

Land Drainage.

CHAPTER 75.

AN ACT to Enable the Land Owners of Lands to Drain and Reclaim them :
Prescribing the Powers and Duties of County Commissioners and Other
Officers in the Premises and to Provide for the Repair, and Enlargement of
Such Drains.

Be it Enacted by the Legislative Assembly of the Territory of Dakota :

§ 1. OFFICERS OF COUNTY OR TOWN MAY CAUSE CONSTRUCTION OF DRAIN.] That the board of county commissioners of any county, or the board of supervisors of any organized township, shall have power at any regular session, when the same shall be conducive to the public health, convenience or welfare, or when the same will be of public benefit or utility, to cause to be constructed as hereafter provided, any ditch, drain or water-course within said county or township.

§ 2. PETITION. APPOINTMENT OF VIEWERS AND OTHER DUTIES ETC.] That before the board of commissioners or board of supervisors shall establish any ditch, drain, or water-course, there shall be filed with the register of deeds (or the clerk of the township) of such county, a petition signed by one or more of the land owners whose lands will be liable to be affected by or assessed for the expense of the construction of the same, setting forth the necessity thereof with a general description of the proposed starting point, route and terminus, and such petitioner or petitioners shall give a bond with good and sufficient freehold securities payable to the Territory to be approved by the register of deeds or township clerk, conditioned to pay all expense in case the board of commissioners or board of supervisors shall fail to establish said proposed ditch, drain or water-course. As soon as said petition is filed said boards shall, if in regular session or at any regular session, appoint three resident freeholders of the county or township not interested in the construction of the proposed work, and not of kin to any parties interested therein, as viewers, to meet at a time and place specified by said boards, preparatory to commencing their duties as hereinafter specified. And it shall be the duty of the register of deeds or clerk thereupon to issue to said viewers a certified copy of the petition and order of the board, who shall proceed at the time set in said order, with a surveyor, who shall be a civil engineer, and shall make an accurate survey of the line

of said ditch, drain or water-course from its source to its outlet, and they shall cause stakes or monuments to be set along said line, numbered progressively down stream at each one hundred feet. And they shall make a computation of the total number of cubic yards of earth to be excavated and moved from said drain, ditch or water-course, and an estimate of the total cost of construction of the whole work. And they shall set apart and apportion to each parcel of land, and each corporate road or railroad, and to the county and townships when public highways are benefited, a share of said work in proportion to the benefits which will result to each from such improvement and give location of each share, its length in feet, and the estimated number of cubic yards of earth to be removed therefrom, and the price per cubic yard, and the cost of the construction of each or allotment separately, and specify the manner in which the work shall be done. And they shall have power where they find it necessary, to provide [for] running said ditch under ground through drain tiles or other materials as they deem best, by specifying the size and kind of tile or other material to be used in such underground work, and shall estimate the cost of the same as a part of the total cost of the work, and they shall accurately describe as the same is described on the county or township tax-duplicate, each parcel of the land to be assessed for the construction of said ditch, giving the number of acres in each tract assessed, and the estimated number of acres benefited; the amount that each tract of land will be benefited by the construction of said work and the amount that each tract is assessed therefor. And they shall, in tabular form, give the depth of cut, the width at the bottom and width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, drain or water-course. And they shall also ascertain and give the names of the owners of the lands that are assessed for construction of said ditch, drain or water-course as far as they can be ascertained with reasonable inquiry and search of the public records, and report also whether or not the proposed ditch or drain will be of public utility.

§ 3. DUTY OF VIEWERS WHERE PROPOSED DRAIN OCCUPIES A PRIVATE DITCH.] Whenever a public ditch, drain or water-course is located wholly or in part in the bed of a private ditch already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated and the cost of same on each tract of land and deduct the same from the assessment thereon.

§ 4. LANDS BENEFITED BY DRAIN TO PAY COSTS.] All lands benefited by a public ditch, drain or water-course shall be assessed in proportion to the benefit for the construction thereof, whether

it passes through said lands or not, and the viewers in estimating the benefits to lands not traversed by said ditch shall not consider what benefits such lands will receive after some other ditch or ditches shall be *construed* [constructed] but only the benefits that will be received by reasons of the construction of the public ditch, as it affords an outlet for the drainage of such lands.

