid.**—Any party may appeal from the judgment of any appealable order of the district court, or who claims damages or against whose property benefits are assessed may appeal to the supreme court as in civil actions from any final order except an order establishing such ditch, or drain in proceedings under this chapter, within thirty days after the filing of such order, by filing the notice of appeal and bond required as in civil actions upon appeal to the supreme court. The appellant shall also serve a copy of the notice of appeal and appeal bond on the respective attorneys in the proceeding, the attorney general of the state, also upon the clerk of the district court, and file proof of such service and the original notice with the clerk, whereupon the said clerk shall certify the case to the supreme court in the same manner as in other cases appealed to said court. In case the appellant prevails in the supreme court, and the cost of the construction of said ditch, drain or water course is increased on account of said appeal, having been determined in favor of said appellant, and damages or costs are awarded to the appellant, upon a remittur from the supreme court to the district court the clerk of the district court shall notify the judge of the judicial district wherein said appeal was taken, advising the court of the action of the supreme court in the proceeding, whereupon the judge of the district court shall make a further finding and order assessing the amount against the tracts of land originally assessed for the construction of the said ditch and proportionately distribute the same, in proportion to, and in the same manner as the original assessment. The clerk shall thereupon certify the same to the county auditor, or county auditors as the case may be, and the said county auditor or auditors shall cause the same to be spread upon the tax duplicate record, and a statement thereof to be filed in the register's office in the same manner as under the original assessments. ('07 c. 470 § 17).

[2651—]18. **Contract, how let—Payment, how made.**—At the time of filing of the order and findings by the court, as provided for the general assessment, the clerk of the district court shall also furnish a certified copy thereof to the drainage commission of the State of Minnesota, whereupon said drainage commission shall proceed to advertise for bids for the construction of any proposed ditch or lateral, or for the repairing, extending, deepening, strengthening, altering, or cleaning out any ditch, river or natural water course proposed to be repaired, extended, deepened, altered, or cleaned out, or for the construction of new and additional outlets, for the purpose of draining any shallow, marshy, or meandered lake, or draining any lake or body of water that has been caused to overflow, on account of additional drains or water courses, running into the same which have been constructed for the purpose of the drainage of land or for the benefit of the public health. Said bid shall be made with reference to plans and specifications to be furnished by said commission and the contract for the construction of said works shall be let to the lowest responsible bidder. The successful bidder shall be required to furnish good and sufficient bond for the faithful performance and construction of such work, and the payment of all labor, material and supplies furnished in the construction of such ditch, or in such repairing, extending, deepening, straightening or clearing out any of such ditch, or work authorized to be done under this act. Payment shall be made as said work progresses, and in accordance with the rules that may be adopted by said drainage commission, or specified in the contract. Such contracts and rules shall be approved by the attorney general of the state. Before the final payment is made the ditch or work un-

der contract for construction shall be carefully inspected, and the work approved by the state drainage commission, and in case the contractors and the state drainage commission cannot agree upon the approval of said contract they shall have the authority to submit the same to any competent disinterested civil engineer whom they may agree upon, whose compensation therefor shall be paid one-half by the contractor, and the balance out of any appropriation available for draining state lands upon the warrant of the state auditor approved by the state drainage commission and whose decision when filed in the court where the proceedings are had shall be final. ('07 c. 470 § 18)

[2651—]19. Ditch defined.—Whenever the word “ditch” is used in this act it shall be construed to mean “ditch,” “drain,” “creek,” “pond,” “water course,” “outlet,” “river,” (whether navigable or otherwise), “lake,” (whether navigable or otherwise), and the word “ditch,” shall mean “ditches,” whenever the sense requires it. ('07 c. 470 § 19)

[2651—]20. Supervision.—Any and all work provided for in this chapter shall be done under the constant supervision and inspection of the engineer of said commission, or any assistant engineer duly appointed by said commission. ('07 c. 470 § 20)

[2651—]21. Authority to enter on land.—The viewers and engineer shall have the right to enter upon any lands for the purpose of making preliminary surveys or locating such ditch or estimating damages and to do any act necessary for the proper performance of their duties and any person attempting to prevent or interfere with them in so doing shall be punished, upon conviction, by the court as for a misdemeanor. ('07 c. 470 § 21)

[2651—]22. Co-operation with county board.—The drainage commission of the State of Minnesota, is hereby authorized to co-operate with the county board of each county wherein a county ditch or judicial ditch, or a portion thereof is located, or may be located, in enlarging, extending, repairing or otherwise bettering any such ditch now completed, or that may be now in the course of construction, or hereafter constructed, or in deepening, widening, straightening, or otherwise improving, any natural water course into which the water of any county, judicial or state ditch flows, or in the construction of additional outlets to any lake, or body of water, or meandered lake that has become overflowed by reason of additional drain, and ditches having been constructed into the same, and the waters flowing therefrom into such lake, body of water, or meandered lake, causing the said lake, body of water, or meandered lake, to overflow and damage abutting and adjacent land, whenever in their judgment it is necessary and desirable so to do. ('07 c. 470 § 22)

[2651—]23. County bonds.—The county board in each and every county in this state wherein any such state or judicial ditch is proposed to be wholly or partly located and established shall issue the bonds of their respective counties in an amount equal to the assessments against the private lands and corporations in their respective counties to defray the expenses incurred or to be incurred in locating, constructing and establishing so much of any ditch as may be located within such county; or in such relation to such county as to affect lands therein, within the terms of this act. The word “expense” shall be construed to mean and to cover every item of the cost of said ditch from its inception to its completion and all fees and expenses incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed twenty years from their date, and shall bear such rate of interest not to exceed six

per cent per annum, payable annually or semi-annually, all as the county board shall by resolution determine. Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of this act, and shall be signed by the chairman of said board and countersigned by the county auditor, who shall keep a record thereof. Said county board shall have power to negotiate said bonds as they shall deem for the best interests of said county, but not for less than their par value. The proceeds from the sale of all such bonds shall be paid to the state treasurer and by him credited to the state drainage fund, which is hereby created. ('07 c. 470 § 23)

[2651—]24. **Interest—Premium on bonds.**—The amount that each tract of land, public or corporate road, shall be liable for on account of the location, construction and establishment of any ditch or ditches under the provisions of this act shall bear interest from the date of the filing of the auditor's statement in the register of deeds office at the rate of six per cent (6 per cent) per annum until paid; provided, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear, and said interest shall constitute an additional lien on said lands or roads until fully paid, which said interest when about to be paid shall be computed by the county auditor, providing that if said bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the presiding judge of the court in the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable in keeping such ditch in repair and free from obstruction, so as to answer its original purpose. ('07 c. 470 § 24)

[2651—]25. **Liens, when payable—Taxes—Certificate of payment.**—The payment of such liens shall be made to the treasurer of said county as follows: One-fifteenth of said principal, with interest thereon, on or before five years from said filing in the register of deeds office. One-fifteenth of the same on or before six years. One-fifteenth of the same on or before seven years. One-fifteenth of the same on or before eight years. One-fifteenth of the same on or before nine years. One-fifteenth of the same on or before ten years. One-fifteenth of the same on or before eleven years. One-fifteenth of the same on or before twelve years. One-fifteenth of the same on or before thirteen years. One-fifteenth of the same on or before fourteen years. One-fifteenth of the same on or before fifteen years. One-fifteenth of the same on or before sixteen years. One-fifteenth of the same on or before seventeen years. One-fifteenth of the same on or before eighteen years. One-fifteenth of the same on or before nineteen years. All reckoned from the date of said filing; provided, where the annual installment to be assessed amounts to less than one mill per year, the auditor shall levy the amount of one mill per year for as many years as is necessary at that rate to pay the full lien levied against the tract or parcel of land. On or before the 15th day of November, of the fourth year next following such filing the auditor shall enter on the tax list of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on said tracts, with a proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien. One-fifteenth of said taxes shall become due and payable, with accumulated interest thereon, at the time and in the manner and be subject to and be collected with like penalties as all other taxes for said year on said tracts in which such entry was made, and another one-fifteenth with and as the taxes of each successive year, until all is paid. The

provisions of sections 23 [2651—23] and 25 [2651—25], as amended, shall be applicable in all proceedings for the construction of ditches heretofore commenced, and prosecuted under the provisions of this act where bonds have not been issued. When payment of the full amount of such lien, with accumulated interest, shall thus or at any time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue, under his hand and official seal, a certificate of such payment, and the same, when recorded in the office of the register of deeds, shall release and discharge said lien of record. ('07 c. 470 § 25)

[2651—]26. Powers and duties of board.—A majority of the members of said drainage commission of the State of Minnesota, shall have authority to act in all matters, and perform all duties required of the commission to be performed pertaining to the drainage of the state lands, and such private lands as they may be compelled to pass through in draining said lands, and shall from such records and surveys as are now in existence, and from such surveys and records as they may find it necessary to make, ascertain the number of acres of low or wet lands belonging to the state; that it is necessary to drain in order to protect the public health, convenience, and welfare of the community, and to make said lands fit for agricultural purposes. They shall ascertain where the same are located, and what ditch or ditches are necessary to drain said land, and said commission is hereby authorized, empowered by a majority of the members thereof, and without any petition or judicial procedure provided for in section four (4) [2651—4] of this act to construct as many main and lateral ditches of the size and capacity as are necessary to effectually drain such land. They may repair, extend, deepen, and alter or clean out any ditch heretofore or hereafter constructed, by the state or under its direction, when necessary to drain the land originally intended to be drained by such ditch. The said commission, in its discretion, shall drain the state lands that are most accessible to highways, villages and railroads before draining such lands more remote. In the execution of the provisions of this chapter the said commission may appoint as many agents and employés as are necessary to comply with the provisions herein. ('07 c. 470 § 26)

[2651—]27. State ditch—Survey, map, profile, etc.—Wherever the said drainage commission shall find the State of Minnesota owns land in sufficient bodies to warrant a state ditch, it shall proceed to determine the course of said ditch, the size thereof as to depth and width at the top and bottom, and cause an accurate survey to be made upon the ground, with stakes, on which shall be written in plain figures the station number and the amount in feet, to be cut. These stakes shall be set at least every one hundred feet. Every main ditch shall run to some permanent water course, stream or lake, of sufficient size to carry the water coming into the same from such ditch without overflowing the banks thereof at high water mark. Said commission shall also cause a map of such ditch to be made on a uniform or convenient scale showing the location of said ditch, all topography for a width of at least one-quarter of a mile on each side, the depths of soundings made in marshes and lakes, and designate the character and kind of surface and subsoil, so far as the same may be readily ascertained, and the legal subdivision of all lands drained by such ditch, and if the same passes through or drains private lands, said map shall show the names of all the owners, so far as known or can be ascertained, and if unknown, to so state; said map shall also designate what private lands (if any) are drained and what private lands (if any) are not drained by said ditch. All topographical features to be located by

actual survey to the center line of the ditch. Said commission shall also cause a profile of the center line of said ditch to be made, which, as to details, will at least show the elevations of the natural surface at each station of one hundred feet or any necessary fraction thereof, or as nearly as practicable, the elevations of the grade line; the ratio of the grade; the cutting at each station; the elevation and description of permanent "bench marks," of which one shall be established at each end of the ditch, and one as nearly as practicable midway between the source and the outlet. Where natural objects do not exist upon which to make such "bench marks," artificial posts shall be set in a stable, and permanent manner for such "bench marks." All elevations, as far as possible or practicable to be referred to the standard datum of sea level. Said map, profile and specifications signed by a majority of the members of said commission shall be filed in the office of the state auditor, and certified copies thereof filed with the auditor of each county in which said ditch is to be located. ('07 c. 470 § 27)

[2651—]28. **Rivers and water courses—Widening, deepening, etc.**—Whenever in any drainage proceeding under any laws of this state whereby the cost of construction is assessed against the benefited property (or) corporations it is proposed to widen, deepen, straighten or clean out any river or other natural water course or drain any low, shallow or grassy lake, or any body of water that has become overflowed by reason of the water from ditches previously constructed, under any drainage act, flowing into the same causing damage to abutting and adjacent lands, or by which it is proposed to promote the public health and which will be of public benefit and general utility; and said state drainage commission shall be satisfied that it is expedient and necessary, they are hereby authorized and empowered to appropriate out of any state drainage funds which may be created by law sufficient to defray not to exceed one-half of the actual cost and expense of doing such work. Provided, that no contract for said work shall be let without the approval of the state drainage commission. ('07 c. 470 § 28)

[2651—]29. **Orders of court—Jurisdiction.**—The judges of the district court of the state before whom any petition may be filed under the provisions of this act shall have power to make any order necessary from time to time in any proceedings hereunder or modify the same as justice may require at any time during the pendency thereof and shall not lose jurisdiction of the proceedings by reason of failure to give proper notice of failure to hold any hearing noticed or ordered to be held for the consideration of any matter connected with the proceedings or committed to them, and may make any new and additional order in the premises as justice may require, to bring the parties interested before them, to promote the final completion of the ditch or works petitioned for or to establish and complete any state ditch, drain or water course, or drain any marshy or meandered lake under the provisions of this act. ('07 c. 470 § 29)

[2651—]30. **Obstructing commission, etc.—Penalty.**—It shall be unlawful for any person to interfere with or obstruct the said state drainage commission, or any officer, servant or employé thereof, or of the court from entering upon the land for the purpose of making a survey for the purpose of establishing any ditch, drain or water course, or interfere with or obstruct the viewers appointed by the court or said commission, or other person lawfully engaged in constructing said ditch, drain or water course. Any person found guilty thereof, shall be punished as if for a misdemeanor under the statutes. ('07 c. 470 § 30)

[2651—]31. **Traveling expenses.**—The members of said commission shall receive their necessary traveling expenses for attending meetings of the commission, viewing or inspecting the work or proposed work or other duties connected therewith. ('07 c. 470 § 31)

[2651—]32. **Duties of secretary—Expenses, fees, etc.**—The secretary of the commission, shall keep complete records of the proceedings of the commission, and of all surveys and work constructed under this act, which records shall become a part of the state auditor's office. He shall, when requested, or his duties require him so to do, certify to any record or proceeding on file in the office of the secretary, and shall be allowed his necessary expenses, and costs of all necessary books and record blanks, stationery and other expenses or disbursements paid out by him for the purpose of procuring such records, or in the discharge of his duties as such secretary, and in addition thereto, he shall be allowed such fees and compensation for extra services so rendered, or for necessary clerk hire, as to the members of the commission shall seem just and reasonable. All other officers or persons performing any services in any proceeding, except the judge of the district court, shall receive reasonable compensation to be allowed by the commission, except contractors, payments to whom shall be made as provided for in section eighteen [2651—18] of this act, and all bills or claims, including expenses of the engineers and viewers, shall be audited by the commission, and paid by warrant, drawn by the secretary and countersigned by the chairman of said commission, and paid out of the state drainage fund hereinbefore provided for. ('07 c. 470 § 32)

[2651—]33. **Act liberally construed.**—This act shall be liberally construed so as to promote the public health, the construction and improvement of roads, and the drainage and reclamation of wet and overflowed lands. ('07 c. 470 § 33)

[2651—]34. **Additional powers of commission.**—The state drainage commission, in addition to its other powers hereinbefore enumerated, shall have the power, whenever the same will be of public benefit and utility and will promote the public health and welfare,

First. To clean out, repair, extend or otherwise improve any state ditch heretofore or hereafter constructed and to determine and decide whether or not any other public ditch shall empty therein, and if allowed so to do, to determine and prescribe upon what terms and conditions it be allowed so to empty into such state ditch.

Second. To make surveys of rivers, creeks or streams within this state for the improvement thereof and to widen, deepen, straighten, change the course of, clean out, or otherwise improve any river, creek or stream in this state whenever the same shall have overflowed or shall hereafter overflow by reason of the water or sediment from any public drainage ditch or ditches, emptying therein, or otherwise by reason of said drainage ditches, and causing damage to abutting or adjacent lands. Provided, that the said state drainage commission shall, as a condition precedent to the making of any of said improvements, or to the exercise by said commission of any of the powers conferred by this section, require that any portion of the cost or expense to be incurred thereby shall be paid by the town or county or by the person or persons benefited or liable to be benefited by such improvement, and the said state drainage commission, in carrying out the provisions of this section is hereby authorized to enter into any necessary contract with any such town, county, person or persons.

Said state drainage commission shall also have the power to acquire title to any private property necessary for any of its authorized purposes, by purchase or by the exercise of the right of

eminent domain, and in such last mentioned case the said commission may request the attorney general of this state to take proceedings for that purpose, and it shall thereupon be the duty of the attorney general of this state to proceed to acquire the necessary title to said private property in the manner and according to the provisions of chapter 41 of the Revised Laws of 1905 and acts amendatory thereof, anything therein contained to the contrary notwithstanding and the use of said lands for the purposes aforesaid, or either of them or otherwise, by the state drainage commission in the furtherance of its lawful projects is hereby declared to be a public purpose. Said commission shall also have the power to let contract for all such work and to change the plans thereof when necessary and to supervise, control and accept the same when complete and to cause the same and all preliminary expense in connection therewith to be paid for out of any funds appropriated to the use of the said state drainage commission. (Laws 1907, c. 470, as amended by Laws 1909, c. 207, § 1.)

Historical.—Laws 1907, c. 470, was amended by adding thereto a section, to be numbered 36, as above set forth, by section 1 of "An act amending chapter 470 of the General Laws of Minnesota for the year 1907 relating to the state drainage commission, its powers and duties." Approved April 17, 1909.

See section [2651—]1, ante.

[2651—]35. Big Stone Lake and Whetstone and Minnesota rivers—Control of waters.—The state drainage commission is hereby authorized to use moneys appropriated by this act in constructing such dykes, dams, canals, locks and gates as they may deem necessary and advisable to control the waters of Big Stone Lake and hold and impound therein the waters of the Whetstone river and the Minnesota river so far as is practicable, and in order to carry into effect the purpose of this act, may to the extent that it may become necessary, expend portions of said money in the vicinity of the south end of said Big Stone lake without the limits of the state of Minnesota when such expenditure is made with the consent and approval of all parties whose property is directly affected thereby. Provided, that said commission is not hereby authorized to so construct such dyke, gate or dam or reservoir as to raise the waters of said lake at any time beyond the high water mark, and such dykes, canals, gates or dams shall be so constructed as to provide proper facilities for the escape of the waters from said lake so as to protect the lands in that vicinity and to keep the waters of said lake within high water mark and to let out such waters through the natural channel of the Minnesota river during seasons of the year other than the flood stage, so as to keep said lake in normal condition. ('09 c. 336 § 1)

Historical.—"An act authorizing and directing the state drainage commission to construct a dyke and canal for the purpose of controlling and impounding the waters of Big Stone Lake and the Minnesota and Whetstone rivers so as to prevent the flooding of lands in the Minnesota Valley." Approved April 21, 1909:

[2651—]36. Same—Powers of commission—Release by owners.—Said state drainage commission are hereby authorized to use all powers, authorities and privileges granted them by chapter 470 of the Laws of 1907, in carrying into effect the provisions of this act. Provided, that in all cases where owners of property across, upon or through which said dyke or canal shall be constructed or upon which any dredging or ditching may be done, shall sign a contract in such form as shall be prescribed by said commission releasing to said commission or the state of Minnesota, all claims for damages of every kind that may arise from the construction of such dyke, canal, gate or other structure, or such ditching or dredging as said commission may deem necessary. Then and

in that event no petition as provided for in section 4 [2651—4] of chapter 470 of the Laws of 1907, or any of the proceedings thereunder shall be necessary, but said commission may proceed to construct the improvements provided for in this act the same as though they were constructed under the provisions of said chapter 470, on state lands. ('09 c. 336 § 2)

[2651—]37. **Same—Deepening channels of rivers.**—Said state drainage commission is further hereby authorized to cause the channel of the Minnesota river or the Whetstone river to be deepened, widened or straightened in such manner as they may deem necessary so as to carry into effect the full purpose of this act, and are authorized to cause to be made all surveys and plats that they may deem necessary and proper and to do and perform such other acts and things as may be necessary to enable them to fully effectuate the purpose of this act. ('09 c. 336 § 3)

[2651—]38. **Topographical survey of watersheds.**—The state drainage commission of the state of Minnesota is hereby authorized and directed to cause to be made a topographical survey of the several watersheds of the state for the purpose of securing data from which complete plans for a uniform system of drainage may be prepared. ('09 c. 471 § 1)

Historical.—"An act authorizing the state drainage commission to make a topographical survey of the various watersheds of the state, and to provide for a uniform system of drainage throughout the state." Approved April 23, 1909.

[2651—]39. **Same—Maps, plans, etc.**—As soon as practicable after the completion of the survey of any watershed or part of a watershed, said drainage commission shall cause to be prepared such maps, plans, specifications and estimates of the cost as it may deem necessary for the system or systems of drains or ditches for the several counties included in whole or part in such watersheds; such maps, plans and estimates to be prepared in duplicate and to be divided into sections so as to include in each section or sections as far as practicable the plans and estimates relating to any county included in the survey. ('09 c. 471 § 2)

[2651—]40. **Same—Report to county.**—On the completion of the report of such survey, or part thereof relating to any county in this state, a copy of so much of such report relating to such county shall be filed with the county auditor of the county included therein. ('09 c. 471 § 3)

[2651—]41. **Same—Plans to be followed.**—Upon the filing of such report with the county auditor, as provided for in section three of this act, all subsequent drainage work carried out under any of the drainage laws of this state shall be constructed in conformity with such plans except as modified by the state drainage commission. ('09 c. 471 § 4)

[2651—]42. **Same—Commission to prescribe rules.**—The state drainage commission shall prescribe such rules and regulations governing the construction of ditches in any county in this state under the provisions of this act, as may seem to them just and proper. ('09 c. 471 § 5)

[2651—]43. **Same—To co-operate with United States department of agriculture.**—The drainage commission of the state of Minnesota is hereby authorized to co-operate with the department of agriculture of the United States in the execution of drainage or topographical surveys in any county in this state whenever said drainage commission deem it expedient and in the best interest of the state so to do. ('09 c. 471 § 6)

COUNTY DITCHES.

