

the disclosure of the garnishee, the proceeding may be dismissed.

SEC. 8. There is hereby appropriated from the treasury of the State of Minnesota, out of any moneys not otherwise appropriated, such sum as may be necessary in the aggregate to pay the salaries, expenses and compensation hereinbefore provided for.

Appropriation.

SEC. 9. All acts and parts of acts inconsistent with this act are hereby repealed.

Inconsistent laws repealed.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved April 17, 1905.

### CHAPTER 230.

S. F. No. 182.

*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 cooperation 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.*

Drainage.

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

SECTION 1. The board of county commissioners of any county shall have power, at any session, when they shall find the conditions stated in the third section of this act to exist, to cause to be constructed as hereinafter provided, any ditch, drain, creek or other water course within said county; 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

Powers of Co. Commissioners.

into or through any city or village within any such county, 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.

Provisional.

Ditches to follow course of natural stream, etc.

As to meandered lakes.

Overflow waters.

Remonstrance.

Adjoining incorporated village.

Ten days notice.

Water supply of municipality not to be diverted.

*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 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 the court if such proceedings are in district court.

*Provided, further*, that no meandered lake adjoining an incorporated village, or upon which an incorporated village is a riparian owner, shall be drained or lowered unless by the approval of a majority vote of the legal voters of said 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 (5) or more riparian owners upon any such meandered lake; but the provisions of this chapter shall not grant to any person or to any board of county commissioners in 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 con-

nected with the water supply of any city or village in this state.

SEC. 2. 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.

When waters raised, etc.

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

Filing of petition by six or more land owners, or others.

Contents, etc

Bonds.

Dismissal of undertaking.

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 said ten days, give a new bond with good and sufficient freehold sureties, payable to the county, to be approved, including amount and sureties by the county auditor, conditioned the same as the original bond. Notice of the filing of said petition, and of the time and 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 such 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.

SEC. 4. Before entering upon his duties, such engineer shall give a bond in the sum of two thousand dollars (\$2,000), 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

Notice by  
auditor.

Notice not  
given, or  
defective.

Survey to be  
made.

Engineer's  
bond.

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 (2) years after the filing and approval of such bond, in the sum of four thousand dollars (\$4,000), 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.

Limitation  
of bond.

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

Survey, etc.  
Specifications.

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.

Locating  
public ditch.

Detailed  
report.

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 circum-

stances 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 (2%) 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

County attorney to assist in framing contracts, etc.

Branch ditches.

Ditches along highways.

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.

SEC. 5. 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.

SEC. 6. At the session of said board of county commissioners, when said civil engineer is appointed, or at such time thereafter as may be appointed by them, not later than ten (10) days thereafter, said board shall make an order appointing three (3) 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

Ditch on  
division  
lines be-  
tween prop-  
erty owners.

Lands not  
assessed.

Changing  
lines of  
ditches.

Complete  
report.

Viewers.



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 (15) days after the filing of the engineer's report, and it shall further be the duty of the county auditor, within five (5) 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 board of county commissioners 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; the estimated 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

Meeting.

Viewer falling to qualify  
—oath—  
statement.

Damage, etc.

Benefits.

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 roadbed, 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.

Viewers  
disagreeing.

In case the viewers are unable to agree each viewer shall state separately in the report his findings on the matters disagreed upon.

Previous  
excavations  
deducted.

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.

Benefits  
assessed in  
proportion.

SEC. 7. All lands benefited by a public ditch, drain or water course, and all public or corporate roads or railroads so benefited, in whole or in part, shall be assessed in proportion to the benefits for the construction thereof, whether said ditch passes through said lands or along or near the line of such roads or railroads or not, and the viewers in estimating the benefits to lands, roads or railroads not traversed by said ditch shall not consider what benefits such lands, roads or railroads will receive after some other ditch or ditches shall be constructed, but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage, or prevents the overflowing of or otherwise directly benefits such lands, roads or railroads.

Filing of  
report.

SEC. 8. 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 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 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.

Necessary  
delays.

SEC. 9. 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 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 engineer's 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 de-

Auditor to  
call meeting  
of Co. Com-  
missioners  
and others  
interested.

Publication.

Contents of  
notice.

Second no-  
tice, when.

fective, 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.

When order  
of commis-  
sioners set  
aside.

*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.

Rehearing  
reconsidera-  
tion.

*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 by 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.

Jurisdiction  
of Co. Com-  
missioners.

SEC. 10. 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 complete 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,

Hearing by  
commis-  
sioners.

Engineer  
and viewers  
present.

Establish  
ditch.

Defective  
reports  
remedied.

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.

Damages in excess of benefits paid out of Co. treasury.

SEC. 11. 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.

Appeal.

Award confirmed.

Bond, if doubt as to rightful claimant.

SEC. 12. 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:

Appeal by party aggrieved.