§ 5. VIEWERS—DISCRETIONARY POWERS.] In locating a public ditch, drain or water-course, the viewers may vary from the line described in the petition as they deem best,

Provided, They commence the ditch at the point described in the petition and follow down the line therein described as near as practicable, and

Provided, further, That when there is a sufficient fall in length of the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough, not exceeding one-half mile, to obtain a sufficient fall and outlet [and] not be detrimental to the usefulness of the whole of the work; they shall as far as practicable locate the ditch on division lines between lands owned by different persons, and they shall so far as practicable avoid laying the same diagonally across the lands but they must not sacrifice the general utility of the ditch to avoid diagonal lines. And all persons whose lands may be affected by said ditch may appear before said viewers and freely express their opinions on all matters pertaining thereto.

§ 6. DAMAGES.] In locating a public drain or water-course, the viewers shall estimate the damages, if any, that any person or persons will sustain by reason of the construction of such ditch and assess such damages to parties owning the lands benefited in proportion *in* as each tract of land is assessed for benefits.

§ 7. CONCERNING ROUTE OF DITCH.] The viewers, if they find the route proposed is not such as best to effect the object sought, or that the proposed drainage can be effected as well in construction with a ditch necessary for the improvements of public highways already established or such as may be thereafter required, shall proceed to establish the route. If the route proposed is upon a section line where a public road may be required, and in all cases in which the route proposed is along highways already established, the viewers shall locate the ditch at a sufficient distance from center of such highways to admit of a good road along such central line. The earth taken from the ditch shall be so placed upon the roadway as to form a turnpike and no nearer to the margin thereof than two feet. But in locating a drain as above, the viewers shall not materially depart from the terminal points described in said petition.

§ 8. VIEWERS—WHEN TO MEET—REPORT, ETC.] Said viewers may, after having met at the time and place specified in the order issued to them by the register of deeds or township clerk, proceed immediately to perform their said duty or adjourn from time to time as best suits their convenience, and file their report with the register of deeds or township clerk at least four weeks before the next regular meeting of said boards;

Provided, The water be high or the weather inclement, they shall not be compelled or required to file the report until at least four weeks before the second regular meeting of said board after having received their orders from the register of deeds or township clerk, but their report must then state the reason for such postponement. And if the viewers find the proposed ditch, drain or water-course not of public benefit or utility, they may report against the location of the same, in which case their report need only state that they find the proposed work not to be of public benefit or utility.

§ 9. DUTY OF CLERK WHEN REPORT IS FILED.] It shall be the duty of the register of deeds or township clerk on said report being filed, if it be in favor of the proposed work, to cause a notice to be given a publication for three consecutive weeks, by posting three copies of said notice in three public places in the township or townships 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 at [of] the time set for the hearing thereof, which notice shall briefly state where said ditch commences at its source, through whose land it passes and where it terminates at the outlet, together with the names of the owners of the lands that will be affected thereby so far as these can be ascertained with reasonable inquiry, and search [from] the public records in the offices of the township clerk, register of deeds and treasurer, and at the same time the register of deeds or township clerk shall mail a copy of the same to all non-residents whose address is known to him or can be ascertained by inquiring at the treasurer's office.

§ 10. WHEN COUNTY COMMISSIONERS SHALL ESTABLISH DRAIN.] Said board of commissioners or board of supervisors at the the time set for the hearing of said petition shall if there is no remonstrance filed, proceed to hear said petition, and [if] they find the reviewers report is made in accordance with the provisions of this act and it be in favor of the proposed work, and [if] they find the proposed drain to be of public utility or conducive to public health or of public benefit or convenience, they shall establish the same as specified in the report. But if the viewers report against the proposed work the board shall dismiss the petition and tax the cost as hereinafter provided, and, when damages are awarded to any person or persons or corporation as provided by this act,

the board of commissioners or board of supervisors shall order the same to be paid out of the county or township treasury to the person, persons or corporation entitled thereto.

§ 11. REMONSTRANCE.] It shall be lawful for any person interested in the location of said proposed work to file with the board of commissioners or township board, at or before the time set for the hearing of the petition, a remonstrance against the ditch as located by viewers on and across his lands, by setting forth his grievances therein, and any person deeming his assessment too high or the damages allowed too low, may remonstrate for such reasons against the action of the viewers. Any person filing a remonstrance shall file with the same a bond payable to the Territory with not less than two freehold sureties conditioned for the payment of all costs and expenses caused by such remonstrance, if any action of the viewers be sustained by viewers to be appointed as hereinafter provided; such bond to be approved by the board of commissioners or township boards, and thereupon said board shall appoint three disinterested resident freeholders of the county or townships, not of kin to any person interested in the proposed work, as viewers, to meet at a specified time and place preparatory to commencing said review, and it shall be the duty of the register of deeds or township clerk thereupon to issue to said reviewers a certified copy of the petition and remonstrance and order of the board in appointing such reviewers.