[2651—]44. Powers of county board—Ditches, drains, and water courses, etc.—Meandered lakes.—The county board of the several counties of this state within their respective counties and the judges of the district courts of this state shall have the power when the conditions stated in the third section of this act are found to exist, to cause to be constructed as hereinafter provided. Any ditch, drain, creek or other water course within their respective jurisdiction; and such ditch, drain, creek or other water course may, in whole or in part, follow and consist of the bed of any stream, creek or river, whether navigable or not, or any lake, whether meandered or not, and they may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural water course, whether navigable and whether meandered or not, and may follow and extend the same into or through any city or village within any such jurisdiction, far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river, or other water course by means of dykes, levees and embankments to its natural or artificial bed, as laid out. Provided, that when in any such proceedings the waters of any creek, river or other water course are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable follow the general direction of such creek, river or water course. And provided, further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character, or except in case such meandered lake is no longer of sufficient depth and volume to be capable of an beneficial public use of substantial character for fishing, boating or public water supply. Provided, further, that the overflow waters from any meandered lake that may have overflowed, or may hereafter overflow, outside of its natural bed may be drained away under the authority of this act. Provided, further, that no meandered lake shall be drained or lowered under the authority of this act if objection is made thereto by remonstrance signed by at least seventy-five legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report, and filed in the office of the county auditor of the county in which such proceedings are had or in the office of the clerk of court, if such proceedings are in district court. Provided, further, that no meandered lake adjoining an incorporated village or city or upon which an incorporated village or city is a riparian owner, shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or village at any annual election or special election held for such purpose. Ten days' posted notice thereof shall be given, and such election held upon written request of five or more riparian owners upon any such meandered lake; but the provisions of this chapter shall not grant to any person or to any county board, or to the judge or judges of any district court of this state, the right or privilege to divert in any manner the waters from any lake, stream or other body of water that constitutes a part of or is connected with the water supply of any city or village in this state. (Laws 1905, c. 230, § 1, as amended by Laws 1909, c. 469, § 1.)

Historical.—“An act providing for the drainage of lands and meandered bodies of water in certain cases, providing for the construction and repair of ditches, dykes, roads, drains and water courses, and for the reimbursement in certain cases of owners of lands damaged thereby, providing methods for doing such construction and repair and for such reimbursement, providing for the collection of the costs and expenses of the same, providing for the co-operation

of the state drainage board in such construction and repair, prescribing the powers and duties of county commissioners and other officers in the premises, appropriating funds for the payment of assessments against state lands affected thereby, prescribing penalties for the violation thereof, and repealing certain acts therein mentioned and referred to," approved April 18, 1905, as amended by "An act amending chapter 230 of the General Laws of 1905, relating to drainage and repealing section 3½ and section 10 of chapter 367, and all of chapter 448, of General Laws of 1907, and all of chapter 44 of Revised Laws 1905, relating to drainage and validating certain drainage proceedings heretofore had," approved April 23, 1909 (Laws 1909, c. 469). Laws 1905, c. 230, § 64, provides that the act shall take effect from its passage. For sections added by amendment, see sections [2651—] 107, [2651—] 109.

Constitutionality.—Laws 1905, c. 230, is constitutional. *Miller v. Jensen*, 102 Minn. 391, 113 N. W. 914.

Construction in general.—The first proviso to this section construed, and held, that in establishing a public ditch, if waters are to be diverted from their natural course, the ditch must follow the general direction of the water course and terminate therein, whenever it is practicable so to do; otherwise there may be, so far as reasonably necessary, a departure from the water course in the route and termination of the ditch. *State ex rel. Wait v. Baxter*, 104 Minn. 364, 116 N. W. 646.

[2651—]45. **Same—Rivers, water courses, etc.—Appropriations for.**—The county board of any county wherein is situated any river, water course or creek in which the natural flow of water has been raised, increased or obstructed by reason of any artificial drainage flowing into the same, or any of its tributaries, are hereby authorized by a unanimous vote of all the members of said board to appropriate such a sum of money out of the county revenue fund to aid in defraying the expenses in deepening, straightening or widening such river, water course or creek; or removing such obstruction therefrom, as in their judgment is just and right, but said moneys so appropriated shall in no event exceed one-half of the expense so incurred, in deepening, straightening and widening said river, water course or creek, or in removing such obstruction therefrom, and the balance of such expense shall be assessed against the lands benefited as provided in this act. ('05 c. 230 § 2)

[2651—]46. **Petition — Bond — Notice — Survey.**—Before the county board shall establish any ditch, drain or water course, or other construction named in section one [2651—44] of this chapter, there shall be filed with the auditor of such county a petition signed by one or more of the land owners whose land will be liable to be affected by or assessed for the expense of the construction of the same, or by the supervisors of any township, or the duly authorized officers of any city or village council, which township, village or city is liable to be affected by or assessed for the proposed construction, or by the duly authorized agent of any public institution, corporation or railroad, whose lands or property will be liable to be affected by or assessed for the expense of the construction of the same, or by the state board of control or its duly authorized agent, setting forth the necessity thereof and that it will be of public benefit and promote the public health, with a description of the proposed starting points, routes and termini: and one or more of such petitioners shall give bond, with good and sufficient freehold sureties payable to the county, to be approved including amount and sureties, by the auditor, conditioned to pay all expenses in case the county board or the court shall fail to establish said proposed ditch, drain or water course. Whenever it shall appear to the county auditor (first) that any bond so approved and filed as aforesaid is insufficient in amount to cover all the preliminary costs and expenses of the ditch in the matter of which the said bond is given or

(Second) That the sureties of said bond are not sufficient or

(Third) That the security afforded by said bond is in any way impaired, the said auditor shall cite the principal and sureties on

the said bond to appear before him at a time and place stated, not less than ten days after service of notice or citation, to show cause why a new and sufficient bond should not be filed.

At the time and place stated, the county auditor shall hear and determine the matter and if he determines a new bond to be necessary he shall order same to be made and filed, and fix the amount thereof. The requirements as to the conditions, execution, approval and other matters affecting the prior bond shall govern the bond so required to be made, and within ten days after making said order, the said bond so ordered shall be filed with the said county auditor, and the said new bond if accepted and approved by the county auditor, shall thereafter stand as security for the payment of all costs and expenses thereafter incurred in the matter of said ditch, in case the county board or the court shall fail to establish said proposed ditch, drain or water course. In case said new bond is not filed as ordered, no further proceedings shall be had in relation to the proposed ditch, and the county board may thereupon upon motion at any meeting thereof and upon showing of above facts, dismiss said ditch proceedings and collect from the principal or principals and sureties or either of them, all expenses paid or incurred to date in the matter of constructing said ditch. All notices or citations herein required to be given shall be in writing and shall be served by the publication thereof once each week for two successive weeks in the newspaper designated by the county board, to publish the delinquent tax lists that year and at any time between the day of the first and the last publication thereof by mailing a copy thereof to each person so to be served at their last known postoffice address. Provided, that the principal or principals and sureties who have signed said bond, may, at any time prior to the final order, establishing the ditch, drain or water course, and subsequent to the filing of the engineer's report, upon ten days' notice in writing to the petitioners, of their intention so to do, pay the costs of the proceedings and dismiss the same, unless one or more of such petitioners shall, within ten days, give a new bond with good and sufficient freehold sureties, payable to the county auditor, conditioned the same as the original bond. Notice of the filing of said petition, and of the time and the place of the hearing to be had thereon, shall be given by the auditor to all persons interested, by causing a copy of such petition, preceded by a statement of the time and place set for the hearing thereof, to be published for three successive weeks in a newspaper printed and published in said county, and by posting, at least three weeks before such hearing, printed copies thereof, in three public places in each township, where the proposed work is located and one at the door of the court house in said county, and at the same time the auditor shall mail a printed copy of said notice to all non-residents of the county whose lands lie within two miles on either side of the routes specified in the petition, whose address is known to him or can be ascertained by inquiry at the county treasurer's office: Provided, that in all cases in which from any cause, said notice shall not be given, or in case said notice shall be defective, the county auditor shall cause the same to be given so that the petition may be heard at the next session of said board, after the expiration of such, or any new, three weeks' publication. When said board shall be satisfied that all of the foregoing conditions have been complied with they shall cause an accurate survey of the line of said proposed ditch, drain, creek or water course from its source to its outlet, to be made by a competent and experienced civil engineer, to be appointed by them by resolution to that effect. The auditor shall forthwith transmit to such engineer a certified copy of such resolution. Upon the filing of the petition such proceeding may be designated and numbered by

the county auditor as "County Ditch No.," and may be so referred to in all subsequent proceedings. (Laws 1905, c. 230, § 3, as amended by Laws 1907, c. 367, § 1, and Laws 1909, c. 469, § 2.)

Historical.—Laws 1905, c. 230, was amended by "An act to amend chapter 230 of the General Laws Minnesota for 1905, entitled 'An act providing for the drainage of lands and meandered bodies of water in certain cases, providing for the construction and repair of ditches, dykes, roads, drains and water courses, and for the reimbursement in certain cases of owners of lands damaged thereby, providing methods for doing such construction and repair and for such reimbursement, providing for the collection of the costs and expenses of the same, providing for the co-operation of the state drainage board in such construction and repair, prescribing the powers and duties of county commissioners and other officers in the premises, appropriating funds for the payment of assessments against state lands affected thereby, prescribing penalties for the violation thereof, and repealing certain acts therein mentioned and referred to, and repealing chapter 311, Laws 1905,' " approved April 23, 1907 (Laws 1907, c. 367).

By section 11 of Laws 1907, c. 367, Laws 1905, c. 230, was amended by adding thereto a section, to be numbered 68, whereby Laws 1905, c. 311, was repealed. For Laws 1905, c. 230, and Laws 1909, c. 469, see note under section [2651—] 44, ante.

[2651—]47. Engineer—Bond or bonds—Duties and powers—Survey, estimate, etc.—Contract and specifications—Locating ditches, etc.—Before entering upon his duties, such engineer shall give a bond in the sum of two thousand dollars, with good and sufficient freehold sureties, payable to the county (or to the respective counties, or any two or more of them as the case may be), in which any part of the work is to be done, for the use of such county, or counties, as the case may be, and also for the use of all parties who may show themselves to be aggrieved or injured by any negligence or malfeasance on his part in acting as such engineer; to be approved by the auditor of the county in which the proceedings are commenced, conditioned that he will diligently, honestly and to the best of his skill and ability perform his duties as such engineer, and shall take an oath to faithfully perform his duties. Provided, that the engineer shall not be required to continue his bond any longer than six months after the completion or abandonment of the work. Provided, that in all proceedings commenced before the board of county commissioners of any county, the engineer may, in place and stead of giving a separate bond as above required in each proceeding, give a bond covering all proceedings for ditches, drains or water courses in said county, upon or in which he may be appointed engineer under the provisions of this chapter within two years after the filing and approval of such bond, in the sum of four thousand dollars, with good and sufficient freehold sureties, to be approved by the county auditor of said county, payable to the county for the use of said county and also for the use of all parties who may show themselves to be aggrieved or injured by any negligence or malfeasance on his part in acting as such engineer, conditioned that he will diligently, honestly and to the best of his skill and ability perform his duties as such engineer in each and all such proceedings. He shall make a correct survey of the line of said ditch, drain, creek or water course, and of the branches thereof, if any, from its source, or sources, to its outlet or outlets; and he shall cause stakes or monuments to be set along said line, numbered progressively down stream, at each one hundred feet; and he shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain, creek or water course between each of the one hundred foot stakes, and the estimated cost per cubic yard for the removal thereof, and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of such ditch, drain, creek or water course, and shall make an itemized tabulation of all cleaning of obstructions of water courses, building of flumes, of other wood or masonry work,

construction of fences for the protection of the ditch, bridges or other additional construction work found necessary, together with the estimated cost thereof, and make an estimate of the total cost of laying out, establishing and constructing the whole work (including branch ditches, if any), including all preliminary and other expenses connected therewith, and with the inspecting and certifying to the work when and as the same is completed. He shall also, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, creek or water course; and he shall specify the time so far as practicable, and the manner in which the work shall be done; and may for that purpose set a different time for completing the several contracts, and also for completing any station or stations included in each contract, and shall have power, when he finds it necessary, to provide for running said ditch underground, through drain tiles, or other materials, as he deems best, by specifying the size and kind of tile or other material to be used in such underground work, and shall estimate the cost of the same as a part of the total cost of the work. In locating a public ditch, drain, creek or water course, or the branches thereof, the engineer may vary from the line described in the petition, or from the starting point thereof, as he deems best; provided, he commence the ditch at or as near the point described in the petition as is reasonably practicable and follow down the line therein described as nearly as practicable, and provided, further, that he shall have authority to specify such branch ditch or ditches as in his opinion, may be necessary to give owners of lands likely to be assessed for the construction of the main ditch the full benefit thereof. He shall also include in his report a form of contract as complete in its provisions as practicable and which shall contain detailed and complete specifications by direct statement, or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor or contractors, and which shall define the relations which shall exist between the county and the contractor or contractors and which shall give the engineer the right with the consent of the county auditor or county auditors, as the case may be to modify his plans and specifications as the work proceeds, and as circumstances may require, provided no changes are made that will substantially impair the usefulness of any part of the ditch, or substantially alter its original character or increase its total cost by more than two per centum of the total original contract price for the construction thereof, and the county attorney, upon request from the engineer, shall assist him in the preparation of said form of contract, specifications and provisions. In locating a public ditch, drain, creek, water course, or the branches thereof, the engineer may vary from the line described in the petition, or from the starting point thereof, as he deems best; provided, he commences the ditch at or as near the point described in the petition as is reasonably practicable, and follow down the line therein described as nearly as practicable, and provided, further, that he shall have authority to specify such branch ditch, or ditches, as in his opinion may be necessary to give owners of lands likely to be assessed for the construction of the main ditch as originally petitioned for the full benefit thereof, and he shall do the same things and report the same data, tabulations and estimates with reference to said branches as are required by the chapter, with reference to the public ditch, drain, creek or water course, or the branches thereof, described in the original petition; provided, that such branch ditch or branch ditches may either be opened at the same time and in the same manner as the main ditch,

or the engineer may only locate said branch ditch or ditches for future construction. But he must fix a time limit as to the construction of any such branch ditches. In all cases in which the route proposed is along highways already established, the engineer shall locate the ditch at sufficient distance from the center of such highway to admit of a good road along the central line thereof. The earth taken from the ditch shall be so placed, and the brush or timber taken from the right of way of such ditch may be so placed upon the roadway as to form a turnpike, which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water, in time of high water, and no nearer to the margin thereof than two feet, but in locating a ditch, drain or water course, or the branches thereof, as above, the engineer shall not materially depart from the terminal points described in said petition, provided, however, that when there is not sufficient fall in the length of the route described in the petition to drain the land adjacent thereto, or when for other reason it appears expedient, he may shorten or extend the ditch from the outlet named in the petition far enough to reasonably effectuate the purpose for which the work is intended. When, in his opinion, it will not be detrimental to the usefulness of the whole work or to the usefulness of any extensive section of the whole work, he shall, as far as practicable, locate the ditch on division lines between lands owned by different persons; and he shall, as far as practicable, avoid laying the same diagonally across lands, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines. Provided, that the engineer, when it is desirable and practicable, and if the bondsmen for the petitioner agree thereto in writing, may provide for the drainage of lands not likely to be assessed for the ditch, originally petitioned for, by extending the ditch, or drain or water courses beyond the limits named in the petition, or by putting in branches, and in such case the viewers shall assess benefits and damages to such additional lands. Provided, further, that if the engineer finds that better results can be obtained, and if the bondsmen for the petitioners agree thereto in writing, he may substantially alter the starting points, routes and termini of such ditch, drain or water course, or he may plan for the different parts of the ditch, drain or water course to flow in different directions, with more than one outlet, making in fact more than one ditch. ('05 c. 230 § 4)

[2651—]48. Report.—He shall thereupon make a detailed and complete report of his doings, and submit therewith the necessary plans and specifications and a description of the lands over which the ditch or ditches is or are surveyed. Such report shall give the names of assistants and laborers and the time each was employed by or under him, together with his own time on the work, and every other item of expense by him incurred in and about the said work, and he shall forthwith file such report with the auditor after having subscribed and sworn to the same. All reports, except reports as to assistants and expenses incurred, all plans, specifications, maps or profiles herein required to be made by the engineer shall be made by him in duplicate and filed in the office of the county auditor or the clerk of the district court, as the case may be, and one of each thereof together with a copy of the contract shall be delivered to the contractor at his request at any time after the execution of the contract. (Laws 1905, c. 230, § 5, as amended by Laws 1909, c. 469, § 3.)

See note under section [2651—]44.

[2651—]49. Viewers—Meeting—Duties.—At the session of said county board, when said civil engineer is appointed, or at such time thereafter as may be appointed by them, not later than ten

days thereafter, said board shall make an order appointing three resident freeholders of the county not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers to meet at a time and place to be specified by the county auditor as hereinafter provided, preparatory to commencing their duties as hereinafter specified. It shall be the duty of the county auditor, within five days after the filing of the engineer's report, to make an order designating time and place for the first meeting of the viewers, which time shall be within fifteen days after the filing of the engineer's report, and it shall further be the duty of the county auditor, within five days after the filing of the engineer's report, to issue to said viewers a certified copy of the petition and of the order of the county board appointing them, and of his order designating the time and place of their first meeting. In case any of the viewers so appointed shall fail for any cause to qualify in time for the first meeting, the county auditor shall designate some person having the qualifications above stated to take his place. The viewers after taking the oath to faithfully perform their duties, shall proceed at the time set in said order, with or without said civil engineer, and shall prepare a tabular statement showing, as far as practicable, 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 to be the same as appears on the county tax duplicates of said county, and the description to be given in legal form), and the total number of acres in each of said tracts of land to be benefited or damaged (as the case may be); the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any water course, and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; 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 road so that the roadbed or traveled track of any such road will be made better by the construction of such ditch, the viewers shall estimate the benefit arising therefrom to such roads, roadbeds or railroads, and report said benefits (names of roads and other particulars necessary to identify the corporations private or public, to be benefited thereby, and amounts of benefits to each) as a part of their tabular statement provided for in this section; and the viewers shall also report as a part of such tabular statement the damages awarded to each municipal or other corporation, and to any person, persons, or association of persons, telephone and telegraph companies, for injury to any road, railroad, or roadbed, telephone or telegraph line or other personal property, and from the necessary construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such ditch, stating the same separately; and they shall also report the total estimated benefits in respect to the entire ditch and branches, if any, 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. In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matters disagreed upon. Whenever a public ditch is located wholly or in part in the bed of a private ditch already or partially constructed, the engineer shall make an estimate of the number of cubic yards of earth already excavated on each tract of land and the amount of the reduction in

the cost of constructing the portion of the ditch on each such tract of land by reason of such private drain having been constructed, and the viewers shall deduct such amount from their estimate of benefits, if any, against such tract of land, making an appropriate notation thereof on their report. (Laws 1905, c. 230, § 6, as amended by Laws 1909, c. 469, § 4.)

See note under section [2651—] 44.

[2651—]50. What lands assessed—Benefits, how estimated—State lands—Annual appropriation.—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 ditches pass through said lands or along or near the line of such roads or railroads or not, and the viewers in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such lands, roads or railroads will receive after some other ditch or ditches shall be constructed, but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage, or prevents the overflowing of or otherwise directly benefits such lands, roads or railroads. All lands owned by the state of Minnesota or any department thereof benefited by such ditch, drain or water course shall be liable for such benefit, the same as taxable land. The sum of \$5,000.00 for the year 1909 and annually thereafter, or so much thereof as may be necessary to meet all assessments against state lands under this act, is hereby appropriated out of the general revenue fund for that purpose. (Laws 1905, c. 230, § 7, as amended by Laws 1909, c. 469, § 5.)

See note under section [2651—] 44.