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 (20) days from the date such final order is issued, a notice of appeal, which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond to the board of county commissioners, with at least two freehold sureties in an amount of not less than two hundred and fifty (\$250) 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 (20) days after such filing the auditor shall make a complete transcript of all the papers and proceedings on file and of record in his office, so far as the same pertain to the premises or matter on account of which the appeal is taken, together with the notice of appeal, to the clerk of the district court.

Filing of appeal notice.

Bond.

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 (20) 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

Jury trial.

Precedence of trial.

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.

Work not  
to be de-  
layed.

Cases con-  
solidated.

SEC. 13. 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.

SEC. 14. Within ten (10) 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 (10) 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 second 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 (2) freehold sureties, payable to the county, or to

Letting of  
contracts.  
Sale.

Auditor  
acting for  
county.

Bond.



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 (3) 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 (30) 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 (10) 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.

Published  
notice of  
letting of  
contracts,  
contents.  
Adjournment

Approval by  
engineer and  
Co. attorney.

Bond and  
contract  
attached.

SEC. 15. The bond and contract shall be attached to each other and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications, and refer to the number of the section or sections, as provided for in the preceding section; and shall provide that the work shall be done and completed as provided for in the report of the engineer, and subject to his approval and that of the auditor, or auditors, as the case may be.

Time essence  
of contract.

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.

Extension  
of time  
to finish  
work.

Contractor  
a public  
officer.

SEC. 16. 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 (5) 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 (10) 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 (10) days' notice by publication, to the lowest responsible bidder, but not for a sum exceeding fifty (50) 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.

Notice when work not within time limit.

Work resold.

SEC. 17. 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 commissioners 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 commissioners 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

Inspection by engineer.

Work in more than one county.

How paid.

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 board of county commissioners, 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 indorse 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 (6) 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 (75) 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.

Not paid  
for want  
of funds.

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 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.

Commission-  
ers author-  
ized to issue  
bonds.

SEC. 18. The board of county commissioners of each and every county wherein any such ditch is proposed to be wholly or partly located and established 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 so much of any such 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 "expenses" shall be construed to mean and to cover every item of cost of said ditch from its inspection 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 ten years from their date—and shall bear such rate of interest—not to exceed 6 per cent per annum—payable annually or semi-annually, all as the board of county commissioners 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.

Time bonds  
may run.

Said board shall have power to negotiate said bonds as they shall deem for the best interest of said county, but not for 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.

Bonds sold  
for not less  
than par.

Such 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 they may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can properly be used for the purposes 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.

Redemption.

SEC. 19. 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 :

Auditor to  
make state-  
ment as to:  
Owners of  
land bene-  
fited, etc.

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.

Amounts  
each liable  
for.

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:

Auditor's  
statement,  
form.

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.

Execution  
and filing.

SEC. 20. 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

Lien, precedence,  
notice.

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 auditor, to be by him placed with the other papers relating to such ditch, and carefully preserved by him.

Register's  
fees.

SEC. 21. The amount that each tract of land, public or corporate road or railroad, shall be liable for on account of the location, construction and establishment of any ditch or ditches under the provisions of this act shall bear interest from the date of the filing of the auditor's statement in the register of deeds office at 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 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.

Assessment  
to bear inter-  
est after  
filing of  
statement.

Same rate  
as bonds.

Premium  
on bonds.

SEC. 22. The payment of such liens shall be made to the treasurer of such county, as follows: One-tenth of said principal, with interest thereon, on or before one (1) year from such filing in the register of deeds' office, one-tenth of the same on or before two (2) years, one-tenth of the same on or before three (3) years; one-tenth of the same on or before four (4) years; one-tenth of the same on or before five (5) years; one-tenth of the same on or before six (6) years; one-tenth of the same on or before seven (7) years; one-tenth of the same on or before eight (8) years; one-tenth of the same on or before nine (9) years; one-tenth of the same on or before ten (10) years. All reckoned from the date of such 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

Payment  
of liens.

Tax lists to contain unpaid liens.

against the tract or parcel of land. On or before the fifteenth day of November 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-tenth of such tax 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-tenth with and as the taxes of each successive year, until all is paid. When payment of the full amount of such lien, 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 such lien of record.

Certificate of payment.

State and corporate lands liable for benefits.

SEC. 23. 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.

Appropriation for state's liability.

SEC. 24. 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.