§ 12. REVIEWERS—DUTY OF.] Such reviewers shall meet at the time and place specified in the order issued to them by the register of deeds or township clerk and proceed to review the action and report of the viewers as well as the entire premises through which the proposed work extends, and shall be vested with all power granted to the viewers originally except that [if] they find [the] proposed work of public benefit or utility they shall not change the line of the ditch as located by the viewers at any other place or places than those complained of in the remonstrance, and then only far enough to do justice to the party remonstrating. And they shall, before commencing said review, obtain from the register of deeds or township clerk, the report of the reviewers which they shall carefully preserve and return to said officers when they have completed this review, and they shall file with said officers a report of their proceedings in the premises after having subscribed and sworn to the same, at any time before the next regular meeting of said board, and if the reviewers sustain the action of the viewers and make no change in the proposed work, their report need only state, after having made full examination of the viewers report, as well as the entire premises through which the proposed work extends, they find the action of the

viewers just and correct, and that they sustain and approve the action of the viewers and their report.

§ 13. PROCEEDINGS ON REPORT OF REVIEWERS.] Upon the filing of the report of such reviewers as required by the preceding section, the register of deeds or township clerk shall, when the board of commissioners or board of supervisors convenes in regular session, record the same, together with the proceedings had in the matter of the petition, and if said reviewers sustain and approve the action of the viewers without change, all cost occasioned in consequence of the filing of the remonstrance shall be taxed against parties remonstrating, and a *free* [fee] bill shall issue thereon by the register of deeds or township clerk and be collected as provided by law.

§ 14. COSTS OF REMONSTRANCE—HOW PAID.] If the reviewers find the proposed work of public benefit or utility and do not sustain the entire action of the viewers but make changes in favor of the remonstrants, the cost occasioned in consequence of the filing of the remonstrance shall be taxed as a part of the total cost of the work as the same is taxed against the parties benefited in proportion to their benefits, and if the viewers find the proposed work not of public benefit or utility, the entire cost shall be taxed against the petitioners and collected as provided in section 13 of this act.

§ 15. ADOPTION OF REVIEWERS REPORT.] Upon the filing of the report of the reviewers the board of commissioners or the township board, shall, if they find such report made in accordance with the provisions of this act, establish the same as described in the report of the viewers as they find the same sustained, correct or changed in the report of the reviewers.

§ 16. PROCEEDINGS AFTER ADOPTION OF REPORT.] Whenever the board of commissioners or township board establish a public ditch, drain or water-course, they shall order the viewers, if the same is established without remonstrance according to the viewers report, or the reviewers if the same is established according to their report, to meet at a time and place specified after a lapse of ten days and make a final report in which they shall specify the time in which each share or allotment of the ditch shall be constructed and completed, and they shall apportion the cost of the location thereof, including printer's fees, damages, if any shall have been allowed and compensation to the laborers who assist the viewers in marking out the ditch, and award to each person or persons or corporation owning the lands assessed for the construction of said work, their proportionate share of said cost, and shall specify the time [in] which costs and expenses shall be paid to the county or township treasurer, and file their report with the

register of deeds or township clerk after having subscribed and sworn to the same. And it shall be the duty of the viewers and the reviewers to file with the report an account of the names of the laborers, and the time each was employed by them, and all compensation and damages allowed by this section shall be collected by the treasurer as the other taxes are collected, and the compensation paid out when collected, on an order from the register of deeds or township clerk to the parties entitled thereto, and the damages, when collected, shall be placed into the county or township fund to compensate the county or township for the damage previously paid as required by section 10 of this act.