[2651—]51. Report—Unavoidable delays.—Said viewers shall forthwith file with the county auditor a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a reference, as hereinafter provided), within thirty days from the date of their first meeting; provided, that if the water be so high, or the weather so inclement, or such unavoidable accident occur as in the opinion of the board of county commissioners to practically and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by such board; but the report of said viewers must in such case state the reason for such delay, and if such reason be not deemed sufficient by the board of county commissioners such viewers shall forfeit one-half of the compensation hereinafter provided. ('05 c. 230 § 8)

[2651—]52. Meeting of county board—Notice—Jurisdiction—Improper service—Special meeting—Resubmission to engineer and viewers—Pending proceedings.—Within three days after the filing of such report it shall be the duty of the auditor to call a special meeting of the board of county commissioners, by giving to each member thereof not more than thirty-five days' notice, in the manner provided by law for notifying county commissioners of special meetings. He shall also cause a notice of the time and place of such special meeting to be given to all persons interested by publication for three successive weeks prior thereto, in a newspaper printed and published in said county, and by the posting, at least three weeks before such meeting, 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 engineers' and viewers' reports, and of the time and place set for the hearing thereof, which notice shall

briefly state substantially the starting points and termini of the ditch, drain, creek or water course and branches, together with a description of the land through which they pass, all as appears by the engineers' report, together with the names of the owners of the lands and the names of the municipal corporations and other corporations that will be affected thereby, as the same appears in the report of the viewers; and within one week after beginning such publication, the auditor shall mail a printed copy of said notice to all non-residents of the county named in such viewers' report as affected by such proposed work, whose address is known to him, or can be ascertained by him by inquiry at the county treasurer's office; provided, that in all cases in which, for any cause, said notice shall not be given, or in any case said notice shall be legally defective, the county auditor shall cause the same to be again given, so that the petition may be heard at another special, adjourned or regular meeting of said board, which will occur more than seven days after the expiration of another notice by the publication, posting and mailing, as provided in the first instance: Provided, further, that whenever any final order of the board of county commissioners establishing, or refusing to establish any ditch in proceedings under this chapter shall have been heretofore or shall be hereafter set aside, annulled or declared void by any court by reason of a failure, to give proper notice of the said pendency of said petition and viewers' report and of the time and place set for the hearing thereof, the county auditor, at any time within one year after the rendering of such judgment or decision, upon the application of any petitioner in such case, or upon being directed by resolution by the board of county commissioners, shall call a special meeting of such board of county commissioners for a rehearing on such petition and viewers' report, and shall give notice of such meeting and rehearing in the manner hereinbefore provided, and at such meeting the said board of county commissioners shall proceed to reconsider such report, shall act upon the same and make findings thereon and may establish such ditch in conformity with the provisions of this chapter; Provided, further, that whenever, upon appeal in proceedings under and pursuant to any drainage law of this state, the court shall have heretofore by order dismissed said proceedings on account of the failure of the county auditor to give proper notice of the pendency of said petition and viewers' report, or of the time and place set for the hearing thereof, as required by such law, then and in that event the county auditor, at any time within one year after the rendering of such order, upon the application of any petitioner in said proceedings, or upon being directed by resolution of the board of county commissioners, shall call a special meeting of the board of county commissioners for a rehearing on such petition and viewers' report and shall give notice of such meeting and rehearing in the manner hereinbefore provided, and at such meeting the said board of county commissioners shall proceed to reconsider such report, shall act upon the same and make findings thereon and may establish such ditch in conformity with the provisions of this chapter. Upon due publication, posting and mailing of the notice provided for in this section, the board of county commissioners shall have jurisdiction of each tract of land and of all other property in said viewers' report described, including any land added by the drainage of any meandered lake or the change of any water course, and of each tract of land described in said notice, and of each tract of land owned by any of the persons or private corporations whose names appear in said notice that is affected by the proposed drain, and of all persons and corporations, municipal and otherwise, that are named in said notice, and of all persons and corporations having or owning any interest whatever in, or any mortgage, lien

or incumbrance against any of the tracts of land or other property heretofore in this paragraph referred to; Provided, that if it shall appear to said board after a hearing of all parties interested or before final order establishing a proposed ditch or drainage system, that the general system of said proposed ditch as surveyed by him may be improved by the addition of other branch ditches connecting therewith, or by a change in the course or dimensions of either the main ditch or any branches thereof, or by the elimination of one or more such branches; or if it shall appear to said board at such hearing that the viewers have made unequal or improper assessments affecting any of the property or persons assessed, or have awarded benefits in an unequal or improper proportion to any such parties; or if it shall appear to said board that either the engineer or the viewers have not fully and properly complied with all of the provisions and requirements of this act, then and in such case the said board shall resubmit the same to the said engineer and the said viewers who shall be respectively authorized to re-examine the course of said proposed ditch and lay out and provide for such other and additional branch ditches as may to said engineer appear necessary, or make any changes in the main ditch either as to course or dimensions as may seem advisable, or eliminate any branch ditch formerly provided for, or make any other changes as in his opinion may result in an improvement in the general system of drainage to be affected by said proposed ditch; and the said viewers shall review all the property that may be affected by such drainage ditch as the same may be located and laid out by the engineer, and said viewers shall have the authority to reassess all property, either as to benefits or damages, that may be affected by said ditch or drainage system. The said engineer and viewers, after having the said matters resubmitted to them shall proceed forthwith with their duties under said order and within thirty days shall file with the county auditor their report thereon. Upon the filing of said reports the county auditor shall forthwith proceed as in the case of the filing of the original reports and a hearing upon said amended reports shall be had and the same notices to all parties concerned shall be given as upon the original reports. This act shall have application to all ditch proceedings now pending in which the reports of the engineers and viewers have not been approved or the ditch established by final order. (Laws 1905, c. 230, § 9, as amended by Laws 1907, c. 367, § 2.)

See note under section [2651—] 46.

[2651—]53. Hearing by county board—Order establishing ditch, etc.—Findings—Re-reference.—Said board of county commissioners, at the time which may as aforesaid, upon such proper notice thereof, be set for the hearing of said petition and reports (or at any time to which said hearing may be adjourned from time to time, as necessity may require, but not otherwise), shall proceed to hear and consider the same; and all persons interested may appear and be heard by and before them. Unless excused by the board of county commissioners, the engineer and at least two of the viewers shall be present at such hearing. If said board, from the report of the engineer and from the report of the viewers and such other evidence as may be adduced before them, shall find that the engineer's report and the viewers' report and all other proceedings in the matter have been made and taken in accordance with the provisions of this act, and that the estimated benefits to be derived from the construction of said work, are greater than its total costs, including damages awarded, and that such damages and benefits have been duly awarded and assessed, and that said work will be of public utility or promote the public health, and that such reports are com-

plete and correct, they shall by an order containing such findings establish such ditch as specified in the report of the civil engineer, and establish and confirm the viewers' report; provided, that in case the viewers' report is found to be defective or erroneous in any particular, the board of county commissioners shall have authority to remedy such defect by reference to said viewers, if necessary, or otherwise, and to cause the expense of such re-reference, if any, to be assessed against the land benefited. In case the viewers have not agreed or shall not agree in their findings, the board of county commissioners shall determine the proper findings and change the viewers' report accordingly. In case of such re-reference the viewers shall proceed summarily to make the necessary corrections, and forthwith report the same to the said board of county commissioners. ('05 c. 230 § 10)

Order establishing ditch.—The order required by this section, establishing a ditch, must in itself, or by reference to the engineer's report, locate the ditch, by giving the proper starting point, route, and terminus. *Johnson v. Morrison County*, 119 N. W. 502.

[2651—]54. **Damages—How paid.**—When damages are awarded to any person, persons or corporation in excess of benefits, if any, and the same shall have been duly confirmed, the board of county commissioners of each county in which any of the lands for which such damages are awarded are located shall order the same paid out of the treasury of such county, on warrants to be drawn and attested by the auditor and signed by the chairman of the board. Such warrants shall be issued at the expiration of the time for appeal in favor of such persons as shall not have appealed, and shall be dated and become due and payable immediately after the letting of contracts, as hereinafter provided. In case of appeal, or in case of any postponement or delay in determining the amount of damages due to any person or corporation, warrants in favor of such person or corporation shall not be issued until the final determination thereof. When the award is confirmed by order of court, it shall be the duty of the clerk to immediately transmit to the county auditor of each county affected thereby a certified copy thereof, and likewise of any final order or judgment thereafter made in the case of any appeal or jury trial; and thereupon the same duty shall devolve upon the county commissioners and auditor as hereinbefore provided. Whenever an award shall have been finally confirmed it shall be the duty of the board of county commissioners of the county in which the lands, in respect of which such award was made, are located, to cause to be forthwith paid to the owner of such property an amount of damages over and above all benefit which may have been awarded therefor, with interest at the rate of 6 per cent per annum, from the date to which such assessment relates to the date of such payment. If in any case there shall be doubt as to who is entitled to the damages for land taken, such board may require of the claimant a bond, with good and sufficient sureties, to hold the county harmless from all loss, costs and expenses, in case any person should thereafter claim and show himself entitled to any part of such damages. ('05 c. 230 § 11)

[2651—]55. **Appeal to district court—Jury trial.**—Any person or corporation aggrieved thereby may appeal from an order of the board of county commissioners made in the proceedings, and entered upon their records, determining either of the following matters, viz:

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

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

Third—Refusing to establish such proposed ditch.

To render such appeal effectual the appellant shall file with the county auditor, within and not after twenty days from the date such final order is issued, a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond to the board of county commissioners, with at least two freehold sureties in an amount of not less than two hundred and fifty dollars, to be approved by the auditor of the county in which such appeal is taken, conditioned that said appellant will duly prosecute the appeal and pay all costs that may be adjudged against him, and to abide the order of the court. Within twenty days after such filing the auditor shall make a complete transcript of all the papers and proceedings on file and of record in his office, so far as the same pertain to the premises or matter on account of which the appeal is taken, together with the notice of appeal, to the clerk of the district court. Any person deeming himself aggrieved by the determination in any order establishing the proposed ditch of the amount of his benefits or damages may demand a jury trial to determine the amount of his benefits or damages on account of the construction of such ditch. Such demand shall be in writing, signed by the party making the same, or by his agent or attorney, and shall be filed in the office of the clerk of the district court within and for the county in which the proceeding is pending, within twenty days after the filing therein of the order confirming the report of the viewers. The issues raised by such demand shall stand for trial and shall be fully tried and determined at the next term of the district court held within the county in which such proceedings were commenced, beginning after the filing of such demand, and shall take precedence of all matters of a civil nature in said court. If there be more than one demand, they may be consolidated and tried together, but the rights of such persons shall be separately determined by the jury in its verdict; provided, however, that if the demandant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land then the costs of such trial shall be paid by the demandant. The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned. ('05 c. 230 § 12)

Order establishing ditch—Certiorari.—Certiorari is available to review an order of the county commissioners establishing a ditch: no appeal from such order being provided. *State ex rel. Ross v. Posz*, 106 Minn. 197, 118 N. W. 1014.

Appeal in general.—Where landowners, who were not served with notice nor named in the proceedings, and whose lands were not referred to therein, remonstrated against the proposed ditch on the ground that water would be brought in damaging quantities upon their premises, they were not restricted to an appeal from the determination of the board to proceed with the construction of the ditch, but might resort to injunction. *Bilsborrow v. Pierce*, 101 Minn. 271, 112 N. W. 274.

[2651—]56. **Consolidation of appeals.**—If more than one party appeals, the court may, in his discretion, order the cases consolidated and tried together; in such case the right of each party shall be separately determined. ('05 c. 230 § 13)

Ditch limited to description.—In proceedings under Laws 1905, c. 230, the board is limited in its final order establishing the ditch to the description thereof in the petition, subject to such reasonable departures in the course, distance, and terminals as are necessary to render the improvement of practical utility. An extension of a proposed ditch for seven miles beyond the terminus named in the petition is unauthorized. *Lager v. Sibley County*, 100 Minn. 85, 110 N. W. 355.

[2651—]57. **Letting of job.**—Within ten days after the filing in the office of the county auditor of the order establishing a county ditch, or, when the proceedings are taken in court, then within ten days after the filing of the order establishing a judicial ditch in the office of the clerk, the auditor, in the first instance, and in the sec-

ond instance, the auditors of the respective counties, meeting for that purpose at the office of the auditor of the county in which the proceedings are pending, shall proceed, as hereinafter provided, to sell the jobs of digging, and constructing the entire work, either as one job, or in one or more linear sections of one hundred feet each, each of said sections to be known and numbered by the stake, or monument set by the engineer at the foot of each such section, as shown in the engineer's report commencing at the one including the outlet, and thence in succession up the stream to the one including the source. The auditor or auditors, as the case may be, may, with the approval of the engineer, sell separately from the jobs of excavation, any jobs of building of flumes or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor or auditors, as the case may be, shall contract in the name of the county, or in the name of the respective counties, as the case may be, each acting by and through its auditor, with the party to whom any of such jobs of construction work or any section or sections is or are sold, requiring him to construct the same in the time and manner, and according to the specifications, provisions and form of contract, set forth in the report of the engineer, on which the ditch is established; and shall take from him a bond in the penal sum of not less than the contract price, with not less than two freehold sureties, payable to the county, or to the respective counties, or any two or more of them as the case may be, for the use of such county or counties, as the case may be, and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which such bond is given; to be by said auditor or auditors, as the case may be, approved, conditioned that said party shall faithfully perform and fulfill his contract and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor and otherwise conditioned as in this act provided, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or principals or sureties on said bond. The auditor of the county in which the proceedings were taken shall give notice of the letting of such contracts by publication for three successive weeks, in the official paper of such county, of the time when and the place where such contracts shall be let to the lowest responsible bidders; and in such notice shall state the approximate amount of work and the estimated cost, and shall invite bids for the work as one job, and also for any one or more of such sections, or any one or more of such construction jobs, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds more than thirty per cent the estimated cost of the construction of the part of said work covered by said bid; nor unless accompanied by a certified check, payable to the auditor, or to the respective auditors, as the case may be, for not less than ten per cent of the bid; and said auditor or auditors may adjourn such letting from time to time until the whole work shall be taken, and, with the approval of the engineer, may let any one or more of such sections; or any one or more of such construction jobs, when the estimated cost of the construction is more than \$3,000.00, the auditor may also advertise such letting in a trade paper; if no bids are received which can be entertained the bondsmen for the petitioners may have the right, at any time, to pay the costs of the proceedings and dismiss the same. The engineer shall attend to the letting of the work and no bid shall be accepted without his approval, as to the compliance with plans and specifications. ('05 c. 230 § 14)

[2651—]58. **Contract and bond.**—The bond and contract shall be attached to each other and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications, and refer to the number of the section or sections, as provided for in the preceding section; and shall provide that the work shall be done and completed as provided for in the report of the engineer, and subject to his approval and that of the auditor, or auditors, as the case may be. Such contract shall be drawn to the satisfaction of the engineer and county attorney. Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the contracting county or counties and of the parties performing labor and furnishing material in and about the performance of such contracts, and shall provide that time shall be of the essence of the contract, in that if there should be any failure to perform the work according to the terms of said contract within the time limited therein, originally or by extension, the contractors shall forfeit and pay to the county in which the portion of the work in default shall be located, a certain sum, to be named therein, and which shall be fixed by the county auditor, or auditors, as the case may be, for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the auditor, or auditors, as the case may be, stating to his or their satisfaction good and sufficient reasons therefor, nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited and before such extension, or occurring after the limit of the extension. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name, and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds of public officers as security to all persons and providing for actions on such bonds by any injured party in the district court. ('05 c. 230 § 15)

[2651—]59. **Failure to complete—Reletting.**—If a job be not completed within the time fixed in the contract therefor it shall be the duty of the bondsmen to notify the county auditor of each county in which any part of the lands affected thereby is located, in writing, of that fact, within five days after the expiration of the time fixed in the contract; whereupon the auditor, or auditors, as the case may be, shall, in writing, duly dated, order said bondsmen to complete said job within a time specified by him or them, and said bondsmen shall receive from the proper county or counties, as the case may be, the amount due on such job or part thereof, that they have so completed, less the proper deduction for forfeiture, if any. The amount due said bondsmen for such work shall be determined by said engineer; provided, that a job not completed, as hereinbefore specified, by the original contractor, and the completion of which shall not be undertaken by the bondsmen as hereinbefore provided, within ten days after the date of such order, or of the failure to complete, which, the bondsmen shall not so notify said auditor, or auditors, as the case may be, shall be resold by the auditor, or auditors, as the case may be, after ten days' notice by publication, to the lowest responsible bidder, but not for a sum exceeding fifty per cent in excess of the original estimated cost of such work, nor a second time to the same party. A contract and bond

shall thereupon be entered into as hereinbefore provided, and such contract shall provide for the completion of the work resold within six months from the date thereof. Such excess, if any, shall be recoverable against the bondsmen on the original contract. ('05 c. 230 § 16)

[2651—]60. Duties of engineer—Certificates—Payment.—It shall be the duty of the engineer, on being notified by any contractor that his job is completed, to inspect the same, and if he finds it complete according to the contract, plans and specifications, he shall report that fact to the board of county board and give to the contractor a certificate stating that said section or sections (by number) or other jobs of construction, are completed according to the contract, plans and specifications, as set forth in the report of said engineer: Provided, that when the work for which such certificate is to be issued, affects more than one county, proportionate certificates shall be issued; whereupon, if approved by the county board of the county or counties, as the case may be, and upon the presentation and surrender of said certificate with such approval indorsed thereon, to the auditor of the proper county or counties, said auditor shall draw a warrant on the county treasurer of his county for the proportionate amount found to be due in respect of lands in his county on said contract, according to such preliminary certificate, as herein provided; and that said warrant shall be paid out of the general ditch fund to be provided by the county board as hereinafter specified. Said warrant shall become due and payable out of said fund at once, and if there shall be no cash in said fund to pay said warrant when the same is presented the county treasurer shall endorse said warrant "Not paid for want of funds," and date and sign such indorsement, and the amount of said warrant shall draw interest at the rate of six per cent per annum until called in by the treasurer or auditor of said county and paid; Provided, however, that the auditor, upon the written approval of the engineer, may issue preliminary certificates for not to exceed seventy-five per cent of work already done and approved, within the county of which he is such auditor, which certificate shall be treated as hereinbefore provided; but no such certificate shall be furnished except when accompanied by the engineer's written certificate that no loss will result therefrom. Provided, that the said certificate or certificates of the engineer in the matter of any county or judicial ditch proceedings, or any other estimate or certificate required under any of the drainage laws of this state to be made by him, shall not constitute prima facie evidence of the truth of the contents thereof, or of the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or any part thereof unless and until said certificate is approved by resolution of the county board. It shall also be the duty of the engineer to inspect the laying of tile, excavation and all other work of construction from time to time, as provided for in the specifications and provisions in his report and as provided for in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board or the judge of the district court as the case may be, as to all work completed since the last prior report, and his services for making such inspection shall be paid for at the same rate and in the same way as his services in making his original survey and report. Also it shall be the duty of the engineer, at the request of the contractor, immediately upon the completion of each continuous mile of ditch hereunder constructed by dredge work to inspect the said mile of work and to determine and certify whether or not the same is completed to the

depth required by the contract, plans and specifications, and if not so completed the further depth necessary to comply therewith. Said certificates shall be made in duplicate and one thereof shall be given to the contractor and the other filed in the office of the county auditor of the county where the drainage proceedings were instituted, and said engineer's certificate shall be prima facie of its necessary contents to the same extent and under the same circumstances as other engineer's certificates herein mentioned. (Laws 1905, c. 230, § 17, as amended by Laws 1909, c. 469, § 6.)

See note under section [2651—] 44.

Construction in general.—The proviso at the end of Laws 1905, c. 230, § 17, authorizing partial payments on the approval of the county auditor and the engineer, authorized such payments without the concurrence or approval of the county commissioners. *Moody v. Brasie*, 104 Minn. 463, 116 N. W. 941.

[2651—]61. **Bonds of county.**—The county board of each and every county wherein any drainage ditch is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, are hereby authorized to issue the bonds of their respective counties in such amount as may be necessary to defray, in whole or in part, the expense incurred or to be incurred in locating, constructing and establishing or repairing so much of any such ditch as may be located within said county; or in such relation to such county as to affect lands therein within the terms of this act. The word "expenses" shall be construed to mean and to cover every item of cost of said ditch from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed twenty years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all as the county board shall by resolution determine. Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of this act, or such bond may be in such form as the state board of investment may prescribe, and shall be signed by the county auditor, who shall keep a record thereof. Said county board shall have power to negotiate said bonds as they shall deem for the best interest of said county, but for not less than their par value. The proceeds from the sale of all such bonds shall be placed in a general ditch fund which is hereby created. Such county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can properly be used for the purpose of this act, into which fund shall also be paid all moneys received from the payment of any liens created under the provisions of this act. And such board is hereby authorized to pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury, when the moneys on hand in the general ditch fund of the treasury are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys have been taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments, for ditches, drains or water courses constructed under any proceedings had hereunder. (Laws 1905, c. 230, § 18, as amended by Laws 1907, c. 367, § 3, and Laws 1909, c. 469, § 7.)

See note under sections [2651—] 44, [2651—] 46.

[2651—]62. **Statement and summary.**—At the earliest practicable time after the letting of the contract for the construction of any

ditch, as herein provided, the auditor of each county affected thereby shall make in tabular form a list and statement showing the following facts, and in the order named, viz:

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

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

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

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

Fifth—The amount that each of said tracts of land, and that each of said corporate roads or railroads so benefited will be liable for and must pay into the treasury of each county for the location, construction and establishment of such ditch, which said amount shall be determined as follows: Said auditor shall make a full statement showing the total cost of each ditch, under each separate petition for such ditch, and each petition and each ditch located, constructed and established shall be known and designated by a number to be given to it. Such statement shall be headed as follows: Statement showing cost of ditch No. To whom paid. For what paid. Amount paid. Said statement shall be summed up, showing in figures the total cost of each ditch, and shall be attached to and form a part of the statement herein provided for. The total cost shall then be divided by the total estimated benefits as provided for in subdivision five of this section, for the rate of cost on each one dollar of benefits, the auditor not to be obliged to carry out and use a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land, and to each public or corporate road or railroad (as hereinbefore provided for) shall be multiplied by said rate, and the result set down in the proper column opposite each of said tracts of lands, public or corporate roads or railroads; and such result so obtained, less the amount of damages, if any, shall be the amount that each of said tracts of land, public or corporate roads or railroads will be liable for on account of such improvement. ('05 c. 230 § 19)

[2651—]63. Record of statement — Liens — Fees.—Such statement shall then be signed by the auditor in the presence of two attesting witnesses; and be duly acknowledged by him, and shall then be duly filed with and recorded by the register of deeds of such county. The amount which each tract of land and each public or corporate road or railroad will be liable for, and the interest thereon, as hereinafter provided, shall be and remain a first and paramount lien on such land, public or corporate roads or railroads, until fully paid; and shall take precedence of all mortgages, charges, incumbrances or other liens whatever, such payments may be made as hereinafter provided. Such filings shall be deemed notice to all parties interested of the existence of such lien. The fees 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 au-

ditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him. ('05 c. 230 § 20)

[2651—]64. **Interest—Premium on bonds.**—The amount that each tract of land, public or corporate road or railroad, shall be liable for on account of the location, construction and establishment of any ditch or ditches under the provisions of this act shall bear interest from the date of the filing of the auditor's statement in the register of deeds office at the rate of six per cent per annum until paid; provided, that when bonds are issued by the county for the construction and establishment of such ditch the same rate of interest shall be charged as said bonds so issued bear, and said interest shall constitute an additional lien on said lands or roads until fully paid, which said interest when about to be paid shall be computed by the county auditor, providing, that if said bonds are sold at a premium, such premium shall be used as far as may be to make up any deficiency in the assessments levied by the county auditor or county auditors in the proceedings, and the balance remaining of such premium, if any, shall be used as far as practicable, in keeping such ditch in proper repair and free from obstruction so as to answer its original purpose. ('05 c. 230 § 21)

[2651—]65. **Liens, how paid—Taxes.**—The payment of such liens shall be made to the treasurer of such county as follows: One-tenth of such principal on or before one year from such filing in the office of the register of deeds, and one-tenth each year thereafter until the whole thereof is paid. Provided, that if in the final order establishing said ditch, or at any time thereafter, the judge of the district court or the county board, in his or its discretion, so orders, then payment of such lien shall be made to the said treasurer as follows: One-fifteenth of said principal on or before five years from the date of said filing in the office of the register of deeds, and one-fifteenth each year thereafter until the whole amount of said principal is paid. The said principal lien shall bear interest at a rate not to exceed six per cent per annum reckoned from the date of the filing of the lien statement in the office of the register of deeds, and interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually except as hereinafter in this section otherwise provided. On or before the 15th day of November next following such filing the county auditor shall enter on the tax lists of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, with a proper notation to secure the successive entry each year thereafter of the unpaid balance of such lien and the interest thereon and the portion of the principal of such lien due each year and all accumulated interest, and each thereof shall become due and payable and shall be collected at the same time and in the same manner as real estate taxes for that year on the tract in question become due, payable and are collected, and all of the provisions of law now or hereafter existing in relation to the collection of real estate taxes so far as applicable thereto, are hereby adopted for the purpose of enforcing payment of such liens and of the installments thereof and of the interest thereon and of each of the same. Provided, that in case of delay in the construction of the ditch or in the proceedings therefor, or in the payment therefor to the contractor, the county board, or the judge of the district court, as the case may be, may each year during such delay, except after ditch bonds for such ditch have been issued and sold upon verified petition therefor in such ditch proceedings by any party interested and upon proper proof of facts, order the abatement of such proportion of the interest on such liens due that year as the cost and expense of such ditch paid to date bears to the total esti-

mated cost of such ditch, including the cost of preliminary proceedings, and it shall thereupon be the duty of the county auditor to make such entries and notations in his books as is necessary in complying with such order of abatement. After the amount of any lien provided for in this chapter, or any installment thereof, or of the interest thereon has been entered on the tax lists, with the taxes, if any, due any year and default has been made in the payment of such lien or part thereof, no penalty therefor shall be added to such lien, or shall attach thereto at the time or times that penalty attaches to unpaid real estate taxes, but after said lien or any installment thereof becomes delinquent with real estate taxes, same shall bear interest as in case of delinquent real estate taxes. When payment of the full amount of such liens, with accumulated interest, shall thus, or at any one time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of such payment, and the same, when recorded in the office of the register of deeds, shall release and discharge said lien of record. (Laws 1905, c. 230, § 22, as amended by Laws 1909, c. 469, § 8.)