Benefits to municipality, or railroad how assessed

SEC. 25. The benefits accruing to any municipal corporation or to the owners of any corporate road, or to the owners of any railroad, respectively, by reason of the improvement of any public road within the limits of, or connecting with such municipal corporation, or of such corporate road, or such railroad by the construction of any such ditch, shall be assessed, levied and enforced as follows: Whenever any public road shall have been found to be so benefited, the town which is by law chargeable with the duty of keeping such road in repair, shall be assessed the amount of such benefits in said town accruing to such roads within said town, by reason of such ditch and the same shall thereupon become a liability of such town, and shall be due and payable in ten equal 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 (30) days after its maturity, the amount hereof, with interest, shall be enforced in the same manner as judgments against the town. Whenever any railroad or the lands of any railroad company, shall be determined in any such proceeding to be benefited by any such ditch, such railroad, or the lands of such railroad company, so far as the same are legally subject to local assessment, 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 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 the 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.

SEC. 26. After the construction of any such work, the board of county commissioners of such county in which the same is, or any part thereof, shall keep the same, or such part thereof, in proper repair and free from obstruction and to widen or deepen so as to answer its purpose and pay for the same of the general revenue fund of the county; and to raise the necessary money to reimburse that fund they are hereby authorized to apportion and assess the cost thereof upon the lands which will be benefited by such repairs, removal of obstructions, widening or deepening according to such benefits in their judgment. They 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 succeeding tax the lands the same as state and county taxes, and be col-duplicate, and it shall be a first and paramount lien upon lected in the same manner as state and county taxes. The provisions of this section shall also apply to all works constructed for the purpose of drainage under any law now or heretofore in force in this state except state ditches. If they shall be of the opinion that such assessment or any part thereof ought to be charged to lands in other counties, the county commissioners thereof shall

Commis-  
sioners to  
keep in  
repair.

Assessments,  
benefits,  
statement,  
lien.

Assessment  
chargeable  
to other  
counties,  
procedure.

on request and written notice of not less than ten days meet with them at a time and place by them appointed and they shall jointly make such assessments and certificates to the auditors of the proper counties. A majority of such commissioners as attend any such meeting shall have power to act and decide any question and to make the assessments and certificates, and upon failure of any commissioner to perform the work required of him by this section after ten days' notice in writing to him by any person interested, he shall be liable for all damages caused by such failure to perform his duty, to be recovered by the person or persons so damaged. He shall also be deemed guilty of a misdemeanor and, upon conviction thereof, fined not less than ten nor more than fifty dollars.

Ditch in  
more than  
one county,  
judicial ditch

SEC. 27. Whenever it is desired to construct a ditch extending into or through part or the whole of more than one county, or if entirely within one county, the ditch is to be so located that it will probably result in benefit or damage, or both, to lands in an adjoining county or counties, then in either of such cases, the petition required by section three (3) of this act shall be addressed and presented to the judge of the district court of the district in which any one of such counties is situated. Before such presentation such petition shall be filed with the clerk of the district court of the county in which such proceedings are commenced and a copy thereof, duly certified by him, shall be filed with the county auditor of each of the counties wherein any of the lands described in said petition are located. Such proceeding may be designated and numbered by said clerk of the district court as follows: "Judicial Ditch No. . . . ." and may be so referred to at all subsequent times.

Time for  
hearing,  
notice.

SEC. 28. Upon presentation of such petition, the judge shall fix a time and place for the preliminary hearing, which is provided for in section three (3) 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.

Survey  
directed.

SEC. 29. 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 (3) 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 (4) and five (5) of this act are provided, save that the filings shall be with such clerk.

Proceedings  
as under  
Sec. 4 and 5.

SEC. 30. As soon as reasonably possible after the filing of such report, the judge shall make an order appointing viewers, as provided in section six (6) of this chapter and the proceedings thereafter shall be as specified in sections six (6), seven (7) and eight (8) 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.

Viewers.

SEC. 31. 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 (3) 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 (9) of this chapter in respect of the county auditor, save that it shall be published and posted in each county described in the petition.

Duty of  
clerk of  
court.

Hearing  
notice.

SEC. 32. 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 (10) of this chapter. All the provisions of this chapter, except the provisions of sections twelve (12) and thirteen (13), 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

Further  
proceedings.

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.

Apportion  
expenses.

SEC. 33. 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 (5) 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.

"Expense"  
defined.

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 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.

Engineer  
failing to  
qualify.

SEC. 34. 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.

Assistant.

SEC. 35. 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.

SEC. 36. 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

Improvement  
abandoned,  
and later  
re-instituted.

Proviso.

shall be made by said county upon collecting the same, to said party or parties who have made payment as aforesaid under said bond.

Auditor to notify municipalities and corporations to construct bridges and culverts.

SEC. 37. 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.

Co. Commissioners may build.

SEC. 38. 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.

Amount not to exceed benefits.

Petition for viewers, where damage to land, subsequent to construction, not awarded by viewers.

SEC. 39. 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 damaged 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 (20) 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.

Bond for expenses.

Appointment of viewers.

Viewer failing to qualify.

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.

Notice to parties interested, publication.

Time for hearing, personal examination, award, if damaged.

SEC. 40. 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.

Expense assessed against land benefited.

In case no damage.

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.