§ 17. APPEALS.] Any person or corporation aggrieved thereby may appeal from any final order or judgment of the board of commissioners or township board, made in the proceedings and entered upon their record, determining either the following manner, viz.: Whether said ditch will be conducive to public health, convenience or welfare; whether the route thereof is practicable; whether the assessments made for the construction of the ditch are in proportion to the benefits to be derived therefrom; the amount of damages allowed to any one person or persons, or corporations, and the appellant shall file with the register of deeds or township board an appeal bond, with at least two freehold sureties to be approved by the register of deeds or township clerk, and the clerk of district court, conditioned that he will prosecute such appeal, and pay all costs that may be adjudged against him in the district court.

Provided, That such appeal bond shall be filed within thirty days after such final order or judgment of the board of commissioners is made and after the lapse of such thirty days no appeal can be taken. And if an appeal be taken, the register of deeds or township clerk shall withhold his notices to the viewers or reviewers to make their final report, and he shall within twenty days after the appeal bond is filed, make a complete transcript of the proceedings had before the board of commissioners or board of supervisors and of such appeal bond, and certify the same, together with all the papers filed in his office, pertaining to such proposed work, to the clerk of the district court.

§ 18. WHEN MORE THAN ONE PARTY APPEALS—DUTY OF JUDGE.] If more than one party appeal the Judge of the district court shall order the cases to be consolidated and tried together and the rights of each party shall be separately determined by the jury in its verdict.

§ 19. SALE OF WORK TO THE LOWEST BIDDER.] As soon as the final report of the viewers or reviewers is filed, the register of deeds or township clerk shall sell the jobs of digging and

constructing each share or allotment separately, of the entire work, and he shall give notice for three consecutive weeks, by posting three written copies of such notice in three public places in the vicinity of the proposed work, and one at the door of the court house in said county, of the time and the place he will sell, to the lowest responsible bidder or bidders, each and every share and allotment thereof, commencing at the one including the outlet, and thence in succession up stream to the one including the source, and no bid shall be entertained which exceeds more than twenty per cent. over and above the estimated cost of the construction in any case, and the register of deeds or township clerk shall contract with the party to whom a share or allotment is sold requiring him to construct such share or allotment in the time and manner set forth in the report of the viewers or reviewers on which the ditches are established, and shall take from him a bond with two freehold sureties, payable to the Territory, for not less than double the amount for which the same is sold, to be by him approved, conditioned that he will faithfully perform and fulfill his contract and pay all damages which may accrue by reason of the failure to complete the job within the time required in the contract therefor.

§ 20. RE-SELLING.] A job[failing] to be completed within the time fixed in the contract and bond shall be re-sold by the register of deeds or township clerk to the lowest responsible bidder, but shall not be sold for a sum exceeding twenty per cent. of the estimated value of such work, nor a second time to the same party; a contract and bond shall be entered into as hereinbefore provided, but the auditor may for a good cause shown, give full time to any contractor not exceeding sixty days, and the register of Deeds or township clerk, shall fix a time for the completion of work re-sold not exceeding sixty days from the date of the bond, and no contractor shall be prosecuted on his bond until the section below is completed.

§ 21. INSPECTION OF WORK.] It shall be the duty of the county surveyor, on being notified by any contractor that his job is completed, to inspect the same and if he find that it is completed according to contract he shall accept it and give to the contractor a certificate of acceptance stating that said job, share or allotment is completed according to the specifications of said ditch, and if any share or allotment has been sold to a person not the owner of the land assessed therefor, he shall in addition state the amount due the contractor for constructing the same, from the owner of the said land, which certificate shall be a lien upon the land assessed for such share or allotment, and shall be due and payable immediately by the owner of the land, which shall be a

lien upon the land assessed for such share or allotment and shall be due and payable immediately by the owner of the land; such certificate if not paid on demand shall draw interest until paid, and if the allotment sold belongs to a non-resident of the county or the township, the register of deeds or township clerk shall state such fact when he offers it for sale, and when the county surveyor accepts it and issues his certificate of acceptance, he shall file with the register of deeds or township clerk a copy thereof, whereupon said register of deeds or township clerk shall charge the amount mentioned in said certificate on the tax duplicate against the land assessed, with such allotment, to be collected as other taxes are collected together with six per cent. for the holder of the certificate after the same becomes delinquent, and when collected it shall be paid to the [person] holding the certificate on an order of the register of deeds or township clerk.