See note under section [2651—] 44.

[2651—]66. State and railroad lands assessable.—All lands owned by this state, and all lands owned by any railroad or other corporation, benefited by any such ditch, drain or water course, shall be liable for such benefits the same as taxable lands. ('05 c. 230 § 23)

[2651—]67. Standing appropriation.—The sum of five thousand dollars for the year one thousand nine hundred and five, and annually thereafter, or as much thereof as may be necessary to meet all assessments against state lands under this act, is hereby appropriated out of the general revenue fund for that purpose. ('05 c. 230 § 24)

[2651—]68. Benefits to municipalities, railroads, etc., how assessed—Counties having 200,000 inhabitants.—The benefits accruing to any municipal corporation by reason of the improvement of any public road or street within the limits of or connecting with such municipal corporation, shall be assessed, levied and enforced as follows: Whenever any public road or street shall have been found to be so benefited, the city, village or town which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such roads or streets within such city, village or town by reason of such ditch, and the same shall thereupon become a liability of such city, village or town, and shall be due and payable in ten annual installments, beginning on the first day of June next following the date of the entry of the lien against private individuals as herein provided; but if any of such installments are not paid within thirty days after its maturity, the amount thereof, with interest, shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and a levy thereof made thereon, and the same shall become due, be paid and collected in the same manner and at the same time as other taxes. Provided, however, that in all counties now or hereafter having a population of more than two hundred thousand inhabitants when any public road heretofore or hereafter found to be benefited is a county road, as county roads are defined under the laws of this state, the benefits accruing thereto shall not be assessed against the city, village or town chargeable with the duty of keeping such road in repair, but the same shall be assessed against the county by which said road has been built or is maintained, and the amount thereof shall be charged to and paid out of the general road and bridge fund of

said county, and where any such city, town or village has been heretofore charged with said benefits accruing to any such road, the liability therefor shall be and is hereby discharged and the same shall be paid from said general road and bridge fund of said county. Whenever any railroad or the lands of any railroad company shall be determined in any such proceedings to be benefited by any such ditch, such railroad, or the lands of such railroad company shall be assessed their just proportion of such benefits as other lands benefited are assessed, which assessment shall be collected from the owners of such railroad or from such railroad company in the same manner as personal taxes are collected by law. From the date of the filing by the county auditor or in the office of the register of deeds of the statement aforesaid, the amount of such assessment, with interest, shall constitute a lien against all property of such owners and railroad company within such county. Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. (Laws 1905, c. 230, § 25, as amended by Laws 1909, c. 469, § 9.)

Historical.—Laws 1907, c. 367, § 3½, amending Laws 1905, c. 230, § 25, was repealed by Laws 1909, c. 469, § 14. See section [2651—] 117, and notes under sections [2651—] 44, [2651—] 46.

[2651—]69. Repairs—Assessments—Lands in other counties—State ditches.—After the construction of any public drainage ditch within the state of Minnesota under any law of this state, the county board of the county in which the said ditch or any part thereof is located shall keep the same or such part thereof in proper repair and free from obstruction and shall widen or deepen the same so as to answer its purposes, and pay for the same out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund, it is hereby authorized to apportion and assess the cost thereof, upon all lands originally assessed for benefits by reason of the construction of said ditch; said apportionment and assessment to be in the same proportion as was the original assessment for benefits. It shall make a written statement of such assessments and deliver the same to the auditor of the county, who shall put the same upon the next succeeding tax duplicates of said county and such assessment shall be a first and paramount lien upon the lands affected, the same as state and county taxes. In case such assessment or any part thereof is chargeable against lands in another county, then the amount thereof chargeable against such other county shall by the county board of the county which has paid the same, be certified to the county auditor of such other county chargeable therewith and such county auditor shall thereupon draw his warrant therefor in favor of and deliver the same to the county treasurer of the county which has paid the same, and such auditor drawing such warrant shall thereupon apportion and assess the amount thereof upon all the lands in his said county originally assessed for benefits by reason of the construction of said ditch in the same proportion as was the original assessment for benefits. The provisions of this section shall apply to all works constructed for the purpose of drainage under any law now or heretofore in force in this state including state ditches. In case of repair of state ditches by the county board the cost of the same shall be paid out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund, the county board is hereby authorized and empowered, and it shall be their duty to appoint viewers to assess and apportion the cost of such repairs and preliminary and other expenses in connection therewith, said assessment and apportionment to be for benefits to all lands which may have been benefited by the construction of said state ditch and of any lateral or spur ditch emptying therein in propor-

tion to such benefits. All the laws of this state in regard to county drainage ditches, designating the number and qualification and the duties and compensation of viewers, prescribing rules and directions governing the making of assessments of benefits and the manner and time of giving notice of meeting, governing the making, filing and the approval, change and adoption of the final report of the viewers, providing for a hearing thereon, and such other provisions thereof as is necessary and as is adaptable therefor, shall govern proceedings for repair of state ditches, and a statement of the assessment for repairs shall be made, and such assessment levied and collected in like manner as is hereinbefore in this section provided for the making of a statement of and collecting assessments for repairs of county or judicial ditches. Provided, that, if the repairs for any county or judicial ditch is made necessary or if the same is widened or deepened as consequence of the construction of lateral or private ditches, which increases the volume of water to be taken care of by the original ditch or deposits sediment in the original ditch, then the board, in assessing or apportioning the cost of repairs, or of widening or deepening said ditch, shall include in such assessment the lands benefited by such lateral or private ditches, and shall assess benefits against the said land, after such assessments, shall apportion and assess the balance of the cost of the repairs or of widening or deepening said ditch as hereinbefore provided. Provided, further, that before ordering repairs for any ditch and before widening or deepening the same, the estimated cost thereof shall be ascertained and reported to the county board by a competent civil engineer appointed for that purpose, and a hearing held before the said county board to determine the necessity of such repairs and the apportionment and assessment of the cost thereof, said hearing to be held after notice thereof stating time, place and purpose thereof, signed by the county auditor, which notice shall be served in the manner provided in section 9 [2651—52] of chapter 230 of the Laws of 1905 for the service on parties interested of the final meeting of the county board to act on the viewers' report. Provided, further, that in case there are any moneys in the general ditch fund of the county to the credit of the particular ditch in question and available for the purpose aforesaid, the same may be used by the said county board for any of the said purposes without notice. The repairs herein provided shall be construed to include the taking from said ditch of sediment deposited therein, the removal of obstructions therein, the widening and deepening thereof so as to answer its original purpose, or so as to provide for additional flow of water caused by other ditches or any other reason, the cutting and removal of weeds or grass from the bottom, sides, banks or right of way of such ditch and such other changes or alteration therein as will enhance its usefulness for the purpose of drainage, and shall further be construed to include the extension of said ditch to a new outlet when in case the same is found by the county board to be necessary or advisable. (Laws 1905, c. 230, § 26, as amended by Laws 1907, c. 367, § 4, and Laws 1909, c. 469, § 10.)

See notes under sections [2651—] 44, [2651—] 46.

[2651—]70. Judicial ditch—Petition.—Before any district judge shall establish any ditch, drain, water course or other construction named in section 1 [2651—44] of this chapter, there shall be presented to a judge of the district court in the judicial district in which any part of the proposed ditch is to be located, a petition such as is required by section 3 [2651—46], of chapter 230, of the General Laws of Minnesota for the year 1905, as amended by this act. Before such presentation, such petition shall be filed with

the clerk of the district court of the county wherein the said ditch, or any part thereof, is to be located or constructed, and a copy thereof, duly certified by the said clerk shall be filed with the county auditor of each of the counties wherein any of the lands mentioned or described in the said petition are located. Such proceedings may be designated and numbered by the said clerk of said district court as follows, "Judicial Ditch No.," and may be so referred to at all subsequent times. (Laws 1905, c. 230, § 27, as amended by Laws 1909, c. 469, § 11.)

See note under section [2651—] 44.

In general.—The conclusion of the trial court that certain lands bordering on Bald Eagle Lake will be damaged by the construction of a certain judicial ditch held not sustained by the evidence. *Backus v. Conroy*, 104 Minn. 242, 116 N. W. 484.

[2651—]71. **Hearing in district court.**—Upon presentation of such petition, the judge shall fix a time and place for the preliminary hearing, which is provided for in section three [2651—46] of this act, in respect of presentation to the board of county commissioners, and the same notice thereof shall be given, save that it shall be given by such clerk and shall be posted and published in each county wherein a copy of such petition shall have been filed. ('05 c. 230 § 28)

[2651—]72. **Appointment of engineer—Survey—Report.**—Upon such hearing, if the judge shall be satisfied that the requisite conditions exist, and have been complied with, he shall, by order, direct a survey to be made, as provided in section three [2651—46] of said chapter, and shall appoint a competent and experienced civil engineer to make the same and direct a copy of such order to be forthwith made and transmitted by the clerk to such engineer and to the auditor of each county, described in the petition. The same proceedings shall be taken by such engineer as in sections four [2651—47] and five [2651—48] of this act are provided, save that the filings shall be with such clerk. ('05 c. 230 § 29)

[2651—]73. **Appointment of viewers.**—As soon as reasonably possible after the filing of such report, the judge shall make an order appointing viewers, as provided in section six [2651—49] of this chapter and the proceedings thereafter shall be as specified in sections six [2651—49], seven [2651—50] and eight [2651—51] of this chapter, save that the duties therein specified in respect of the board of county commissioners shall be performed by such judge, and those in respect of the county auditor shall be performed by such clerk; and that the viewers may be residents of any of the counties described in the petition, and that their jurisdiction shall extend throughout all such counties, and that their reports shall be filed with such clerk. ('05 c. 230 § 30)

[2651—]74. **Filing of report—Notice of hearing.**—Immediately upon the filing of such report, it shall be the duty of such clerk to prepare and transmit forthwith a certified copy thereof to the auditor of each of the counties described in the petition, and within three days after the filing of such report, to transmit to the judge of said court a written notice of the filing of such report. Upon the receipt of such notice, the judge shall make an order fixing the time and place of hearing said petition and engineers' and viewers' report. The same notice thereof shall be given by the clerk as is provided in section nine [2651—52] of this chapter in respect of the county auditor, save that it shall be published and posted in each county described in the petition. ('05 c. 230 § 31)

[2651—]75. **Hearing—Proceedings.**—At the time and place fixed for the hearing, if the court shall be satisfied that notice thereof has been given according to law, he shall proceed as in

section ten [2651—53] of this chapter. All the provisions of this chapter, except the provisions of sections twelve [2651—55] and thirteen [2651—56], shall apply to judicial ditches, so far as consistent with the special provisions relating thereto. In a judicial ditch proceeding the judge of the district court shall perform all the duties required of and have all the powers vested in the board of county commissioners in a county ditch proceeding. In a judicial ditch proceeding the clerk of the district court of the county in which the proceeding is commenced shall until the making of the order establishing or refusing to establish the ditch perform all the duties required of and have all the powers vested in the county auditor in a county ditch proceeding. ('05 c. 230 § 32)

[2651—]76. Order apportioning expenses—Further orders.—In a judicial ditch proceeding the judge of the district court shall by his orders made either at the times of the respective hearings herein provided for, or at any other time upon five days' notice in writing of the time and place of such hearing to the auditor of each county affected, apportion and determine the items of expense, or portions thereof to be paid by the respective counties. Upon similar notice to said county auditors said judge of the district court may at any time modify said order or orders, as justice may require, or make any additional order in the premises. The word "expenses" as used in this section shall be construed to mean every item of cost of said ditch from its inception to its completion and all fees and expenses paid or incurred in pursuance thereof, including all damages awarded. Nothing in this section contained shall be construed as limiting the authority of the respective counties to issue their bonds as provided in section 18 [2651—61] of this chapter and the respective auditors' statements shall be filed in the respective counties and the assessments collected and bonds paid by the respective counties as hereinbefore provided. ('05 c. 230 § 33)

[2651—]77. Engineer—Vacancy.—If the engineer appointed by the court or by the board of county commissioners fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work the court or board of county commissioners, as the case may be, that originally appointed him, shall forthwith appoint another civil engineer, having the qualifications required by this chapter in the place and stead of the engineer first appointed, who shall give the bond and take the oath required by this chapter and shall do all things remaining to be done by the original appointee under the requirements of this chapter. ('05 c. 230 § 34)

[2651—]78. Assistant engineers.—The engineer shall have power, if the board or court, as the case may be, that appointed him, consent thereto, to appoint assistant engineers, when necessary, for whose acts he shall be responsible, and whom he may remove at pleasure. Any such assistant engineer shall, before entering on his duties, take the oath required by this chapter of the engineer, and such oath and appointment shall be filed in the office where the original petition was filed. The rate of compensation of assistant engineer shall in no case exceed the rate of compensation of the engineer and shall be fixed at the time of appointment by the board of county commissioners or the judge as the case may be. ('05 c. 230 § 35)

[2651—]79. Abandoned or dismissed proceedings—Use of former survey—Refundment under bond.—In any proceedings heretofore or hereafter had for the establishment of a ditch or drain or the changing of a water course, where an engineer has been appointed and has made a complete survey, and report thereof and, for

any reason, the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a ditch or drain, or the changing of a water course, for the benefit or reclamation of the same territory surveyed in said former proceedings, or a part thereof, or the same territory, or a part thereof, and territory additional thereto, the engineer shall use the engineer's report, survey, stakes and monuments made in said former proceedings, as far as practicable, or as much thereof as may be applicable and the cost thereof in said former proceedings, or of such part thereof as is used, shall be paid for as part of the subsequent proceedings in which such report, survey, stakes and monuments, or part thereof, is used. Provided that when a bond has been heretofore given under and pursuant to the provisions of any drainage law of this state and the party or parties giving said bond have, because of the refusal of the county commissioners to order the construction of the ditch petitioned for, been called upon to pay to the county the expenses incurred in said proceeding, and said party or parties have actually paid to said county such expenses, and after such refusal by said county commissioners' proceedings are instituted anew for the establishment of a ditch or drain or the changing of a water course for the benefit or reclamation of the same territory surveyed in said former proceeding, or a part thereof, or territory additional thereto, and the engineer uses the engineer's report, survey, stakes and monuments made in said former proceedings then and in that event the cost of said work of said engineer and his assistants in said former proceedings shall be assessed against the lands benefited and payment of the cost incurred by reason of the work of said engineer and his assistants in said former proceeding shall be made by said county upon collecting the same, to said party or parties who have made payment as aforesaid under said bond. ('05 c. 230 § 36)

[2651—]80. Bridges and culverts—Notice to certain corporations.—The county auditor shall notify each municipal, railroad and other corporation to construct any bridge or culvert across or upon its road or right of way within a reasonable time named in such notice. If any such work is not done within the time limited, the board of county commissioners may cause the same to be done, and the cost thereof shall be deducted from the damages allowed such corporation, or collected from it as in case of an assessment for benefits. ('05 c. 230 § 37)

[2651—]81. Assessment not to exceed benefits.—The amount that any tract of land, public or corporate road or railroad shall be liable for on account of the location, construction and establishment of any ditch or ditches under the provisions of this chapter, or on account of the repair thereof, shall in no event exceed the benefits which will accrue thereto as determined in the proceedings for such location, construction and establishment or repair. ('05 c. 230 § 38)

[2651—]82. Damages arising after construction—Petition—Viewers—Notice—Hearing.—That whenever any land adjacent to any ditch or drain constructed, either under the provisions of this chapter or under any prior drainage law by which the original cost of said ditch or drain was assessed against the benefited property, may be or has been damaged subsequent to the construction of such ditch or drain by reason of a part of the soil being carried away by water flowing through said ditch or drain, or by the deposit of earth or any other foreign substance (snow and ice excepted) on said land, and which damage was not considered and included in the award of the viewers appointed in the proceedings to construct such ditch or drain, the owner of the land so dam-

aged may, at any time within six years after the completion of the ditch or drain causing such damage petition the board of county commissioners of the county where the land claimed to be damaged is situated for the appointment of viewers to ascertain and report the amount of such damages, such petition shall state the description of the land alleged to have been damaged, the amount of damage claimed, the location of the ditch or drain, the description of the land found in the proceedings to construct said ditch or drain to have been benefited by its construction, and the names of the owners of the land benefited, as shown by the last assessment roll. Upon the filing of the petition and a bond in the sum of one hundred dollars, conditioned that if it finally be determined that no damages have been sustained that are properly allowable under this section, the petitioner will pay all the expense of the proceedings had under the petition, it shall be the duty of the board of county commissioners at their next regular or special meeting to appoint three persons who are qualified under the provisions of this chapter, viewers, selecting if practicable the same persons as acted as viewers in the proceedings to construct the drain or ditch causing the damage, and the board of county commissioners shall fix the time and place for the first meeting of the viewers, which shall be not more than twenty days from the date of their appointment. In case any of the viewers so appointed shall fail for any cause to qualify, the county auditor shall designate some proper person to take his place. Each of said viewers before entering upon the duties of his office shall take and subscribe an oath that he will faithfully perform his duty as viewer and file the same in the office of the county auditor. Upon the appointment of the viewers the county auditor shall give notice to parties interested, and whose lands are liable to be assessed for the payment of the damages claimed, by one publication at least one week before the first meeting of the viewers in the newspaper in which the last delinquent real estate tax list was published, if that paper is still published in the county, and if not, in some legal newspaper printed and published in the county, and if there is none, in some newspaper published at the state capital, stating the date and the first meeting of the viewers, and that any party interested may appear at that meeting and at such other time and place as the viewers may fix, and be heard in relation to the damages and such other matters as the viewers are authorized to hear and determine, and proof of the publication of said notice shall be filed in the office of the county auditor prior to the first meeting of the viewers. ('05 c. 230 § 39)

[2651—]83. Duties of viewers — Award — Report—Compensation.—The viewers shall meet at the time and place named by the board of county commissioners for their first meeting and hear such evidence as shall be offered by the petitioner or any interested party, and for that purpose they may adjourn their hearing from time to time and to such places in the county as they may deem proper; and they shall make a personal examination of the premises claimed to be damaged and inquire into the cause and amount of damage, and if they find that any damage contemplated by the last above section of this chapter has been done the land described in the petition, they shall make an award in writing, stating the cause and amount of damage and file said award in the office of the county auditor, and the county auditor shall, after the time to appeal has expired as hereinafter provided, if no appeal is taken, issue an order on the county treasurer for the amount of such award in favor of the party entitled thereto, and the amount so paid, together with the fees and expenses of the viewers, shall be assessed against the land that was found in the proceeding to construct the

ditch in question to have been benefited in the proportion and manner provided by this chapter for the assessment of benefits. If the viewers find that no damages have been sustained that are properly allowable under the provisions of this chapter, they shall so report, and the expenses of the proceedings shall be paid by the petitioner, and on his failure to pay the county may maintain an action on the bond hereinbefore provided for. Each of the viewers shall receive three dollars per day for each day actually and necessarily spent in the performance of his duty as viewer, not exceeding 5 days, together with his actual necessary expenses, an itemized account thereof to be filed with and audited and allowed by the county auditor, and paid by the county treasurer on the order of the county auditor. ('05 c. 230 § 40)

[2651—]84. Appeals—Bond.—Either the board of county commissioners, the petitioners or any party whose lands are liable to assessment for damages awarded, if they feel aggrieved, may within thirty days after the filing of the viewers' award appeal to the district court of the county in which the proceedings are had by serving on the parties who have appeared in the proceedings before the viewers and filing with the county auditor a notice of appeal, stating that an appeal is taken to the district court from the award of the viewers, and filing with the auditor a bond in the sum of five hundred dollars, with sufficient sureties to be approved by him, conditioned if the award and decision of the viewers is sustained the appellant will pay the cost of the appeal and abide and satisfy any judgment the court may render against him in the premises. Before the taking of the appeal the auditor shall forthwith file with the clerk of the district court the original petition, the award and bond on appeal, and thereupon there shall be pending in the district court a civil action to determine whether any damage has been done the land described in the petition, that come within the provision of section thirty-nine [2651—82] of this chapter and the amount of such damages, and such action shall be tried in the manner provided for the trial of civil actions. Any party may appeal from the judgment or any appealable order of the district court to the supreme court in the same manner as appeals in civil actions are taken. The final judgment in the action, if in favor of the petitioner, shall be certified to the county auditor, and assessment made in the manner provided in the last above section of this chapter, for the assessment of the award of the viewers. ('05 c. 230 § 41)

Appealable order.—An order of the court on appeal from the assessment of damages, assessing appellant's damages and directing judgment to be entered accordingly, is not an appealable order under this section, or a final order appealable under section [2651—]94. *Prahl v. Brown County*, 104 Minn. 227, 116 N. W. 483, followed in *Adams v. Brown County*, 104 Minn. 527, 116 N. W. 484.