Viewers per diem.

Each of the viewers shall receive three dollars (\$3.00) 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.

Parties aggrieved may appeal, bond.

SEC. 41. 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 (30) 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 (\$500), 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 forth-



with 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 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.

Appeal to  
supreme  
court.

SEC. 42. 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.

Co-operation  
of state  
drainage  
board.

SEC. 43. Any person wilfully 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 shall be guilty of a misdemeanor, and shall also be liable to any person or corporation, 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 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 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.

Wilfully  
obstructing,  
or injuring  
work a mis-  
demeanor.

Neglect of  
officials.

Prosecution.

SEC. 44. 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.

Orders and  
notices, how  
served.

Per diem, fees, etc., of engineer, viewers, etc., auditing.

SEC. 45. The engineer shall receive the sum of five dollars (\$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 viewers shall each receive three dollars (\$3.00) per day for every day they are necessarily engaged in viewing ditches and making up and filing their reports, and their actual and necessary expenses. Each rodman shall receive the sum of two dollars (\$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, axman and every other employe necessary to the prompt execution of the work of locating or inspecting a public ditch shall be allowed one dollar and fifty cents (\$1.50) per day, and may be allowed in addition thereto his board and lodging for the time such person is thus actually employed. The county auditor of each county, and the clerk of the district court shall receive reasonable compensation for their services under this act, and such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The fees per diem, compensation and expenses provided for in this act shall be audited, examined, allowed and paid upon the order of the board of county commissioners. *Provided*, that in case of a judicial ditch the judge shall first approve of such fees per diem compensation and expenses.

Majority of viewers may act.

SEC. 46. A majority of the viewers shall be competent to perform the duties required of them by this act.

Liberal construction of this act.

SEC. 47. 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.

Prima facie evidence.

SEC. 48. 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.

Viewers, Co. commissioners and engineer may enter upon any land in discharge of duties.

SEC. 49. 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.

SEC. 50. No person or corporation shall be permitted to take advantage of any error committed in any proceedings under this chapter either by the board of county commissioners, engineer, viewers, county auditor, or other 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 thereon, it shall in no manner affect the rights or liability of any other person.

Errors, etc., not to be taken advantage of.

SEC. 51. 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.

Aggrieved party may appeal.

SEC. 52. 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.

Statutory limitations as to service of Co. commissioners not to apply to proceedings under this act.

SEC. 53. 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 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.

"Ditch" defined.

SEC. 54. 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.

General laws repealed.

SEC. 55. In case the petitioner or petitioners shall of-

Petitioners offering to construct and maintain ditch at own expense.

fer 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.

Bond.

SEC. 56. 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.

Time and place for hearing.

SEC. 57. 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 (40) nor less than fifteen (15) days from said date of filing, and at least ten (10) 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 (3) 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 de-

scribed 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.

SEC. 58. 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 (3) 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 (6) 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 (10) 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.

Appointment  
of viewers.

Viewers'  
report.

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.

SEC. 59. 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 (30) days, and to a different place. The board of county

Objections  
heard.

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 (1) 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 (1) year after the filing of the final order of the district court in a judicial ditch proceeding.

Order estab-  
lishing  
ditch,—void  
when.

Doubt as to  
who entitled  
to award of  
damages.

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.

Aggrieved  
may appeal.

SEC. 60. 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 of this chapter and the county auditor shall in such case make and file a transcript as required by section 12 of this chapter.

Viewers,  
right to  
enter on any  
lands.

SEC. 61. 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.

SEC. 62. 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.

Draining  
meandered  
lake, appeal,  
bond, etc.

SEC. 63. 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.

SEC. 64. This act shall take effect and be in force from and after its passage.

Approved April 18, 1905.

### CHAPTER 231.

S. F. No. 32.

#### *An act relating to proceedings in criminal cases.*

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

SECTION 1. The district courts of this state shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for the crimes, misdemeanors and offenses, specified in section four of this act and to issue writs and process and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictment.

Dist. courts possess powers to hear and try prosecutions upon information, in certain cases.

SEC. 2. The offense charged in any such information shall be stated in plain and concise language, without prolixity or unnecessary repetition, and all the provisions of law relating to indictments and for testing the validity thereof, shall apply to informations, and all provisions of law applying to prosecutions upon indictments, to writs and process thereon, and to the issuing and service thereof; to motions, pleadings, trials and punishments, or to the passing or execution of any sentence thereon, and to all other proceedings in cases of indictment, whether in the court of original or appellate jurisdiction, shall to the same extent and in the same manner, as near as may be, apply to informations and all prosecutions and proceedings thereon.

Offense charged to be stated in plain language. Provisions as to trial under indictments to apply.

SEC. 3. No information shall be filed against any person for any offense, until such person shall have had a preliminary examination as provided by law, before a

No information filed without preliminary hearing unless waived.