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

§ 23. SAME.] After the construction of such work, the town supervisor of such township in which the same is, or any part thereof, shall keep the same or such part thereof in proper repair and free from obstructions so as to answer its purpose, and pay for the same out of general township fund; and to raise the necessary money to reimburse that fund he shall apportion and assess the costs thereof upon the lands which will be benefited by such repairs, or removal of obstruction, according to such benefits in his judgment. He shall make a statement of such assessment and deliver the same to the register of deeds or township clerk

who shall put same upon the succeeding tax duplicate, and it shall be a lien upon the lands and be collected in same manner as Territory, townships 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 full force in this Territory. If he shall be of the opinion that such assessment or any part thereof ought to be charged to lands in other townships, the supervisors thereof shall, on request, meet with him at any time and place by him appointed, and they shall jointly make such assessments and certificates to the register of deeds or township clerks of the proper counties or township. A majority of such supervisors as attend any such meeting shall have power to act and decide any question and to make the assessments and certificates, and upon failure of any township supervisor to perform the work required of him by this section, after ten days notice in writing to him by any person interested, he shall be liable with his sureties on his official bond for all damages caused by such failure to perform his duty, to be recovered by the person or persons so damaged. He shall *so* [also] be *deem* [deemed] guilty of a misdemeanor, and on conviction thereof fined not less than ten or more than fifty dollars.

§ 24. WHEN DITCH CROSSES TWO OR MORE TOWNSHIPS OR COUNTIES.] Whenever the route of a proposed ditch, drain or water course extends into two or more counties or two or more townships, the [petition] shall be signed by one or more of the land owners in each county or township whose land will *will* be liable to be assessed for the construction of such ditch, and filed with the register of deeds or the clerk of the townships of the county containing the head or source of the proposed ditch, at least ten days before any regular meeting of the board of commissioners or board of supervisors, and thereupon the register of deeds or township clerks of such county or townships shall transcribe and transmit to the register of deeds of each other county, or the township clerk of each township interested, a certain copy of such petition; and it shall be the duty of the board of commissioners of each county, or the board of supervisors of each township interested in the proposed work, at their first regular meeting after such petition is filed, to appoint three disinterested resident freeholders of their respective counties or townships as viewers in like manner as provided for the appointment of viewers on a ditch in one county or township, to meet and act conjointly at such time and place as the board of commissioners of the county or township where the petition is filed may designate, and such joint viewers shall have the same powers and perform the same duties as provided in this act for the viewers on a ditch in one county or township, and they shall file a report of their proceedings with

the register of deeds of each county interested, at least four weeks before the next regular session of the board of commissioners or board of supervisors, whereupon the register of deeds of each county, or the township clerk of each township shall give notice for three consecutive weeks in the manner provided for ditches in but one county or township, of the pendency of such petition and the time set for the hearing thereof.

§ 25. PROCEEDINGS IN CASE OF JOINT DITCH.] The board of commissioners of the counties, or the board of supervisors of the townships interested in a joint ditch, shall, at the time set for the hearing of said petition, proceed to establish the same in the manner specified for ditches in but one county or township, and in all matters pertaining to such joint ditch the boards of commissioners or board of supervisors shall act in the same manner, so far as applicable, as required by this act establishing ditches in but one county or township, and they shall act conjointly; and when such ditch is established the viewers shall be notified as before provided in this act, to make their final report, and upon the filing of such final report the shares or allotments of such ditch shall be sold and constructed as hereinbefore provided for ditches in but one county or township, except that the register of deeds of the counties or the clerk of the townships interested shall act together as one body in performing their duties.

§ 26. REPAIRS OF JOINT DITCHES.] Such joint ditch shall be cleaned and repaired or enlarged in like manner as for ditches *but* in one county or township, by the joint action of the public officers of the counties or townships interested.

§ 27. REMONSTRANCE IN CASE OF JOINT DITCH.] It shall be lawful for any person or corporation affected by a proposed ditch extending into more than one county or township to file a remonstrance with the register of deeds of the county, *in which* or the township clerk of the township in which he resides, at least five days before the regular meeting of the board of county commissioners or the township board, when the petition is to be heard; and when such remonstrance has been filed and a bond for costs as provided for ditches in but one county or township, the register of deeds shall immediately, or township clerk shall immediately transcribe and transmit a copy of such remonstrance and bond to the register of deeds of the other counties, or township clerk of other townships interested, and then in like manner as hereinbefore provided, the boards of commissioners or board of supervisors, shall appoint reviewers who shall meet and act together and perform their duties as provided for reviewers in one county or township, and file a report of their proceedings with their respective boards of commissioners, or boards of supervisors, at or before

their next regular meetings, and upon the filing of such report the boards shall, if the viewers report the proposed work of public benefit or utility, establish the same, and it shall be constructed, cleaned and repaired or enlarged by the joint action of the proper officers in the different counties or townships, as though it *may* had been established on the report of the viewers and without remonstrance, and it shall be the duty of the register of deeds of the county, or the clerk of the township in which the time and place for the meeting of viewers or reviewers is fixed, to *to* notify the register of deeds of the other counties or clerks of other townships interested, of such time and place for the joint viewers or reviewers to meet.