[2651—]85. Co-operation of state drainage board.—The state drainage board is hereby authorized to co-operate with the board of county commissioners of each county wherein a county ditch or a portion of a judicial ditch is located or may be located in enlarging, extending, repairing or otherwise bettering any such ditch now completed or now or hereafter in course of construction, whenever, in their judgment, it is necessary or desirable so to do. ('05 c. 230 § 42)

[2651—]86. Obstructing or injuring work—Neglect of duty—Penalties.—Any person wilfully or negligently obstructing, or in any way injuring any work constructed under the provisions of this chapter, or under any law of this state, relating to drainage, or allowing such ditch or drainage work to be injured or obstructed by his live-stock, horses or poultry, or diverting the water from

its proper channel, shall be guilty of a misdemeanor, and shall also be liable to any and all persons or corporations, injured by such act, in treble damages. Any county auditor, clerk of court, member of the board of county commissioners, or other officer who refuses or neglects to perform any of the duties imposed upon him by this act shall be guilty of a misdemeanor, and shall also be liable to any person or corporation injured by said act, in treble damages. The county attorney of the proper county shall prosecute all criminal actions arising under this chapter. (Laws 1905, c. 230, § 43, as amended by Laws 1907, c. 367, § 7.)

See note under section [2651—] 46.

[2651—]87. Orders and notices—How served.—All orders and notices herein prescribed not otherwise provided for shall be issued by the auditor or by the judge, as the case may be, and the same shall be served by the sheriff or other disinterested person designated by the auditor or by the judge, as the case may be, and such sheriff or other person so designated shall be paid by the county for such services the same fees as are allowed by law for similar services. ('05 c. 230 § 44)

[2651—]88. Compensation of engineers, viewers, etc.—County officers.—The following fees and expenses shall be allowed and paid for services rendered under this act: To engineers the sum of five dollars per day for every day necessarily engaged, and actual and necessary expenses. To each viewer the sum of three dollars per day for every day necessarily engaged in viewing ditches, in traveling therefor, and in making up their reports, and actual and necessary expenses. To each roadman a sum not exceeding two and fifty hundredths dollars per day, and actual necessary expenses. To each chainman, axman and every other like employé not herein mentioned, and necessary to the prompt execution of the work of locating or constructing a public ditch, a sum not exceeding two dollars per day, and actual and necessary expenses. To each member of the county board the sum of three dollars per day for each day actually occupied in proceedings to establish or repair, or in inspecting any ditch after its completion or during the course of the work if appointed as a committee for that purpose, and the sum of ten cents per mile each way for travel necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such ditch, and for travel in inspecting ditches, or other necessary travel in the said ditch matter. To the county auditor, the county attorney, the clerks of the district court, the register of deeds, the sheriff and other officers performing duties hereunder, such reasonable compensation as shall be fixed by the county board in case of a county ditch, and by the judge of the district court in case of a judicial ditch, and the fees and compensation of all such county officers in ditch proceedings shall be in addition to all other sums and fees allowed by law. All other fees, per diem, compensation and expenses provided for in this act, and such other legal services or expenses as may be necessary shall be fixed, audited, allowed and paid upon the order of the county board; provided, that in case of a judicial ditch, the judge of the district court having charge thereof shall first approve the same. (Laws 1905, c. 230, § 45, as amended by Laws 1907, c. 367, § 5, and Laws 1909, c. 469, § 12.)

See notes under sections [2651—] 44, [2651—] 46.

[2651—]89. Quorum of viewers.—A majority of the viewers shall be competent to perform the duties required of them by this act. ('05 c. 230 § 46)

[2651—]90. Act liberally construed.—This act shall be liberally construed, so as to promote the public health, the construction and

improvement of roads, and the drainage and reclamation of wet or overflowed lands. ('05 c. 230 § 47)

[2651—]91. Record as evidence.—Every order of the county commissioners of any county, or the judge of the district court laying out and establishing any ditch or refusing to establish the same, under the provisions of this chapter, the record thereof, or a certified copy of such record, shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such order. ('05 c. 230 § 48)

[2651—]92. Authority to enter lands.—For the purpose of making examinations and surveys, the viewers, county commissioners and the engineer are authorized to enter upon any land and to do any act necessary for the proper performance of their duties; and any person attempting to prevent or interfere with them, in so doing, shall be punished upon conviction by the court as for a misdemeanor. ('05 c. 230 § 49)

[2651—]93. Stranger to proceedings cannot question same—Liens, assessments and contracts not invalidated, when.—No person or corporation shall be permitted to take advantage of any error committed in any proceedings under this chapter, either by the county board, engineer, viewers, county auditor or other officer, person or persons, nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby. If the court shall at any time modify any assessment or assessments or enjoin the collection thereof, or release any person from liability thereof, it shall in no manner affect the rights or liability of any other person. Whenever a ditch has been established, either under the provisions of this chapter or any prior drainage law, by which the cost of construction was assessed against the benefited property or corporation, and the contract or contracts for the construction thereof has been or shall be let without collusion and in good faith and at a reasonable price, no defect or lack of notice in the letting, making or executing of said contract or contracts, and no variance between the advertisement and the contract as to length of time or manner in which said ditch shall be constructed, shall invalidate in any way the ditch liens or ditch assessments, nor shall the fact that said contract has been or may be let containing provisions different from the advertisement with reference to the time or method in which the proposed work shall be completed or constructed, in any way invalidate said contract, provided such extension of time or change of method was made in good faith and by reason of delay in obtaining bids for the construction of said ditch or for other good causes, and if such contract or contracts has been or shall be let with the approval of the engineer and auditor or auditors, and if said ditch has been or shall be constructed pursuant to the contract, the contractor may recover the contract price thereof from the county or counties and no ditch lien or ditch assessment shall in any way be delayed or invalidated by reason of such variance between the contract and the notice of letting thereof. (Laws 1905, c. 230, § 50, as amended Laws 1907, c. 367, § 6.)

See note under section [2651—] 46.

[2651—]94. Appeal to supreme court.—Any aggrieved party, who claims damages or against whose property benefits are assessed, may appeal to the supreme court, as in civil actions, from any final order except an order establishing such ditch in proceedings under this chapter, made in district court, within thirty days after the filing of such order. The notice of appeal shall be served on the

clerk of the district court and need not be served on any other person or corporation. ('05 c. 230 § 51)

Final order.—See *Prahl v. Brown County*, 104 Minn. 227, 116 N. W. 483, cited in note under section [2651—]84.

[2651—]95. **Pay of county board.**—None of the statutory provisions limiting the number of days that a county commissioner shall draw pay for or limiting the number of sessions, for attendance upon which such commissioner shall be entitled to mileage shall apply to any proceedings under this chapter. ('05 c. 230 § 52)

[2651—]96. **Ditch defined.**—The word "ditch" as used in this act, shall be held to include any open, covered or tiled ditch and any drain, water course or creek, and any side lateral, spur or branch ditches and each and all of the constructions referred to in section one[2651—44] of this chapter, and the petition of any public ditch, may include any side lateral, spur or branch ditch necessary to secure the object of the improvement. ('05 c. 230 § 53)

[2651—]97. **Acts repealed—Unfinished proceedings.**—Chapter 258 of the General Laws of Minnesota for 1901, chapter 38 of the General Laws of Minnesota of 1902, and chapters 178, 188, 311, 315 and 386 of the General Laws of 1903, and all other acts and parts of acts inconsistent with the provisions of this chapter are hereby repealed save as to unfinished proceedings thereunder. ('05 c. 230 § 54)

Historical.—The acts above mentioned were repealed by R. L. §§ 5544-5546, except Laws 1903, c. 188.

[2651—]98. **Construction and maintenance of ditch by petitioners.**—In case the petitioner or petitioners shall offer to construct and maintain such county or judicial ditch at their own expense, the petition need only offer so to do, and set forth; the public utility or benefit to the public health resulting from such work; a general description of the proposed ditch with its starting points, termini and routes, as nearly as the same can be determined; a description of all lands to be crossed or otherwise damaged thereby, with the name of each owner thereof, if the same is known, or can be ascertained with reasonable diligence; all public highways, corporate roads and railroads to be crossed or otherwise damaged thereby, with the names of the towns in which such public highways are located, and of the corporation owning each corporate road and railroad. For further certainty the petitioner or petitioners may file in the office where the petition is required to be filed any maps, plat or specifications describing the proposed ditch, which, when so filed, may be referred to in said petition. All provisions of this chapter shall apply to ditches thus petitioned for, so far as consistent with the special provisions relating thereto. ('05 c. 230 § 55)

[2651—]99. **Bond.**—The petitioner or petitioners shall also accompany said petition with a bond to the county, in case of a county ditch, and to the respective counties in case of a judicial ditch, for the benefit of such county or counties, and of all persons and corporations interested in an amount to be fixed, and with securities to be approved by the county auditor in the case of a county ditch and by the court in case of a judicial ditch, conditioned to pay all damages that may be awarded or assessed, and all fees and expenses that may be paid or incurred in the proceeding under said petition. ('05 c. 230 § 56)

[2651—]100. **Hearing—Notice.**—The county auditor in case of a county ditch and the clerk of the district court in case of a judicial ditch shall, upon the filing of such petition and bond, fix a time and place for the hearing of said petition, not more than forty nor less

than fifteen days from said date of filing, and at least ten days before said hearing, a copy of such petition preceded by a statement of the time and place set for such hearing thereon shall be posted in three public places in each township where the proposed ditch is located and shall be served on all persons and corporations named in said petition, who are residents of the state, and upon the persons, if any, actually occupying any tract of land described in the petition, which belongs to persons or corporations that are non-residents of the state, in the manner provided by law for service of summons in district court, and shall be mailed to all persons and corporations named in said petition, who are non-residents of the state, and whose address can be obtained by inquiry at the office of the county auditor, or at the office of county treasurer of the respective county or counties. ('05 c. 230 § 57)

[2651—]101. Appointment of viewers—Report.—If, upon the hearing, the court or board of county commissioners, as the case may be, shall find the proposed ditch of general and public utility, or beneficial to the public health, it shall appoint three disinterested persons as viewers, and shall fix a time and place for hearing the report of said viewers. Such viewers shall have the same qualifications, and shall take the same oath and shall receive the same compensation as the viewers provided for in section six[2651—49] of this chapter, except that if any one of them is a civil engineer he need not be a freeholder. Said viewers, one of whom may be a civil engineer, shall file at least ten days prior to the time set for hearing thereon, a report showing either by direct statement, or by reference to any maps, plats, specifications or other papers on file in said proceeding, the location and character of the proposed ditch over and across said lands, public highways and railroads; place of entrance, course through and exit from each tract of land; the size and depth of said ditch; when it shall be constructed; how kept in repair; what connections may be made therewith; what compensation, if any, shall be made to the owners of such tracts of land, or to any public or private corporations, or to any persons for damages by reason of such construction. In locating a public ditch in a proceeding under such petition, the viewers shall vary from the starting points, routes and termini described in said petition no more than is necessary to enable said ditch to reasonably effectuate the purpose for which it is intended. ('05 c. 230 § 58)

[2651—]102. Hearing by county board—Order—Damages.—At the time appointed for said hearing on such report, the board of county commissioners or the court, as the case may be, shall consider and pass upon any objections filed and any competent evidence offered and shall correct and change said report and the assessments therein contained, as justice may require, and may continue the hearing from day to day, not to exceed thirty days, and to a different place. The board of county commissioners or the court, as the case may be, shall thereupon make its order laying out and establishing said ditch, and confirming such report as changed and permitting the construction of such work, upon the payment or tender of damages as finally assessed, but such order shall be void unless such damages are paid or tendered within one year after the filing of the final order of the board of county commissioners or the final order of the district court on appeal in a county ditch proceeding, or within one year after the filing of the final order of the district court in a judicial ditch proceeding. If in any case there shall be doubt as to who is entitled to damages awarded or assessed, or if the person entitled thereto cannot be found, such damages may be paid into the office where the original petition was filed, for the

person or persons showing themselves entitled thereto. ('05 c. 230 § 59)

[2651—]103. Appeal.—Any aggrieved party may appeal from that part of such order of the board of county commissioners fixing the amount of his damages or the damages awarded to any person or corporation by filing the notice and bond required by section 12[2651—55] of this chapter and the county auditor shall in such case make and file a transcript as required by section 12[2651—55] of this chapter. ('05 c. 230 § 60)

[2651—]104. Right to enter land.—The viewers shall have the right to enter on any lands for the purpose of estimating damages and of locating such ditch and after payment or tender of damages the petitioners may, in like manner enter upon such lands for the purpose of constructing, maintaining or repairing such work. ('05 c. 230 § 61)

[2651—]105. Agreement as to damages.—The bondsmen for the petitioners may agree with any person claiming or entitled to damages as to the amount thereof; such agreement shall be filed in the office where the original petition was filed and in such case lands covered thereby shall not be considered by the viewers. ('05 c. 230 § 62)

[2651—]106. Order draining meandered lake—Appeal.—Whenever any order of the board of county commissioners made and entered as herein provided drains in whole or in part any meandered lake, any person or corporation aggrieved by any such order, or any taxpayer residing within four miles of any meandered lake affected by any such order, may appeal to the district court from any such order and the procedure and manner of taking such appeal shall conform to the provisions herein set forth for other appeals. Such appeal shall bring before said court all questions and proceedings involved in such order. Provided, that the party taking such appeal shall accompany the same with an appeal bond to the board of county commissioners with at least two freehold sureties in the sum of one thousand dollars, to be approved by the auditor of the county in which such appeal is taken, conditioned that said appellant will duly prosecute the appeal and pay all costs that may be adjudged against him, and to abide the order of the court. ('05 c. 230 § 63)

[2651—]107. Omissions—Supplementary statement for assessment.—If any items of the cost of a ditch established under this or any prior drainage law by the terms of which the cost of construction is assessed against the benefited property or corporations, from its inception to its completion, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor, with the register of deeds, then a supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted costs, which supplementary statement for assessment shall be filed for record in the office of the register of deeds and shall be due, payable and collectible in the same manner, time and form as if a part of the last annual installment of the original assessment. (Laws 1905, c. 230, as amended by Laws 1907, c. 367, § 8.)

Historical.—Sections to be known as sections 65, 66, and 67, were added to Laws 1905, c. 230, by Laws 1907, c. 367, §§ 8, 9, and 10. Laws 1907, c. 367, § 10, was repealed by Laws 1909, c. 469, § 14 (section [2651—]117). See notes under sections [2651—]44, [2651—]46.

[2651—]108. Reassessment of benefits and damages in certain cases.—In all cases where ditch liens or ditch assessments are made

or levied under the provisions of this law or any other prior drainage law by which the cost of construction was assessed against the benefited property or corporations, have been or may hereafter be set aside, vacated, annulled or cancelled for any reason, a reassessment of the estimated benefits and a reaward of damages, or either, may be made by the county board of the county in which the affected land is situated. Three weeks' written notice of the time and place of hearing therefor shall be served on all owners, land owners, and interested parties in the same manner as provided for the service of a summons in the district court, and appeals to the district court from such reassessment of estimated benefits or reaward of damages, or both, may be taken under the same regulations and in the same manner and form as provided in sections twelve [2651—55] and thirteen [2651—56] of this chapter. And as soon as practicable after the expiration of the time for appealing or after final judgment, if appeal is taken, the county auditor shall multiply said benefits by the same rate of cost on each dollar of benefits that other lands benefited by said proposed ditch were or shall be required to pay. A statement thereof shall be filed in the office of the register of deeds by the county auditor in the manner and with the same force and effect as the statement provided for in sections nineteen [2651—62] and twenty [2651—63] of this chapter, and the amount which said tract of land will be liable to pay—shall be due, payable and collected in the same manner, time and form, as nearly as practicable, as the liens mentioned in sections twenty-one [2651—64] and twenty-two [2651—65] of this chapter. (Laws 1905, c. 230, as amended by Laws 1907, c. 367, § 9.)

See note under section next preceding.

[2651—]109. Sale of job for more than estimated cost—Distribution of increase.—Whenever it is made to appear to judge of the district court or to the county board by petition setting forth the facts, which petition may be presented by the county attorney or the attorney for the petitioners, that the county auditor or auditors of the respective counties in which such ditch is located, is unable to sell the jobs for the letting of said ditch, and the work necessary for the construction thereof, as shown by engineer's report, on account that the estimated cost of the construction of said work for the whole of said ditch, or any separate portion thereof which may be sold separately, is 30 per cent less than any offer or bid received for the same, and said petition shall set forth the amount of said estimated cost, and the amount of said offer or bid for the job, for the construction of the same, and the judge or the county board, as the case may be, may proceed to hear and determine the same without notice or with such notice as is considered necessary and as is ordered by said judge or said county board, as the case may be, and the said judge or county board, as the case may be, may by an order direct the county auditor or county auditors, as the case may be, to sell such job of work to such responsible bidder for the amount not exceeding that stated in said petition as offered by the lowest bidder for said work, and the said judge of the district court or county board, as the case may be, shall thereupon amend the findings so as to equitably distribute such increased costs for the construction of said ditch, or such part thereof that may be embraced in said petition and original findings among the several land owners affected by such change or changes in the cost of the construction of the same, and in proportion to the assessments made under the original findings, and the county auditor or several county auditors, upon receipt of a certified copy of such amended findings shall file same and shall include such additional amounts in the statement required by section 19 [2651—62] of chapter 230 of Laws

of 1905 to be made by said auditor or auditors; and same shall be entered and collected in like manner as is provided by law for the collection of the assessments for benefits for construction of such ditch. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

Historical.—Sections to be known as sections 69-76 (sections [2651—]109 to [2651—]116) were added to Laws 1905, c. 230, by Laws 1909, c. 469, § 13. See notes under sections [2651—]44, [2651—]46, [2651—]107.

[2651—]110. Appeal to supreme court.—Any party who claims damages or against whose property benefits are assessed may appeal from the district court to the supreme court as in civil actions from any final appealable order, except an order establishing such ditch or drain in proceedings under this chapter, within thirty days after the filing of such order, by filing the notice of appeal, and bond required as in civil actions upon an appeal to the supreme court. The appellant shall also serve a copy of the notice of appeal and bond on the respective attorneys of record in the proceedings, and file proof thereof with the clerk. In case the appellant prevails in the supreme court, and the cost of the construction of said ditch or drain is increased on account of said appeal having been determined in favor of appellant, and damages or costs are awarded to the appellant, upon a remittitur from the supreme court to the district court, the clerk of the district court shall notify the judge of the judicial district wherein such appeal was taken, whereupon the judge shall make an order directing the county auditor, or auditors, if in more than one county, to pay the amount adjudged to be due the appellant upon such appeal, together with his costs. If said appeal involves land in more than one county, the judge shall order such sum to be paid proportionately out of the general ditch fund of each county, in proportion to the amount assessed upon the lands in each county for the construction of said ditch. Thereupon the auditor or auditors of each county shall issue county warrants upon the county treasurer for such sum or sums and payable out of the general ditch fund in the county treasury. The said auditor shall thereupon, or in case the same is in more than one county, the several auditors, shall distribute the amount so paid among the several land owners who were originally assessed for the construction of said ditch, drain or water course and enter the same upon tax duplicates against said respective lands, in the same manner and proportion as provided for in the original order in said proceedings, which said additional amount shall become a lien against the said land, and be due and payable in the same manner as provided for in sections twenty-one and twenty-two of this act. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

See note under section next preceding.

[2651—]111. Right of way in adjoining state.—If the engineer finds that there is no practicable or feasible outlet for a ditch except through the lands of an adjoining state, he shall include said findings in his report, together with an accurate description of the needed right of way in such adjoining state and his estimate of the cost of obtaining the same. If such finding is confirmed in the final order establishing said ditch, the county board or judge or judges of the district court making said order,

(a) Shall require the county auditor, in case of a county ditch, or the auditors of the respective counties, in case of a judicial ditch, to purchase such needed right of way at an expense not exceeding the estimated cost therefor specified in the engineer's report; said right of way to be paid for as part of the cost and expenses of said ditch, and

(b) Shall provide in said final order establishing said ditch that the jobs of digging and constructing the ditch shall not be adver-

tised, let or sold until such purchase of such needed right of way in such adjoining state has been in all things completed. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

See note under section [2651—] 109.

[2651—]112. Obstructing or injuring work—Neglect of officer—Penalties.—Any person wilfully or negligently obstructing, or in any way injuring any work constructed under the provisions of this chapter, or under any other law of this state relating to drainage, or diverting the water from its proper channel, and any person who is not authorized so to do by the engineer in charge of any ditch, and who wilfully changes or alters the location of or the markings on any stakes set, placed or marked by such engineer or under his direction in the matter of laying out or the construction of any ditch, and any person digging or constructing or causing to be dug or constructed any ditch or drain which thereby empties into any ditch or drain constructed under the provisions of this chapter without having first secured permission from the county board of the county in which such principal ditch or drain is located, shall be guilty of a misdemeanor, and shall also be liable to any person, persons or association of persons or corporation injured by such act, in treble damages. Any county auditor, clerk of court, member of the county board, or any other officer who refuses or wilfully neglects to perform any of the duties imposed upon him by this act, shall be guilty of a misdemeanor, and shall also be liable therefor to any person, persons, association of persons or corporation injured thereby, in treble damages. The county attorney of the proper county shall prosecute all criminal actions arising under this chapter. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

See note under section [2651—] 109.

[2651—]113. Ditch extending into other judicial district—Jurisdiction.—In case any proposed ditch extends into any other judicial district, proceedings may be commenced before the judge of either of said judicial districts and the judge before whom such proceedings are commenced shall thereafter have jurisdiction of all subsequent proceedings and matters in relation to said ditch, and every order made by the judge laying out or establishing any drain, ditch or water course, or refusing to establish the same, and every order made in relation thereto under the provisions of this chapter and the record thereof, if recorded, or a certified copy of such record shall be prima facie evidence thereof, and of the facts therein stated, and of the regularity of all the proceedings had therein. Provided, that if for any reason during the pendency of any proceeding thereunder, the court or county board for any reason shall fail to hold a meeting or hearing at any time pursuant to any previous order made therein for the holding of any special or adjourned meeting or hearing in relation to any matter connected with said proceedings, the court or county board shall not lose jurisdiction of such proceedings, but may make any new additional order that may be necessary in the premises or that justice may require, in order to arrive at a speedy determination of all matters connected with said proceedings, and the final completion of the ditch, drain or water course petitioned for. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

See note under section [2651—] 109.