§ 28. HIGHWAY OR RAILWAY BENEFITED TO PAY PROPORTION OF COSTS.] When any ditch established under this act drains either in whole or in part any public or corporate road or railroad, or benefits any of such roads so that the road bed or graveled track of any such road will be made better by the construction of such ditch, the viewers or reviewers shall apportion to the county or township, or townships, if a county, [or] territorial road, to the company if a corporate road or railroad, *or railroad*, such portion of the costs and expenses thereof as to private individuals, and require them to pay said costs and perform said labor in like manner as individuals.

§ 29. PENALTY FOR OBSTRUCTING DRAIN, ETC.] If any person shall willfully obstruct any public ditch, or shall willfully divert the water from its proper channel he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than five or more than fifty dollars, and shall also be liable for any and all damage occurring to any person or persons or corporations by such act.

§ 30. SHERIFF TO SERVE ORDERS.] The orders issued by the register of deeds or township clerks to viewers or reviewers, shall be served by the sheriff or town constable and shall be paid by the county or township for such services the same fees as he is allowed by law for similar services.

§ 31. COMPENSATION.] The surveyor or engineer shall be allowed the sum of three dollars per day for each day he is necessarily engaged in performing the duties required of him by this act, which sum shall be paid to him quarter-annually out of the county or township treasury, upon his filing before the board of commissioners or board of supervisors an itemized account of his services verified by his oath, and the cost of publishing the notices of jobs to be let by the register of deeds or township clerk and all blanks and stationery required by him in the performance of his duties, shall be paid by the county or township. The viewers and

reviewers shall each be allowed two dollars per day for each and every day they are necessarily engaged in viewing and reviewing and ditching and making up and filing their reports, which sum shall be paid to them out of the county or township treasury. Each chainman, axman, rodman, and all other hands necessary to the prompt execution of the work of locating a public ditch shall be allowed one dollar and fifty cents per day for the time actually employed in, to be paid as hereinafter provided.

§ 32. MAJORITY OF VIEWERS COMPETENT TO ACT.] A majority of the viewers or reviewers shall be competent to perform the duties required of them by this act, provided that for ditches extending into more than one county or township there shall be present and acting a majority from each county or township interested.

§ 33. DEFINITION OF CERTAIN TERMS.] The terms "regular session" and "regular meeting" of the board of commissioners or board of supervisors as used in this act, shall be held to include only the regular session of such board, commencing on the first Tuesday of January and on the fourth Monday of July in each year, and the word "ditch" as used in this act shall be held to include a drain or water course, and the petition for any public ditch may include any side, lateral, spur or branch ditch necessary to secure the object of the improvement.

§ 34. ASSESSMENT TO BE A LIEN.] The amount of assessment made by the viewers and confirmed by the board of commissioners or board of supervisors, shall be a lien upon all land so assessed from the date of the order of the board of commissioners or board of supervisors establishing the ditch, drain, or water course, and such order together with the report of the viewers on which ditch is established, shall [be] notice to all the world of the existence of such lien, and this act shall be liberally construed to promote the drainage and reclamation of wet or overflowed lands and the amounts due to contractors holding the viewer's certificate of acceptance shall not be defeated by reason of any defect in the proceedings occurring prior to the order of the board of commissioners or board of supervisors establishing the ditch, but such order or judgment of the said board shall be conclusive that all prior proceedings were regular and according to law.

§ 35. COUNTIES EXEMPTED.] This act shall not apply to the counties of Yankton and Lincoln.

§ 36. This act shall take effect and be in force from and after its passage.

ENDORSED.—Received at Executive Office, March 5th, 1883, at 6:10, P. M.

Note by the Secretary of the Territory.

The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the Council of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

GEO. H. HAND,
Secretary of the Territory.