[2651—]114. Further drainage proceedings after completion of ditch—Petition to county board—Hearing.—After the completion of any ditch constructed under any law of this state, excepting state or town ditches, no public or private drains or drainage ditches and no side lateral or spur ditch or ditches shall be so dug or constructed by any person or persons or any association of persons

or by any corporation or any township or other municipal or corporations or the authorities of either of them without having first secured express authority so to do from the county board of the county where such principal ditch is located, or in case of a judicial district from the county board of both counties meeting jointly for that purpose in the county wherein such drainage proceedings were originally instituted, upon notice by the county auditor of such county to the members of said county board or boards as in case of special board meetings. Such proceedings shall be instituted by a petition to the county board filed with such county auditor and signed by parties interested in and affected by said proposed branch, setting forth the source, course, terminus, and the size and dimensions of said proposed side lateral or spur ditch. Thereupon the said auditor shall appoint a time and place to consider the same and shall call a special meeting of the county board or boards, as the case may be, to meet at such time and place for that purpose and shall cause notice thereof to be published once each week for two successive weeks in a newspaper published in each county affected. The said county board or county boards, as the case may be, may employ a competent and experienced civil engineer to investigate and report on the matter. On the day of hearing so appointed, or at any adjourned day thereof, the county board or boards shall proceed to hear all testimony offered in relation to said matter, and shall determine and decide the same, and if the county board or boards decide to permit such branch or lateral ditch to be built, or such other ditch to empty therein, determine and decide the terms and conditions under which same may be built, and the amount to be paid by petitioners therefor, if any, and upon compliance therewith, and not otherwise, said petitioner or petitioners may proceed to construct and complete said private ditch or side lateral or spur ditch so petitioned for. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

See note under section [2651—]109.

[2651—]115. Proceedings begun under other provisions, how completed—Application—Hearing.—In all cases where petition has been made for the construction of a drainage ditch under any of the provisions of the drainage laws of this state now or heretofore existing, the same may be considered and completed under the provisions of this chapter by the county board or the judge of the district court at the election of the bondsmen and sureties thereon upon written application of said bondsmen and the sureties thereon made to said county board or the judge of the district court. Upon the receipt of said application the said county board, or the judge of the district court, as the case may be, shall fix a time and place for the hearing of said application and shall cause a two weeks' published notice thereof to be given to all parties interested, and at the time and place of the hearing thereof the county board or the judge of the district court, as the case may be, shall hear and consider the same and if found to be of sufficient public benefit, shall order the said pending ditch proceedings to be heard and completed under the provisions of this chapter and thereupon the said county board or the judge of the district court, as the case may be, shall have full and complete jurisdiction thereof for the purpose of completing the proceedings thereunder the same as if the said ditch proceedings had been originally commenced under the provisions of this chapter. Provided, that whenever in proceedings in the district court of this state the construction of any ditch heretofore or hereafter ordered by the county board under any drainage law of this state by which the cost [s] for construction were or are assessed against the benefited property, was or is restrained or enjoined

by said court for any reason, that within one year after the entry of final judgment in such proceedings any person whose land is liable to be assessed therefor may cause the entire proceedings relating to said ditch to be transferred to the judge of the district court in the judicial district where the same is pending, by service of a notice of motion to that effect, eight (8) days before the date of hearing on said motion, upon the county auditor, chairman of the county board, and the parties upon whose motion the construction of said ditch was enjoined or the attorneys representing them in such proceedings. The county auditor, upon service of the notice of such motion, shall forthwith transmit to the clerk of the proper district court all original papers filed in said matter. At the time named for the hearing of such motion or on any date to which the same is continued, upon proof of the service of such notice of motion, the court shall proceed and consider the same and the viewers' report, the same in all respects as if such proceedings had been originally commenced in said court, and due notice thereof given as provided in this chapter, and the report of the viewers, appointed in such proceedings by the county board shall by the court on such motion be considered the same in all respects as if the viewers had been appointed by the court in proceedings originally commenced in said court, and the court shall thereupon make such findings as justice may require, and may order said ditch constructed in conformity with the provisions of this chapter, and all further proceedings relating to said ditch shall be had before such court, the same in all respects as if the same had originally been commenced therein. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

See note under section [2651—] 109.

[2651—]116. Irregularity in order establishing ditch—Curative.—Where the county board of any county in this state or the judge or judges of any district of this state has heretofore located, established or constructed, or attempted to locate, establish or construct, any ditch, drain or other water course within their respective jurisdiction, and said county board or said judge of the district court, as the case may be, has found and determined that such ditch, drain or other water course will be of public utility and will promote the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and the final order establishing said ditch is ineffective for the reason that same does not correctly describe or designate the course or the size or dimensions of said ditch, or is ineffective for any other reason, and the contract or contracts for the construction of such ditch have been actually entered into, and the county auditor has executed and filed in the office of the register of deeds the tabular statement required by law and making assessments for the costs and expenses of location, establishment and construction of the same against the lands, corporations, roads and other property benefited thereby, and no appeal has been taken therefrom or from any such proceedings, then the said proceedings, and any assessment or liens so levied or attempted to be assessed or levied, for the cost of said ditch, including damages awarded, and the said contract so entered into, and all ditch bonds, if any, issued in said proceedings, and such of the same are hereby legalized and declared to be valid and in full force and effect, the same as if the proceedings in the matter of locating and establishing said ditch were in all respects regular and the same as if the final order establishing said ditch had been regularly and correctly made. Provided, that this section shall not apply to or affect the right of appeal from said proceedings, as now provided by law, or apply to or affect any action or appeals now pending in which

the validity of such proceedings is called in question. (Laws 1905, c. 230, as amended by Laws 1909, c. 469, § 13.)

See note under section [2651—] 109.

[2651—]117. Repeals.—That section numbered 3 $\frac{1}{2}$ and section numbered 10 of chapter 367 of the Laws of Minnesota for the year 1907, and all of chapter numbered 448 of the General Laws of Minnesota for the year 1907, and all of chapter 44 of the Revised Laws of 1905, be and the same is hereby expressly repealed, save as to pending proceedings under said chapter 448 of the General Laws of Minnesota for the year 1907, which pending proceedings may be completed under the provisions of this chapter, if so elected as hereinafter provided. ('09 c. 469 § 14)

Historical.—For Laws 1907, c. 367, §§ 3 $\frac{1}{2}$, 10, see notes under sections [2651—] 68, [2651—] 107. Laws 1907, c. 448, was "An act providing for a judicial system of drainage of lands, and meandered bodies of water, in certain cases providing for the construction and repair of ditches, dykes, roads, drains and water courses, and for the tiling of land and for the reimbursement in certain cases of owners of lands damaged thereby, providing methods for doing such construction and repair, and for such reimbursement, providing for the collection of the costs and expenses of the same, prescribing the powers and duties of the county auditor, or auditors, and other officers in the premises, appropriating funds for the payment of assessments against state lands affected thereby, prescribing penalties for the violation thereof, and providing for the issuance of bonds for the purpose of carrying the act into effect," approved April 25, 1907.

[2651—]118. Change of method of construction—Petition—Contract.—Whenever proceedings have been or hereafter shall be taken to lay out a drainage ditch according to law and the same has been or hereafter shall be laid out and established, and the contract for the construction thereof let, and it has been or thereafter shall be found to be impossible, by reason of unfavorable weather or other good cause, for the contractor to construct the same, and the engineer in charge of such ditch concludes, after examination, that better results can be obtained by a different method of construction, thereupon, upon a petition of not less than seventy-five per centum of the owners of the land affected by the construction of such drainage ditch, as shown by the viewers' report in such proceedings, and upon the filing with the county auditor of the county where such proceedings are pending in case of a county ditch, or with the clerk of the district court where such proceedings are pending in case of a judicial ditch, by said contractor and his bondsmen of an agreement in writing consenting thereto, the said county auditor or clerk or county auditors, as the case may be, may alter or modify the contract theretofore entered into with such contractor as to the manner, method or time within which such drainage ditch shall be constructed, in accordance with the recommendation of the engineer in charge thereof, upon the filing of such recommendation with such auditor, or auditors, or clerks as the case may be. ('07 c. 138 § 1)

Historical.—"An act to authorize the alteration of contracts for the construction of drainage ditches in certain cases, and to authorize the modification of the original orders establishing such drainage ditches in certain cases." Approved April 10, 1907.

[2651—]119. Engineer's report—Notice of hearing by board or judge—Supplementary order.—If said contract is so modified or altered the engineer shall report to the board of county commissioners in a county ditch, and to the judge of the district court in a judicial ditch, the difference, if any, in the cost of construction, and the difference, if any, in the benefits that will accrue to benefited lands or public roads, and the difference, if any, in the damages which will result to lands or property by reason of such modification or alteration, and the changes, if any, which should be made in the order establishing said ditch, or in the viewers' report, or in the engineer's report therein, as may be necessary to make the same

conform to said modified or altered contract. Such board or judge, as the case may be, shall thereupon cause to be given three weeks' published notice in the official paper of the county or counties, as the case may be, in which the ditch is situated, of the time and place of the hearing to consider the questions and issues involved in said report of said engineer, and to modify as may be necessary the original order establishing the ditch. Said hearing shall be conducted, as nearly as practicable, in the same manner as the hearing for establishing a ditch provided for in chapter 230 of the General Laws of 1905, and such board or the judge, as the case may be, may thereupon make a supplementary order modifying or amending the original order establishing a ditch or the viewers' or engineer's reports therein, or each or all of them as necessity may require, which order shall be supplementary to and amendatory of the original order establishing the ditch, and shall be filed and may be appealed from in the same manner and form as an original order establishing a ditch under said chapter 230 of the General Laws of 1905, and shall have the same force and effect as if a part of the original order establishing such ditch. ('07 c. 138 § 2)

[2651—]120. Acceptance by engineer.—The engineer shall accept the said ditch or any part thereof constructed under such modified or altered contract in the same manner as is now provided by law for the acceptance of the construction of public ditches under chapter 230 of the General Laws of 1905. ('07 c. 138 § 3)

[2651—]121. Modification of contract by agreement.—Nothing herein contained shall in any manner prevent the persons whose lands are affected by the construction of any such county or judicial ditch from uniting in a written agreement with the contractor and his bondsmen for the alteration or modification of any such contract which the engineer may in writing recommend and to which he shall consent, as to the manner or time within which such ditch or drain shall be constructed. Thereupon the contract shall be deemed to be so altered and modified, upon the filing of said agreement and recommendations and consent with such county auditor, or county auditors, or clerk of the district court, as the case may be, and said ditch construction shall thereupon be accepted by said engineer with reference to such altered or modified contract. ('07 c. 138 § 4)

[2651—]122. Power to appropriate moneys for drainage in counties having less than 10,000 inhabitants.—The board of county commissioners of any county having a population of 10,000 inhabitants or less, in this state, are hereby authorized at any regular meeting of said board, or at any special meeting thereof, called for the purpose, to appropriate a sum sufficient in the judgment of said board to complete the work of draining the marsh and swampy lands located in said county, but no such appropriation shall exceed the sum of one hundred and fifty thousand dollars. All sums appropriated under this act shall be specially assessed against the lands in the townships benefited under the provisions of this act, according as the same shall be benefited by carrying out the provisions of this act and in proportion to the benefits received. ('07 c. 330 § 1)

Historical.—"An act authorizing any county in this state having a population of less than 10,000 inhabitants, to issue its warrants and bonds for the purpose of draining swamps and marshy lands located in certain townships in such county, and creating a commission to have charge of the work and prescribe their compensation." Approved April 23, 1907.

[2651—]123. Same—Warrants payable from assessments.—At said meeting the said board of county commissioners may direct the warrants of said county to be from time to time issued as called for

by said board, which warrants shall be payable from the fund derived by assessments against the property and land benefited as provided for in section 1[2651—122]. ('07 c. 330 § 2)

[2651—]124. Same — Funding bonds — Lien — Payment.—The warrants so issued from time to time may be taken up and funded by bonds of such county, issued after the completion of said work, which bonds shall bear interest at rate not to exceed six per cent per annum and shall run for a period of not exceeding twenty years; but may be issued in serial form, falling due at yearly intervals or at such other intervals as such board of county commissioners may determine. Said bonds shall be a special lien upon all lands receiving benefits under this act in proportion to the benefits received, as provided for in section 1[2651—122] herein, and shall be payable out of and from the fund received from the special assessments provided for in section 1[2651—122] herein. ('07 c. 330 § 3)

[2651—]125. Same — Commission — Appointment — Powers — Compensation.—The carrying out of the provisions of this act shall be intrusted to a commission of three residents of any such county, who shall be appointed as hereinafter provided, on or before July 1st, 1907, and may be removed for proper cause. One of said commissioners shall be appointed by the governor of the State of Minnesota, and the other two by the board of county commissioners of any such county, one of whom shall be a competent engineer. The said commissioners are hereby authorized and empowered to perform all proper and necessary acts for the purpose of carrying out the provisions of this act and their compensation shall be fixed by the said board of county commissioners of any such county, which compensation shall not exceed the sum of five dollars per day for actual services rendered. Claims for said services shall be submitted by vouchers and audited and paid in the same manner as other claims against the county. The said commissioners shall constitute the board of review who shall make a thorough and careful examination of all lands affected and who shall make their report as to benefits and damages, and the said commissioners are hereby clothed with all power as to condemnation proceedings, assessment of damages, and other matters pertaining to the execution of the provisions of this act, which is now extended to any board, person, persons or court by the law of the State of Minnesota pertaining to drainage. ('07 c. 330 § 4)

TOWN DITCHES.

[2651—]126. Words defined—Clerk, etc.—The following words used in this act shall have the meaning herein given unless another intention clearly appears: The word "ditch" as used in this act shall be held to include any open, covered or tiled ditch or drain or any ditch or drain in part open and in part tiled or covered, and any drain, water course or creek and any side, lateral, spur or branch ditches and each and all of the constructions referred to in this act. The word "board" as herein used means the board of supervisors of the town in which the lands or roads described in the petition are located or, if said lands or roads are located in more than one town, then the word "board" means all of the supervisors of each one of the towns in which any of said lands or roads are located, acting together as one body at a legally called meeting. The town clerk of the town in which the petition was filed shall act as the clerk of said board and keep a detailed record of its doings. Two or more of said supervisors shall constitute a quorum of said board and a majority of the supervisors present shall have power to act. The words "town clerk" and "town treasurer" as herein

used shall always be held to refer to the town clerk and town treasurer of the town in which the petition was filed. ('09 c. 127 § 1)

Historical.—"An act providing for town ditches and local assessments therefor, for the drainage of lands, and, in certain cases, of meandered bodies of water, for the tiling of lands, for the construction and repair of ditches, dykes, roads, drains and water courses, for the reimbursement in certain cases of owners of lands damaged thereby, for the collection of the costs and expenses of the same, and for the co-operation of the state drainage board; prescribing the powers and duties of the supervisors of towns, of the town clerk, town treasurer, county treasurer and county register of deeds and other officers in the premises; prescribing penalties for the violation thereof; and repealing certain acts therein mentioned and referred to." Approved March 29, 1909.

Section 39 repeals Laws 1907, c. 191. See first note under this chapter.

[2651—]127. **Petition to town board—Certain meandered lakes.**—Before any ditch shall be established under this act there shall be filed with the town clerk of any town in which any part of said ditch is proposed to be located, a petition therefor signed by one or more persons or corporations owning lands which will probably be benefited by the construction of said ditch or by the chief executive officer of any city or village whose streets will probably be benefited by the construction of said ditch or by the town board of supervisors of any town whose highways will probably be benefited by the construction of said ditch, setting forth the necessity thereof and that it will be of public benefit or promote the public health, with a description of the proposed starting points, routes and termini and of the general character, size and depth of said ditch. Said petition shall also contain a legal description of all lands through which said proposed ditch shall run, or to be drained, as near as can be ascertained and shall also contain a description of all public roads and streets likely to be benefited thereby, as nearly as can be ascertained. In such petition the petitioners may, at their option, ask the appointment of an engineer to perform the duties hereinafter in this act specified, and may also, at their option, ask the appointment of an attorney-at-law to perform the duties hereinafter in this act specified. Such petition may include any side, lateral, spur or branch ditches necessary to secure the object of the improvement and may ask for the different parts of the ditch to flow in different directions, with more than one outlet. Provided, that no meandered lake adjoining an incorporated village, or within four miles of any city of the fourth class, or upon which any incorporated village is a riparian owner, shall be drained or lowered under the provisions of this act unless by the approval of a majority vote of the legal voters of such village or city at an annual, or special election held for that purpose. Such special election, if any, held for such purpose, shall be called in the way and manner now provided by law for calling special elections. ('09 c. 127 § 2)

[2651—]128. **Proceedings, how designated.**—Upon the filing of the petition such proceedings shall be designated and numbered by the town clerk as "Town Ditch No. of town of" and may be so referred to in all subsequent proceedings regardless of whether or not said ditch is in fact in more than one town. ('09 c. 127 § 3)

[2651—]129. **Notice of hearing.**—Said town clerk shall forthwith fix a time and place for the hearing on said petition and shall forthwith give notice of the filing of said petition and of the time and place of the hearing thereon as follows:

(a) By posting at least three weeks prior to said hearing a copy of said notice and petition in a manner likely to attract attention in each of three of the most public places in each township in which lands described in the petition are located.

(b) By filing at least three weeks prior to the date of said hearing a copy of said notice and petition in the office of the clerk of each

town, village or city in which lands described in the petition are located.

(c) By mailing at least three weeks prior to said hearing a copy of said notice and petition to each owner of lands described in the petition who is a resident of the state, and whose postoffice is known to said town clerk or can be ascertained by him from the petitioners.

(d) By serving at least three weeks prior to said hearing a copy of such notice upon each occupant of the several tracts of land described in the petition.

When said notice is not legally given or is defective for any reason, the town clerk shall give a new notice of a time and place for hearing on said petition, as hereinbefore provided. ('09 c. 127 § 4)

[2651—]130. Hearing.—At the time and place set for the hearing of said petition (or at any time or place to which said hearing may be adjourned from time to time as necessity may require, but not otherwise) the supervisors of all the towns containing lands described in said petition shall meet and hear and consider said petition, acting as one board. ('09 c. 127 § 5)

[2651—]131. Engineer—Bond and oath—Survey—Report.—If the petition asks for the appointment of an engineer in said matter, said board shall, at said hearing and before taking final action on said petition, appoint a competent engineer to make plans and specifications for said ditch and to superintend the construction thereof when established. Said engineer before entering upon his duties shall give a bond in the sum fixed by said board, payable to the towns in which any part of the ditch is proposed to be constructed, for the use of such towns and also for the use of all persons aggrieved or injured by the negligence or malfeasance of said engineer, to be approved by said town clerk, conditioned that he will diligently and honestly and to the best of his skill and ability, perform his duties as such engineer, but said engineer shall not be required to continue his bond after the conclusion or abandonment of the work. He shall take an oath to faithfully perform his duties. Said engineer shall forthwith make a survey for said ditch and prepare detailed plans and specifications for the construction thereof and make prompt report in writing of his doings to said board. Upon the appointment of such engineer said board shall adjourn said hearing a sufficient time to enable said engineer to make and file his report in the office of said town clerk. ('09 c. 127 § 6)

[2651—]132. Attorney-at-law.—If the petition asks for the appointment of an attorney-at-law in said proceeding, said board shall forthwith, at the beginning of said hearing, by resolution, employ an attorney-at-law to superintend the drafting of all papers, contracts and orders in said proceeding and to give legal advice on all legal matters and questions arising in said proceeding. The rate of compensation of said attorney-at-law may, at the option of said board, be fixed in the resolution employing him. ('09 c. 127 § 7)

[2651—]133. View—Order establishing ditch—Roads benefited or injured.—All persons interested may appear and be heard by and before said board and either all of the members of said board or a committee of not less than three of said supervisors shall examine personally the lands, public streets and public roads likely to be benefited or damaged by said ditch. If such board, from such evidence as may be adduced before them, shall find that all of the proceedings in the matter have been in accordance with the provisions of this act and that the estimated benefits of said work are greater than the total cost, including damages awarded and that said work will be of public utility or promote the public health, they shall establish said ditch by an order to be signed by them and shall

include in said order, either expressly or by reference to maps, plats, specifications or papers on file in the office of said town clerk in said matter, an accurate description of said ditch and of the starting points, routes and termini, size and depth of said ditch and whether open, tiled or covered. They shall also fix a time for the completion of said ditch. Said board shall also include in their final order establishing said ditch a tabular statement showing the names of the owners of, the legal description of and the number of acres in each tract of land to be benefited or damaged, said names to be the same as appear on the tax duplicates of said county, the estimated number of acres in each of said tracts of land to be benefited or damaged, the number of acres added to any tract by the change of any water course and the location and value of said added land, the damage, if any, to riparian rights pertaining to any tract, the amount that each tract will be benefited or damaged by the construction of said work. When any ditch established under this act, benefits either in whole or in part any public road or street within the limits of any town, village or city, charged with the repair thereof, said board shall estimate and report separately in such tabular statement the benefits to each public road or street, together with the name of the town, village or city charged with the repair thereof. They shall also report in such tabular statement the damages awarded for injury to any road or road-bed, and for the construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such ditch and include such benefits and damages as a part of said tabular statement. If said board refuses to establish said ditch they shall make an order setting forth that fact and their reasons therefor. ('09 c. 127 § 8)

[2651—]134. **Benefits and damages, how ascertained.**—The board in ascertaining benefits and damages, and also the court on appeal, shall be guided as far as the same are applicable, by the rules for ascertaining benefits and damages in case of county ditches as set forth in Chapter 230 of the General Laws of Minnesota for 1905. ('09 c. 127 § 9)

[2651—]135. **Costs and expenses.**—The ditch petitioners shall advance all costs and expenses of said ditch proceeding from its inception to its completion, including damages awarded and the costs of constructing said ditch, which costs, expenses and damages so advanced shall be repaid pro rata to said petitioners as herein-after provided. They shall promptly upon making such payments, no matter whether complete or partial, file with the town clerk a verified statement showing in detail the amount and date of payment and to whom and for what paid. ('09 c. 127 § 10)

[2651—]136. **Securities required.**—The board are hereby directed to require such securities as they may deem necessary, suitable and proper, from the petitioners for the proper performance of all their duties under the terms of this act. ('09 c. 127 § 11)

[2651—]137. **Authority to enter lands.**—For the purpose of making examinations and surveys, the board and the engineer and any person or persons named by the court on appeal, are authorized to enter upon any land and to do any act necessary for the proper performance of their duties, and any person attempting to prevent or interfere with them shall be guilty of a misdemeanor. ('09 c. 127 § 12)

[2651—]138. **Appeal to district court—Jury.**—Any person aggrieved thereby may appeal from any order of said board made in the proceedings and filed in the office of said town clerk, determining any of the following matters:

(1) The amount of benefits to any tract of land or to any public road or street.

(2) The amount of damages allowed to any person, town, village or city.

(3) Refusing to establish such proposed ditch.

To render such appeal effectual the appellant shall file with the town clerk within twenty days from the date of the filing of such order in his office, a notice of appeal stating briefly the grounds upon which the appeal is taken, accompanied by an appeal bond to the town treasurer in an amount of not less than \$250.00, to be approved by the town clerk, conditioned that said appellant will duly prosecute the appeal, pay all costs that may be adjudged against him and abide the order of the court. Within twenty days after such filing the town clerk, at the expense of the appellant shall file in the office of the clerk of the district court of the county in which said town clerk resides, a complete transcript of all the papers and proceedings in the premises on file and of record in his office, including the notice of appeal. Any appellant deeming himself aggrieved by the determination in an order of the board establishing the proposed ditch, as to the amount of his benefits or damages, may demand in writing, a jury trial to determine the amount of his benefits or damages and such demand shall be filed in the office of the clerk of the district court within twenty days after the filing of the notice of appeal in the office of said town clerk. If no such demand is filed, the appeal shall be tried by the court without a jury. The appeal shall be duly tried and determined at the next term of the district court held within said county, beginning after the filing of such transcript and shall take precedence of all matters of a civil nature in said court. If there be more than one appeal they may be consolidated and tried together. If the appellant is unsuccessful he shall pay to said town treasurer all of respondent's costs and disbursements, to be taxed and allowed by and before the clerk of said court. The construction of such ditch shall not be delayed or prevented by the prosecution of any appeal if the petitioners shall give bond in amount and with sureties to be fixed and approved by the town clerk, conditioned for the payment of all damages finally awarded on said appeal and to abide the orders and judgments of the court entered thereon. It shall not be necessary to serve any notice of trial or file any note of issue in the district court on such appeal. ('09 c. 127 § 13)

[2651—]139. Appeal from order refusing to establish.—Upon an appeal from an order refusing to establish said ditch the court shall hear the entire matter de novo, without a jury and include in its final order and findings all of the matters and data required in the final order of the town board. As soon as final judgment is entered on an appeal, a certified copy thereof shall be transmitted by the clerk of the district court to said town clerk and shall be attached to the original order of the board and shall have the effect of modifying said original order so as to make it conform with said judgment. ('09 c. 127 § 14)

[2651—]140. Appeal to supreme court.—Any aggrieved party to said ditch proceeding may appeal to the supreme court as in civil actions, from any final order made in the district court, within thirty days after the filing of such order. The notice of appeal shall be served on the clerk of the district court and need not be served upon any other person or corporation. ('09 c. 127 § 15)

[2651—]141. Extension of time for construction.—Whenever the letting of the contract for the construction of said ditch is delayed either by lack of bidders or by appeals or by other proceedings

in court, said town clerk shall by his order in writing extend the time limit in the order establishing said ditch for the construction thereof to compensate for said delay and as necessity may require. ('09 c. 127 § 16)

[2651—]142. Job, how sold—Contract—Bond.—Within ten days after the filing of the order establishing said ditch the town clerk shall post notice in each of three of the most public places in each of the towns through which said ditch extends, and also in the office of the auditor of the county in which said ditch is located of the time and place at which he will sell to the lowest responsible bidder or bidders the jobs of constructing said ditch. When the estimated cost of the construction is more than \$1,000.00 the town clerk shall also advertise such sale of jobs in two newspapers, one of which shall be the paper in which the delinquent tax list is published in the county in which said ditch is located, and the other a legal paper published nearest the proposed work. Said notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job and also in such divisions as the petitioners may in writing request, and shall reserve the right to reject any and all bids, and no bid shall be entertained which exceeds the estimated cost of the construction of the part of said work covered by said bid more than 30 per cent. Said town clerk may adjourn such letting from time to time until the whole work shall be taken. If an engineer has been appointed, no contract shall be let without the approval of said engineer. Said town clerk may sell separately any job of building of flumes or other wood or masonry work, fencing or other construction work specified either directly or by reference in the order establishing said ditch. The town clerk shall contract separately in the name of the petitioners, with each party to whom any of such jobs are sold, requiring him to construct the same in the time and manner specified in the provisions of the final order establishing said ditch, and shall take from him a bond in the penal sum of not less than the contract price, payable to the petitioners for the use of such petitioners and of all persons and municipalities and towns who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which said bond is given with sureties, to be by said town clerk approved, conditioned that said party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of failure to complete the work in the manner and within the time required in the contract therefor, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or sureties on said bond. The contractor or contractors may each require the signatures of each of the petitioners to the contract and if any of the petitioners fail to sign said contract or contracts, said contractor or contractors may require that an amount of money equal to the contract price be deposited with the town treasurer to secure payment of said contract price upon the completion of said contract. ('09 c. 127 § 17)

[2651—]143. Bond and contract.—The bond and contract shall be attached to each other and the contract shall contain a specific description of the work to be done, either expressly or by reference to plans, specifications, the order establishing said ditch or other papers on file in said town clerk's office and shall provide that the work shall be done and completed as provided for in the final order establishing said ditch and subject to the approval of the engineer, if there be one, and if not then to the approval of the board. Said contract and bond shall be drawn to the satisfaction of the engineer, if there be one, and to the satisfaction of the attorney-at-law, if there

be one. Every such contract shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the parties performing labor and furnishing material in and about the performance of such contracts, and shall provide that time shall be of the essence of the contract in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein originally, or by extension, the contractor shall forfeit and pay to the petitioners a certain sum to be named therein and which shall be fixed by the town clerk for each day that such failure shall continue. No extension of time shall be granted unless applied for in writing to the town clerk, stating to his satisfaction good and sufficient reasons therefor, nor, in case there be an engineer, shall an extension of time be granted unless said engineer is satisfied that good and sufficient reasons exist therefor, nor shall any extension affect the right to enforce such forfeiture if any, as shall occur after the time originally limited and before such extension or occurring after the limit of the extension. The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from such failure whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds of public officers as security to all persons and providing for actions on such bonds by any injured party in the district court. ('09 c. 127 § 18)

[2651—]144. **Modification of plans.**—The engineer, if there be one, and if there is no engineer, then the board, shall have the right to modify the plans and specifications contained in the final order establishing said ditch as the work proceeds and as circumstances may require; provided, no changes are made that will substantially impair the usefulness of any part of the ditch or substantially alter its original character or increase its total cost by more than two per centum of the total contract price for the construction thereof. ('09 c. 127 § 19)

[2651—]145. **Failure of contractors.**—If a job be not completed within the time fixed in the contract therefor the town clerk shall forthwith notify the bondsmen in writing and order them to complete said job within a time specified by him. If the completion of said job shall not be undertaken by said bondsmen within twenty days after the date of said order, the petitioners may proceed to complete said job upon the giving of a bond containing like conditions as the original contractor's bond. The board shall determine the proportion of the contract price to be paid to the contractor and the proportion thereof to be paid to the parties completing said ditch. The petitioners and all other parties damaged or injured by the failure of the contractor to complete his job as called for by his contract shall have right of action and recover against the bondsmen. ('09 c. 127 § 20)

[2651—]146. **Damages, how paid.**—No ditch shall be constructed until the damages assessed shall have been paid or deposited as follows: Payment of the damages awarded may be made or tendered at any time after the filing of the order establishing said ditch and acceptance of such payment shall be taken as a waiver of all objections to said order and to the proceedings leading thereto on the part of the payee and of all persons for whom he is lawfully empowered to act. In case any party to whom an award of damages

is made be not a resident of the state or his place of residence be unknown or he be an infant or other person under legal disability or being legally capable, refuse to accept payment, or if for any reason it be doubtful to whom an award should be paid, the petitioners may pay the sum to the town treasurer, to be paid out under the direction of the board and unless an appeal be taken as herein provided, such deposit with the said treasurer shall be deemed a payment of said award. If an appeal be taken from the award of damages then when judgment is entered fixing the amount of damages, the petitioners shall pay said damages as fixed by the judgment of the court, with costs and interest in the same manner as if said damages as fixed by the judgment of the court with costs and interest had been the amount originally awarded in the order establishing said ditch. ('09 c. 127 § 21)

[2651—]147. Supervision—Certificate of completion.—If no engineer has been appointed, then said ditch shall be constructed under the supervision of the board, which shall have authority to approve the same. If an engineer is appointed, then said ditch shall be constructed under the supervision of said engineer, who shall have authority to approve the same. Upon the town clerk being advised that said ditch is completed, he shall notify the engineer, if there is one, and if not, call a meeting of the board. Thereupon said engineer or said board, as the case may be, shall inspect said ditch and if found complete and according to the order establishing the same, shall certify to said fact in writing and file said certificate in the office of said town clerk. The contractor or contractors shall, upon said certificate being filed, be entitled forthwith to payment in full from said petitioners. ('09 c. 127 § 22)

[2651—]148. Statement and summary.—Upon the filing of said certificate of the board or of the engineer, as the case may be, the town clerk shall, at the earliest practicable time make a tabular list and statement showing the following facts and in the order named:

1. The names of the owners of all lands benefited by the construction of such proposed work as appears from the order establishing said ditch as affected by the judgment of the district court on appeal.

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

3. The estimated number of acres benefited in each tract of said land as shown as aforesaid.

4. The estimated amount of benefits and damages to each of said tracts of land as the same appears in said order as changed, on appeal, by the district court.

5. The respective public roads and streets benefited by said ditch, the estimated amount of such benefits to each of said public roads and streets, and the names of the respective cities and towns and villages charged with the repair thereof, all as appears in said order establishing said ditch, as affected by the judgment of the court on appeal.

6. The amount that each of said tracts of land and that each of said towns, villages and cities that are charged with the repair of the several benefited public roads and streets, will be liable for and must pay for said ditch to be determined as follows:

Said town clerk shall make a full statement showing the total cost of such ditch from its inception to its completion, show to whom paid, for what paid and the amount paid. Said statement shall be summed up to show in figures the total cost of each ditch

and shall be attached to and form a part of the list and statement herein provided for. The total cost shall then be divided by the total estimated benefits for the rate of cost on each dollar of benefit, not using a smaller fraction than one-tenth of one mill. The amount of estimated benefits to each tract of land shall be multiplied by said rate and the result set down in the proper column opposite each of said tracts of land, and the result so obtained shall be the amount that each of said tracts of land will be liable for on account of such improvement. The amount of estimated benefits to each public street or road shall be multiplied by said rate and the result set down opposite the name of the respective towns, villages and cities charged with the repair of said respective roads and streets, and shall be the amounts that each of said towns, villages and cities will be liable for on account of such improvement. All assessments against tracts of land owned by any one or more petitioners shall be marked paid by the town clerk. It is the intention of this act that the balance of the assessments shall be ultimately paid over when collected to said petitioners to recompense them for the costs advanced on said ditch. ('09 c. 127 § 23)

[2651—]149. Statement, how executed—Record—Liens.—Such statement signed by the town clerk in the presence of two attesting witnesses and acknowledged by him, shall then be duly filed with and recorded by the register of deeds of each county in which lands, roads or streets are located, that are described in said statement. The amount which each tract of land and each town, village or city will be liable for and the interest thereon as hereinafter provided, shall be and remain a first paramount lien on such land and on such town, village or city until fully paid and shall take precedence of all mortgages, charges, encumbrances or other liens whatever. Such payments may be made as hereinafter provided. Such filing shall be deemed notice to all parties interested of the existence of such lien. The fees of the register of deeds for such recording shall be paid by the petitioners and shall be included in said statement as a part of the total cost of said ditch. Said recorded statement shall be returned to the town clerk and preserved by him with the other papers relating to such ditch. ('09 c. 127 § 24)

[2651—]150. Collection of assessments—Interest—Discharge of lien.—The amount that each tract of land, public or corporate road shall be liable for on account of the location, construction and establishment of any ditch, shall bear interest from the time of the filing of the town clerk's statement in the register of deeds' office, at the rate of 6 per cent per annum until paid. Such liens may be paid to the county treasurer at any time after the recording of such statements in said register of deeds' office. When payment of the full amount of such liens, with interest, shall at any time be made, the town clerk, upon presentation of a receipt from the county treasurer to that effect, shall issue under his hand and seal a certificate of such payment and the same when recorded in the office of the register of deeds shall release and discharge such lien of record. On or before November 15th next following such filing, the town clerk shall notify the auditor of each county in which said statement is filed, of the time of such filing and of the book and page in the office of said register of deeds of said county at which said statement is filed and of the certificates of payment in full that he has issued and said auditor shall thereupon forthwith enter on the tax lists of said county the amount of such lien then remaining unpaid against each respective tract of land subject thereto, as a tax on such tract which shall be subject to and be collected with like penalties as all other taxes for said year, until all is paid. ('09 c. 127 § 25)

[2651—]151. **Roads benefited—Liability of municipalities—Assessments, how collected.**—Whenever any public road or street shall have been found by the order establishing said ditch to have been benefited, the town, village or city which is by law chargeable with the duty of keeping such road or street in repair shall be assessed as hereinbefore provided, the pro rata amount of such benefits accruing to such roads or streets within said city, village or town by reason of such ditch, and the same shall thereupon become a liability of such city, village or town and shall be due on the filing of the town clerk's statement in the office of the register of deeds for record. Thereupon the town clerk shall forthwith issue a warrant to the treasurer of the town in which said petition was filed, requiring him to pay into the ditch fund of said ditch the amount of the assessment of the town of which he is treasurer, which said town treasurer shall forthwith do upon receiving said warrant. Said town clerk shall at the same time notify, by mail or otherwise, the clerk of each other town, city or village of the amount due from said respective town, city or village. If not paid to the town treasurer within thirty days, the town clerk shall notify the county auditor of the proper county in writing, thereof, who shall thereupon extend the amount thereof with interest at six per centum per annum from said day of filing in said register of deeds' office against all the property in such city, village or town liable to taxation, and the same shall become due, be paid, and collected in the same manner and with like penalties as other taxes for that year. ('09 c. 127 § 26)

[2651—]152. **Assessments, how disposed of.**—All assessments when collected by the county treasurer or county treasurers shall forthwith be transmitted to the town treasurer of the town in which said petition was filed, to be kept by him in a separate fund to be known as "Fund of Town Ditch No.....of town of....." and the petitioners for said ditch who have paid for the construction thereof and for the costs and expenses of said ditch, shall be entitled to repayment from said fund of all moneys received by the town treasurer as the proceeds of said assessments and interest. Such payment shall only be made upon warrant drawn by the town clerk who shall have power to draw such warrant without any order of said board. ('09 c. 127 § 27)

[2651—]153. **Documents, where filed.**—All petitions, resolutions, orders, engineer's reports, notices of appeal, bonds of engineer, affidavits, oaths and other instruments and papers having to do with said ditch proceeding shall be forthwith filed in the office of the town clerk where said petition was originally filed. ('09 c. 127 § 28)

[2651—]154. **Meetings of board, how called.**—The town clerk of the town in which said petition is filed shall have power whenever necessary in said ditch proceeding to call a meeting of the board at such time and place as he may designate, upon three days' notice given each member of the board of supervisors of each one of the towns in which any of the lands or public roads described in the petition are located. It shall be a sufficient statement of the objects and purposes of said meeting in said notice to say that it is called pursuant to the provisions of this act. ('09 c. 127 § 29)

[2651—]155. **Appointment of other engineers.**—If the engineer appointed by the board fails to qualify, or at any time resigns, dies or becomes disabled during the progress of the work, the board shall forthwith appoint another civil engineer having the qualifications required by this act in the stead and place of the engineer first ap-

pointed, who shall give the bond and take the oath required by this act and shall do all things remaining to be done by the original appointee. ('09 c. 127 § 30)

[2651—]156. Duty of railroads—Penalty.—It shall be the duty of every railroad company in this state, owning a right of way therein, over, under or through which it shall be necessary to construct any ditch in any drainage proceeding hereunder, to permit such ditch to be constructed over its said right of way; provided, such ditch across said right of way shall be an underground ditch when practicable, otherwise to be constructed in the usual and ordinary manner, and so as not to impair the usefulness of the railroad. Any railroad company in this state refusing permission or continuing to obstruct the construction of such drain across its right of way after the same has been ordered and written permission demanded for the construction of the same by the contractor or party entitled to construct the same, shall forfeit the sum of \$25 per day for each and every day that such refusal or obstruction continues or is made after such written demand, to be recovered in a civil action by the contractor or other party aggrieved. ('09 c. 127 § 31)

[2651—]157. Repairs.—Said board shall have power to enlarge, deepen, widen, lengthen and repair said ditch and the proceedings therefor shall be commenced by a like petition and the costs and expenses thereof shall be paid in like manner by the petitioners and the assessments shall be made and collected and all other proceedings shall be had, as nearly as may be, as in case of a new ditch. ('09 c. 127 § 32)

[2651—]158. Obstructing or injuring work—Failure of officers—Penalties.—Any person wilfully or negligently obstructing or in any way injuring any work constructed under the provisions of this act or allowing such ditch to be injured or obstructed by his live stock, horses or cattle or diverting the water in said ditch or interfering with the construction of said ditch, shall be guilty of a misdemeanor and shall also be liable to any or all persons or corporations injured by said act, in treble damages. Any town clerk, member of a town board of supervisors, town treasurer, register of deeds or other officer who refuses or neglects to perform any of the duties imposed upon him by this act shall be guilty of a misdemeanor and shall also be liable to any person injured by this act, in treble damages. The county attorney of said county shall prosecute all criminal actions arising under this act. ('09 c. 127 § 33)

[2651—]159. Compensation of members of board, etc.—The engineer, if appointed, shall receive the sum of \$5.00 per day for every day he is necessarily engaged in performing the duties required of him by this act and his actual and necessary expenses incurred in and about the same. The members of the board shall each receive \$3.00 per day for every day they are necessarily engaged in acting on said ditch proceeding or in viewing said ditch and in making up and filing their orders and their actual and necessary expenses. Each rodman shall receive the sum of \$2.00 per day and may be allowed in addition thereto his board and lodging for each and every day he is employed, and each chainman, axeman and other employé necessary to the prompt execution of the work of locating or inspecting said ditch shall be allowed \$1.50 per day and may be allowed in addition thereto his board and lodging for the time such person is thus actively employed. The town clerk, the town treasurer, the register of deeds, constable and other officers shall be paid the same fees as are allowed by law for similar service, or if no fees are allowed, then they shall receive reasonable compensation for their services. Such compensation shall be in addition to all sums

allowed by law at the time of the passage of this act. The attorney-at-law shall receive reasonable compensation for his services. The fees per diem, compensation and expenses shall be before payment, audited and allowed by the town clerk and shall be paid by the petitioners from time to time. ('09 c. 127 § 34)

[2651—]160. Parties not affected cannot question proceedings.—No person shall be permitted to take advantage of any error committed in any proceeding under this act either by the board, engineer, town clerk, town treasurer or by the court or by any person nor of any informality, error or defect appearing in the record of such proceedings unless the party complaining thereof is directly affected thereby. If the court shall at any time modify an assessment or enjoin the collection thereof or release any person from the liability thereof, it shall in no manner affect the liability or rights of any other person. ('09 c. 127 § 35)

[2651—]161. Act liberally construed.—This act shall be liberally construed so as to promote the public health, the construction and improvement of roads and the drainage and reclamation of wet or overflowed lands. It shall not be construed as repealing any drainage law except as herein expressly provided. ('09 c. 127 § 36)

[2651—]162. Record as evidence.—The record of every order of the board laying out and establishing any ditch or refusing to establish the same under the provisions of this act and the record of every judgment on appeal 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 said order or judgment. ('09 c. 127 § 37)

[2651—]163. Orders and notices, how served.—All orders, judgments and notices herein prescribed, not otherwise provided for, shall be served by any constable or other disinterested person designated by the town clerk or by the court, and such constable or other person so designated shall be paid the same fees by the petitioners as are allowed by law for similar service. ('09 c. 127 § 38)

CURATIVE AND MISCELLANEOUS PROVISIONS.

[2651—]164. Laws 1901, c. 258, ditch established under—Power to extend beyond outlet named.—Whenever there has heretofore been filed with the county auditor of any county in this state a petition and bonds signed by one or more freeholders, as provided by chapter 258 of the Laws of 1901 and the acts amendatory thereof, asking for the establishment and construction of any ditch within such county designating the commencement and outlet thereof, where all requirements of the said drainage law have been complied with, and the ditch has been established by the board of county commissioners, in accordance with said petition, and the assessments for damages and benefits to the lands affected have been made and confirmed, on the assumption that such ditch should end at the terminus or outlet named in the petition, and where it is found that in order to make such ditch effectual to drain the lands sought to be drained thereby it will be necessary to extend such ditch beyond the outlet named in the petition and in the order establishing the same to a point beyond such designated outlet, within or outside the boundary of such county and state, the board of county commissioners of such county may employ an engineer and proceed to ascertain the cost of the extension of such ditch to the point of outlet necessary to make said ditch effectual to drain the lands of said county sought to be drained, and when such cost is so ascertained said board of county commissioners may make a second

assessment to cover such cost on the same lands and in the same proportion as the first assessment for said ditch was made, and the moneys arising from said second assessment shall be used exclusively to defray the expense of such extension to such new outlet. ('07 c. 371)

Historical.—"An act amending chapter 145 of the General Laws of 1905, entitled 'An act to authorize the board of county commissioners of any county, where a ditch has been legally established, to extend such ditch to a new outlet and make a second assessment on the lands benefited, to cover the cost of such extension.'" Approved April 23, 1907.

Laws 1905, c. 145, consists of one section, which is superseded by the section above set forth.

See Laws 1905, c. 84, "An act to authorize county auditors in this state to give certain public notices and do certain things as are provided for in chapter 258, in the Laws of Minnesota for the year 1901, and as amended by chapter 38 in the Laws of Minnesota for 1902, pertaining to drainage," approved March 30, 1905. The powers conferred by this act were to be exercised within 60 days after its passage.

[2651—]165. **Laws 1905, c. 230, ditch established under—Reassessment for increased cost.**—That in any county when a ditch has been established under the provisions of chapter 230, Laws 1905, and tabular lists and statements have been made, filed and recorded, as provided by sections 19[2651—62] and 20[2651—63] of said act, which have not included the increased cost of such ditch, caused by a modification of the plans and specifications by the engineer as the work has proceeded, or where a part of the cost of such ditch was erroneously assessed against the right of way or other land owned by a railroad company, which was exempt by law from such assessment, the amount of such increased cost arising from such modification of plans when the same does not exceed two per centum of the total original cost of such ditch, or the part of the original cost so erroneously assessed against railroad property may be assessed against the property which was properly subjected to the assessment for such ditch, and the board of county commissioners of any county in which such ditch has been established are hereby authorized to determine what proportion of such assessment each piece, parcel or tract of land affected shall bear, and to assess the same against such lands, according to the same rules which governed the first assessment. ('07 c. 246 § 1)

Historical.—"An act authorizing boards of county commissioners, where ditches have been established as provided for by chapter 230, Laws of 1905, and tabular lists and statements have been made, filed and recorded as provided in sections 19 and 20 of said act, but which lists and statements do not include the increased cost caused either by a modification of the plans and specifications as the work has proceeded or where a part of the original cost has been assessed against exempt property to reassess the property benefited and to determine the amount which shall be assessed against each piece, parcel or tract of land affected, and providing for the collection of the same." Approved April 19, 1907.

[2651—]166. **Same—Duties of engineer.**—The engineer in charge of the construction of any such ditch and who, as the work has proceeded, has modified the plans and specifications of the same, whereby changes have been made which have increased the total cost of such ditch, shall ascertain the correct amount of such cost and shall forthwith make and file with the county auditor a detailed and verified report of the same. ('07 c. 246 § 2)

[2651—]167. **Same—Meeting of county board—Notice.**—Upon the filing of such engineer's report with him, or upon his own ascertainment of the fact that any part of the original cost of the ditch was assessed against exempt railroad property, the county auditor shall forthwith call a special meeting of the board of county commissioners, by giving to each member thereof not less than fifteen days' written notice, and shall also cause a notice of the same and place of such special meeting to be given to all persons interested, by pub-

lication, for one week prior thereto, in a newspaper printed and published in said county, and by posting, at least one week before such meeting, printed copies thereof in three public places in each township where such ditch is located, which notice shall state the object and purpose of such meeting and in addition thereto said auditor shall mail a notice of said meeting to all persons interested whose address is known to him or can be ascertained by inquiring at the treasurer's office. ('07 c. 246 § 3)

[2651—]168. Same—Hearing.—The board of county commissioners at said special meeting, being satisfied that the notice thereof has been given as provided in section 3[2651—167] of this act; shall (or at any time to which they may adjourn from time to time, as necessity may require, but not otherwise) proceed to hear and consider the matter, and all persons interested may appear and be heard by and before them. ('07 c. 246 § 4)

[2651—]169. Same—Order for assessment.—If from the engineer's report and such other evidence as may be adduced before them, the board shall find that by a modification of the plans and specifications the total cost of the ditch has been increased by not more than two per centum of the total original contract price for the construction thereof, or that any part of the original cost was erroneously assessed against exempt railroad property, they shall, by order, determine the proportionate part thereof which shall be assessed against each piece, parcel or tract of unexempt land affected. ('07 c. 246 § 5)

[2651—]170. Same—Duty of auditor—Lien.—The board having made its order reassessing said lands, it shall be the duty of the county auditor forthwith to make out, file and have recorded, a tabular list and statement, as provided in sections 19 [2651—62] and 20[2651—63], chapter 230, Laws 1905, and the amount assessed against each piece, parcel or tract of land, as stated in such list and statement, shall be a lien thereon from the time of the record of such statement in the office of the register of deeds until collected and fully paid, as provided in said chapter 230, Laws 1905. ('07 c. 246 § 6)

[2651—]171. Same—Fees—Statement filed.—The fees of the register of deeds for recording such supplemental list and statement shall be paid by the county, on the allowance of the board of county commissioners, and said statement, after the same has been recorded, shall be returned to the auditor to be by him placed with other papers relating to such ditch, and carefully preserved by him. ('07 c. 246 § 7)

[2651—]172. Same—Appeal.—Any person or corporation aggrieved thereby may appeal from the order of the board of county commissioners, made with reference to such reassessment, for the same reasons and in the manner prescribed in section 12, Laws 1905. ('07 c. 246 § 8)

[2651—]173. R. L. § 2610, judicial ditch established under in counties having 292,000 inhabitants—Repair and maintenance.—That in all counties in this state which now have or may hereafter have two hundred and ninety-two thousand inhabitants, or more, according to the last state census, where a judicial ditch, as defined by section 2610, chapter 44 of the Revised Laws of Minnesota, 1905, has been constructed along a creek or watercourse and where such creek or watercourse flows into a navigable lake, lying wholly or in part within such county, the board of county commissioners thereof shall pay for the repair and maintenance of said ditch or

watercourse out of the lake improvement fund and shall not assess the expense thereof upon the adjoining lands. ('07 c. 75)

Historical.—"An act relating to the maintenance of judicial ditches in counties having a population of two hundred and ninety-two thousand or more." Approved March 28, 1907.

Section 2 repeals inconsistent acts.

[2651—]174. Uncompleted contracts let prior to April 18, 1905—Acceptance of job—Certificate—Warrants.—That all contracts for the construction of ditches made prior to April 18th, 1905, and which contracts are not yet completed, the drainage engineer, in charge of such work, on being notified by any contractor that his job is completed, shall inspect the same, and if he find it complete, according to contract, plans and specifications, he shall accept it, and give the contractor a certificate of acceptance, stating that said section or sections (by number), are completed according to the contract, plans and specifications, as set forth in the report of said engineer, whereupon, if approved by the board of county commissioners, and upon the presentation and surrender of said certificate of acceptance by said contract to the auditor, said auditor shall draw a warrant on the county treasurer of his county for the full amount found to be due on said contract, or preliminary certificate, as hereinafter provided for, and said warrant shall be paid out of the general ditch fund to be provided by the board of county commissioners, as hereinafter specified. Said warrants shall become due and payable out of said fund at once, and if there shall be no cash in said fund to pay said warrant when the same is presented, the county treasurer shall endorse said warrant, "Not paid for want of funds," and date and sign such endorsement, and the amount, said warrant shall draw interest at the rate of six per cent per annum, until called in by the treasurer or auditor of said county, and paid; provided, however, that the engineer, upon the written approval of the auditor, may issue preliminary certificates for not to exceed eighty-five per cent of the engineer's estimate of all the work performed, which certificates shall be treated as hereinbefore provided, but no such certificate shall be furnished except when accompanied by the engineer's written certificate that no loss will result therefrom. ('07 c. 363)

Historical.—"An act to relieve county commissioners, drainage engineers and contractors, who are constructing ditches under contracts let prior to April 18th, 1905." Approved April 23, 1907.

[2651—]175. Laws 1901, c. 258, as amended—Proceedings legalized.—Where the county commissioners of any county of this state, in pursuance of chapter 258 of the General Laws of 1901, as amended by chapter 38 of the General Laws of 1902, and chapters 178, 188, 311, and 315 of the General Laws of 1903 of the State of Minnesota, have established and constructed, or attempted to establish and construct any ditch, drain or other water course, and the proceedings for such establishment and construction are in all respects valid, except that the notice of the pendency of the petition, and the hearing thereof, and the reports of the engineer and viewers has been published less than three weeks prior to such hearing, such ditch, drain or other water course, and such notice, and all other proceedings for its establishment and construction, are hereby legalized and made valid, and any assessments or liens levied or created against the lands benefited by the construction thereof, by the county auditor of any county or the board of commissioners thereof, for the cost of the establishment and the construction of the same, are hereby legalized and declared to be valid and of full force and effect, and a lien against said lands until paid in the time and manner set forth in said chapter 258 of the General Laws of 1901, as amended by chapter 38 of the General Laws of 1902, and

chapters 178, 188, 311 and 315 of the General Laws of 1903. ('05 c. 157 § 1)

Historical.—"An act to legalize certain ditches, drains or water courses established or attempted to be established under and pursuant to the provisions of chapter 258 of the General Laws of 1901, as amended by chapter 38 of the General Laws of 1902, and chapters 178, 188, 311 and 315 of the General Laws of 1903, and to declare legal and valid all the assessments and liens levied or created under and pursuant to said acts and amendments thereto." Approved April 12, 1905.

See note under section [2651—]97.

[2651—]176. **Same—Rights not affected.**—This act shall not apply to or affect the right of appeal from such proceedings as now provided by law, or any actions or appeals now pending in which the validity of any such proceedings is called in question. ('05 c. 157 § 2)

[2651—]177. **Laws 1901, c. 258—Proceedings legalized.**—Where the county commissioners of any county of this state in pursuance of chapter 258 of the General Laws of 1901 and amendments there-to have located and established, or attempted to locate and establish any ditch, drain or other water course to drain any shallow, grassy, meandered lake, the petition for which states that the lake so authorized to be drained is a shallow, grassy, meandered lake of not over four feet in depth, that a deed of consent to the drainage of said lake duly executed by all the persons owning lands adjacent or contiguous to said lake and the outlet thereof has been duly filed and recorded in the office of the register of deeds of the county in which such lake is situated, and that said ditch, drain or other water course will greatly enhance the public health, convenience or welfare, or be of public benefit or utility, and the county commissioners in granting such petition have found and determined, or shall find and determine that said proposed ditch, drain or other water course will be conducive to the public health, convenience or welfare, or be of public benefit or utility, said ditch, drain or other water course is hereby legalized and declared to be conducive to the public health, convenience and welfare and of public benefit and utility; and any assessments or liens levied or that may hereafter be levied against the lands benefited by the construction of any ditch, drain or other water course by the county auditor of any county for the cost of the establishment and the construction of the same pursuant to the provisions of this act are hereby legalized and declared to be valid and of full force and effect and a lien against said lands until paid, in the time and manner set forth in sections twenty and twenty-one of said chapter 258 of the General Laws of 1901, as amended by chapter 38 of the General Laws of 1902 and chapter 315 of the General Laws of 1903. ('05 c. 180 § 1)

Historical.—"An act to legalize certain ditches, drains or water courses to drain shallow, grassy, meandered lakes located and established, or attempted to be located and established under and pursuant to the provisions of chapter 258 of the General Laws of 1901, and amendments thereto, and to declare legal and valid all assessments and liens levied under and pursuant to said act." Approved April 15, 1905.

See note under section [2651—]97.

[2651—]178. **Same—Pending proceedings.**—Nothing herein contained shall affect any action or proceeding now pending. ('05 c. 180 § 2)

[2651—]179. **Laws 1901, c. 258, as amended—Proceedings legalized.**—Where the board of county commissioners of any county in this state, under and pursuant to the provisions of chapter 258 of the General Laws of 1901, and the several acts amendatory thereof, have located and established, or attempted to locate and establish, any ditch, drain or water-course which drains in whole or in

part any shallow, grassy or muddy meandered lake, and the said board of county commissioners in granting the petition for locating and establishing any such ditch, drain or water-course have found and determined that such ditch, drain or water-course will be conducive to the public health, convenience or welfare, and will be of public benefit or utility, and have made such findings and determinations part of the order locating and establishing any such ditch, drain or water-course, said ditch, drain or water-course is hereby in all things legalized and confirmed, and all proceedings had by any such board of county commissioners in locating and establishing any such ditch, drain or water-course are hereby in all things legalized and confirmed, and any such ditch, drain or water-course is hereby declared to be conducive to the public health, convenience and welfare, and of public benefit and utility; and any and all assessments or liens levied, or that may hereafter be levied, against the lands benefited by the construction of any such ditch, drain or water-course by the county auditor of the proper county for the cost of the location and establishment and construction of the same, pursuant to said acts, are hereby legalized and confirmed and declared to be valid and of full force and effect and a lien against said lands until paid, according to the provisions of said chapter 258 of the General Laws of 1901 and the several acts amendatory thereof. Provided, that the provisions of this act shall not apply unless the order of the board of county commissioners locating and establishing any such ditch, drain or water-course has been made and entered more than six months prior to the passage of this act. ('05 c. 247 § 1)

Historical.—"An act to legalize certain ditches, drains or water-courses which drain shallow, grassy or muddy meandered lakes which have been located and established, or attempted to be located and established, under and pursuant to the provisions of chapter 258 of the General Laws of 1901, and the several acts amendatory thereof, and to declare legal and valid all assessments and liens made and levied under and pursuant to said acts." Approved April 18, 1905.

See note under section [2651—]97.

[2651—]180. **Same—Pending proceedings.**—The provisions of this act shall not apply to any action or proceeding now pending in any court of this state directly attacking or bringing in question any such proceeding upon the ground that the same drains any meandered lake, nor to any appeal now pending in any court in this state bringing in question the amount of benefits to any tract of land, or the amount of damages allowed to any person, in any such proceeding locating and establishing any such ditch, drain or water-course. ('05 c. 247 § 2)

[2651—]181. **Laws 1901, c. 258, and Laws 1905, c. 230—Proceedings legalized.**—Where the county commissioners of any county in this state in pursuance of chapter 258 of the General Laws of 1901, as amended, or in pursuance of chapter 230 of the General Laws of 1905, have located, established and constructed or attempted to locate, establish or construct any ditch, drain or other water course wholly within such county, and said board shall have found, and by resolution or order adopted by said board have determined, that such ditch, drain or water course will be of public utility and promote or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof, are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed, or the county has entered into a contract or contracts for the construction thereof, and the county auditor has executed and filed, in the office of the register of deeds, the tabular statement provided for in said acts, respectively, making assessments for the cost of location, establishment and construction of the same against the

lands, corporations and roads benefited thereby, and no appeals have been taken therefrom or from any of such proceedings, then the said proceedings and any assessments or liens so levied or attempted so to be assessed or levied for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid, in the time and manner set forth in said acts respectively. ('07 c. 72 § 1)

Historical.—"An act to legalize certain proceedings heretofore taken for the drainage of lands in certain cases." Approved March 28, 1907.

See note under sections [2651—]44, [2651—]97.

[2651—]182. **Same—Rights not affected.**—This act shall not apply to or affect the right of appeal from said proceedings as now provided by law or any actions or appeals now pending in which the validity of said proceedings is called in question. ('07 c. 72 § 2)

[2651—]183. **Laws 1905, c. 230—Proceedings legalized.**—That in all cases where proceedings have heretofore been taken for the establishment and construction of a ditch or drain under the provision of chapter 230 of the General Laws of 1905, where such ditch or drain as described in the petition therefor or in the report of the engineer is made to commence within any city or village and extends to some point outside such municipality and is intended to drain lands within said municipality as well as lands outside thereof, and such proceedings have in all respects conformed to the requirements of said chapter 230 of the General Laws of 1905, except that the ditch or drain commences inside such municipality instead of outside the same, such proceedings for the establishment of such ditch or drain and the assessments made thereunder are hereby in all things legalized. ('07 c. 9 § 1)

Historical.—"An act to legalize certain proceedings heretofore taken for the drainage of lands in certain cases." Approved February 5, 1907.

See note under section [2651—]44.

[2651—]184. **Laws 1905, c. 230, as amended, and Laws 1907, c. 448—Proceedings legalized.**—Where the county commissioners of any county in this state or the judge of any of the district courts of this state, in pursuance of chapter 230 of the general laws of 1905, or in pursuance of said chapter as amended by the general laws of 1907, or chapter 448, of the general laws of 1907, or any of them, or partly under one of said acts and partly under another thereof have located and established, or attempted to locate and establish any ditch, drain or other water-course, wholly within any county of this state, or partly within one or more counties thereof, and it has been determined by resolution adopted by said board, or order made by said judge that such ditch, drain or water-course will be of public utility, and promotive of or be conducive to, the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water-course has been actually constructed, or the county has entered into a contract or contracts for the construction thereof, and the county auditor has, or county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds the tabular statement provided for in said acts, or any thereof, respectively, making assessments for the cost of the location, establishment and construction of the same within such county against the land, corporations and roads benefited thereby, and no appeals have been taken therefrom or from any of such proceedings, or if such appeals have been taken, that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied, for the actual cost of such work, including damages awarded, are here-

by legalized and declared to be valid and in full force and effect until paid in the time and manner set forth in said acts respectively. ('09 c. 83 § 1)

Historical.—"An act to legalize certain proceedings heretofore taken for the drainage of lands in certain cases." Approved March 19, 1909.

See note under section [2651—]44.

[2651—]185. **Same—Rights not affected.**—This act shall not apply to or affect the right of appeal from such proceedings as now provided by law, or any actions or appeals now pending in which the validity of said proceedings is called in question. ('09 c. 83 § 2)

[2651—]186. **Laws 1905, c. 230, as amended—Fees of auditors validated.**—That in all cases where the fees of county auditors in ditch proceedings under chapter 230 of the General Laws of 1905 as amended, have been incurred and paid since April 23rd, 1907, and said fees have been included in the costs of the ditch and assessed against the benefited lands, said fees and payments are in all respects legalized and validated. ('09 c. 422 § 1)

Historical.—"An act validating the payment of fees to the county auditor in ditch proceedings in certain cases." Approved April 22, 1909.

See note under section [2651—]44.

[2651—]187. **Laws 1907, c. 191—Proceedings legalized.**—Where the supervisors of any town or towns of this state, in pursuance of chapter 191 of the General Laws of 1907 of the state of Minnesota, have established and constructed or attempted to establish and construct, any ditch or drain, all the proceedings for the establishment and construction of such ditch or drain are hereby legalized and made valid and any assessments or liens levied or created, or attempted to be levied or created against the lands benefited by the construction thereof for the cost of the establishment and construction of the same, are hereby legalized and declared to be valid and of full force and effect and a lien against said lands until paid, and all warrants issued under and pursuant to said chapter 191, General Laws of 1907, are hereby validated. ('09 c. 257 § 1)

Historical.—"An act to legalize certain ditches or drains established or attempted to be established under chapter 191 of the General Laws of 1907, and to declare legal and valid all the assessments and liens levied or created, or attempted to be levied or created, and warrants issued, under and pursuant to said chapter." Approved April 19, 1909.

See note under section [2651—]126.

[2651—]188. **Same—Rights not affected.**—This act shall not apply to or affect the right of appeal from such proceeding as now provided by law, or any actions or appeals now pending in which the validity of any such proceeding is called in question. ('09 c. 257 § 2)

[2651—]189. **Laws 1905, c. 230, and Laws 1907, c. 448—Proceedings legalized.**—Where the county commissioners of any county in this state or the judge of any of the district courts of this state, in pursuance of chapter 230 of the General Laws of 1905, or in pursuance of said chapter as amended by the General Laws of 1907, or chapter 448 of the General Laws of 1907, or any of them, or partly under one of said acts and partly under another thereof, have located and established, or attempted to locate and establish any ditch, drain or other water-course wholly within any county of this state, or partly within one or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge that such ditch, drain or water-course will be of public utility, and promotive of or be conducive to, the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water-course has been actually constructed, or the county has entered into a contract

or contracts for the construction thereof, and the county auditor has, or county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds the tabular statement provided for in said acts, or any thereof, respectively, making assessments for the cost of the location, establishment and construction of the same within such county against the land, corporations and roads benefited thereby, and no appeals have been taken therefrom or from any of such proceedings, or if such appeals have been taken, that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied, for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid in the time and manner set forth in said acts respectively. ('09 c. 10 § 1)

Historical.—"An act to legalize certain proceedings heretofore taken for the drainage of lands in certain cases." Approved February 8, 1909.

See notes under sections [2651—] 44, [2651—] 117.

[2651—]190. **Same—Rights not affected.**—This act shall not apply to or affect the right of appeal from such proceedings as now provided by law, or any actions or appeals now pending in which the validity of said proceedings is called in question. ('09 c. 10 § 2)

CHAPTER 46.

NOTARIES PUBLIC.

2657. Term—Bond—Oath.

Liability—Sureties.—If a notary certifies to an acknowledgment of an instrument without personal knowledge as to the identity of the party and without careful investigation of such fact, he is guilty of negligence, and he and the sureties on his bond are liable for damages proximately resulting therefrom. *Barnard v. Schuler*, 100 Minn. 289, 110 N. W. 966.

2659. Powers.

See section [2659—] 1.

[2659—]1. **Same—Date of expiration of commission to be indorsed.**—Each notary public so appointed, commissioned and qualified, shall have power throughout this state, while residing within the county for which he was appointed, to administer all oaths required or authorized to be administered in this state; to take and certify all depositions to be used in any of the courts of this state; to take and certify all acknowledgments of deeds, mortgages, liens, powers of attorney and other instruments in writing, and to receive, make out and record notarial protests. Every notary public, taking an acknowledgment of an instrument, taking a deposition, administering an oath, or making a notarial protest, shall, immediately following his signature to the jurat or certificate of acknowledgment, indorse the date of the expiration of his commission; such indorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form: My commission expires _____, 19—. (G. S. 1894, § 2271, as amended by Laws 1905, c. 48, § 1.)

Historical.—By section 2 the act took effect January 1, 1906. G. S. 1894, § 2271, was G. S. 1866, c. 26, § 4, which was repealed by R. L. § 5518; its provisions being incorporated in section 2659. So far as the amended section above set forth differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

In general.—Taking proof or acknowledgment of execution of an instrument is an act ministerial in its nature, and not judicial. *Barnard v. Schuler*, 100 Minn. 289, 110 N. W. 966.